

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201130966  
Issue No.: 3014  
Case No.: [REDACTED]  
Hearing Date:  
May 23, 2011  
Macomb County DHS

**ADMINISTRATIVE LAW JUDGE:** Susan C. Burke

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; MCL 400.37 upon Claimant's request for a hearing. After due notice, a telephone hearing was held on May 23, 2011. The Claimant appeared and testified. [REDACTED], ES, and [REDACTED] FIM, appeared on behalf of the Department of Human Services (Department).

**ISSUE**

Was the Department correct in not including [REDACTED] in Claimant's group since August of 2010?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) Claimant has a child in her care, [REDACTED]
- (2) Claimant was appointed as full guardian for [REDACTED] prior to August, 2010.
- (3) Claimant requested that the Department add [REDACTED] to her Food Assistance Program (FAP) case in August of 2010, and consistently thereafter.
- (4) [REDACTED] was active on another DHS case.

- (5) The Department does not dispute Claimant's status as guardian of [REDACTED] since August 2010.
- (6) The Department failed to remove [REDACTED] from the other DHS case, and add her to Claimant's case until May 1, 2011.
- (7) Claimant requested a hearing on April 25, 2011, protesting the Department's effective date of [REDACTED] being included in Claimant's FAP group.

### **CONCLUSIONS OF LAW**

The Food Assistance Program, formerly known as the Food Stamp ("FS") program, is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations ("CFR"). The Department administers the FAP program pursuant to MCL 400.10, *et seq* and MAC R 400.3001-3015. Departmental policies are found in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Program Reference Manual ("PRM").

Department policy dictates how changes in primary caretaker of a child should be treated:

Re-evaluate primary caretaker status when any of the following occur:

- There is a change in the number of days per month the child sleeps in a caretaker's home.
  - A second caretaker disputes the first caretaker's claim of the number of days the child sleeps in his/her home.
  - A second caretaker applies for assistance for the same child.
- Based on best available information/evidence, update the number of days per month the child sleeps in each caretaker's home on the child's Individual household status screen and run eligibility. BEM 210.

Department policy dictates how changes in primary caretaker should be processed:

Re-evaluate primary caretaker status when:

- A new or revised court order changing custody or visitation is provided.
- There is a change in the number of days the child sleeps in another caretaker's home and the change is expected to continue, on average, for the next twelve months.

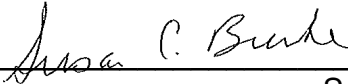
- A second caretaker disputes the first caretaker's claim that the child(ren) sleeps in his/her home more than half the nights in a month, when averaged over the next 12 months.
- A second caretaker applies for assistance for the same child. BEM 212.

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code Rule ("MAC R") 400.901 - .951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because a claim for assistance is denied or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by an agency action resulting in suspension, reduction, discontinuance, or termination of assistance. MAC R 400.903 A request for hearing shall be in writing and signed by the claimant, petitioner, or authorized representative. MAC R 400.904(1) A claimant shall be provided 90 days from the negative action notice. MAC R 400.902 - .904; BAM 600.

In the present case, the Department failed to follow policy and procedures in processing Claimant's submissions showing that [REDACTED] was in her legal care as of August, 2010. BEM 210, BEM 212. The Department failed to present adequate explanation for its failure to follow Department policy. [REDACTED] was in Claimant's care as of the date of her request with the Department in August of 2010. Therefore, the Department was incorrect in not including [REDACTED] in the Claimant's FAP group as of August 2010. However, Claimant did not request a hearing until April 25, 2011. Therefore, the jurisdiction of this Administrative Law Judge is limited to January 25, 2011, ninety days prior to Claimant's hearing request. See MAC R 400.904(1); BAM 600.

### **DECISION AND ORDER**

Based on the forgoing findings of fact and conclusions of law, it is ORDERED that the Department's decision to not include [REDACTED] in Claimant's group as of August 2010 is REVERSED. It is further ORDERED that Claimant's FAP benefits shall be re-determined, effective January 25, 2011 and ongoing, to include [REDACTED]. Any increase in benefit shall be paid to Claimant in the form of a supplement.



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Susan C. Burke  
Administrative Law Judge  
For Maura Corrigan, Director  
Department of Human Services

Date Signed: May 31, 2011

Date Mailed: May 31, 2011

**NOTICE:** Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

SCB/hw

cc:

