

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

IN THE MATTER OF:



Registration. No: 2011-40192
Issue No: 1022; 2018;
3014

Case No: [REDACTED]
Hearing Date: July 21, 2011
Genesee County DHS

Administrative Law Judge: Mark A. Meyer

HEARING DECISION

In accordance with MCL 400.9, MCL 400.37, and 1999 AC, R 400.903 a hearing was held in this matter on July 21, 2011. Claimant appeared at hearing and provided testimony. The Department of Human Services (the Department) was represented by agency personnel.

ISSUE

In dispute was whether the Department properly closed Claimant's Medical Assistance (MA), Family Independence Program (FIP), and Child Development and Care (CDC) cases, and reduced her monthly Food Assistance Program (FAP) benefit allotment, where it was determined by the agency that Claimant was no longer the primary caretaker of her minor daughter.

FINDINGS OF FACT

Based on the competent, material, and substantial evidence on the whole record, the Administrative Law Judge finds as relevant fact:

1. At all times relevant to this matter, Claimant was receiving MA, FIP, CDC, and FAP benefits.
2. On May 25, 2011, Claimant's Department caseworker received an email from a Department caseworker in Washtenaw County, informing her that the biological father of Claimant's daughter, Alona Seager, "has custody and is applying [for benefits] in Washtenaw County." This caseworker directed Claimant's caseworker to "remove [the minor child] from [Claimant's] case." (Department's Exhibit D-1.)

3. On May 26, 2011, the Department issued a notice of case action against Claimant, informing her that her MA, FIP, and CDC case would close, and that her monthly FAP allotment would be reduced to [REDACTED] per month, because Claimant was no longer considered by the agency to be the child's primary caretaker.
4. From the Department's actions in this matter, Claimant filed a request for hearing. (Claimant's hearing request, dated June 23, 2011.)

CONCLUSIONS OF LAW

The hearing and appeals process for applicants and recipients of public assistance in Michigan is governed by 1999 AC, R 400.901 through 400.951, in accordance with federal law. An opportunity for hearing must be granted to an applicant who requests a hearing because his claim for assistance is denied or not acted on with reasonable promptness, and to any recipient who is aggrieved by Department action resulting in suspension, reduction, discontinuance, or termination of assistance. Rule 400.903(1). Indeed, an applicant or recipient holds the right to contest an agency decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department must provide an administrative hearing to review the decision and determine its appropriateness. Bridges Administrative Manual (BAM) 600, p. 1.

Here, based on the word of a Washtenaw County caseworker, the Department determined that Claimant's minor daughter was residing the majority of the time with her biological father, not Claimant. This determination resulted in the closure of Claimant's MA, FIP, and CDC cases, and a reduction in her FAP monthly benefit allotment. Claimant's request for hearing followed.

The MA program was established by Title XIX of the Social Security Act, 42 USC 1396, *et seq.*, and is implemented through federal regulations found in 42 CFR 430, *et seq.* The Department administers the MA program under MCL 400.10, *et seq.*, and MCL 400.105. Department policies developed from this authority are found in the BAM, the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

MA is available to parents and other caretaker relatives who meet certain nonfinancial and financial eligibility factors. BEM 135, pp. 1-2.

A caretaker relative is a person who, among other things, meets the following requirements:

- Except for temporary absences, the person lives with a dependent child.
- The person is:
 - The parent of the dependent child; or

- The specified relative (other than a parent) who acts as parent for the dependent child. (Acts as parent means provides physical care and/or supervision.)

BEM 135, p. 2.

A child can have only one caretaker relative. This means that if a person is an MA applicant or recipient based on being a caretaker relative, *no other person can apply for or receive MA based on being a caretaker relative for the same dependent child.* BEM 135, p. 2.

A child is considered to be living with only one parent in a joint custody arrangement. This person is the primary caretaker. This is the person who provides the home where the child sleeps more than half of the days in a month, *averaged over a twelve month period.* The twelve month period begins at the time the determination is being made. This is the parent who is responsible for the child's day-to-day care and supervision. For purposes of determining a primary caretaker accept the client's statement unless questionable or disputed by the other parent. When parenting time is disputed or questionable, a determination should be based on a court order that addresses custody or visitation. In the absence of a court order, each parent must be provided an opportunity to present evidence of their claim. BEM 135, p. 4.

The FIP was established under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 USC 601, *et seq.* The Department administers the FIP in accordance with MCL 400.10, *et seq.*, and Rules 400.3101 through 400.3131. The FIP replaced the Aid to Dependent Children (ADC) program, effective October 1, 1996. Agency policies pertaining to the FIP are found in the BAM, BEM, and (RFT). The program's purpose is to provide temporary cash assistance to support a family's movement to self-sufficiency. BEM 230A, p. 1.

Group composition is the determination of which individuals living together are included in the FIP eligibility determination group (EDG). To be eligible, a child must live with a legal parent, stepparent, or other qualifying caretaker. BEM 210, p. 1. The EDG is comprised of those individuals living together whose information is needed to determine FIP eligibility. BEM 210, p. 1. Living together is defined as sharing a home where family members usually sleep except for temporary absences. BEM 210, p. 2.

A legal parent or stepparent who lives with a dependent child is always the child's caretaker. BEM 210, p. 4. But, when a child spends time with more than one caretaker (defined as a legal parent or stepparent living in the home, or another adult who acts as a parent by providing physical care and supervision), the Department must determine who the primary caretaker is. BEM 210, pp. 1, 2. The child is always in the FIP group of the primary caretaker. BEM 210, pp. 1, 2, 3, 7.

When a child spends time in the home of multiple caretakers who do not live together, the primary caretaker is determined based on the number of days per month that the child sleeps in the home. BEM 210, p. 7. The primary caretaker is the caretaker who is

primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half the days of the month, *when averaged over a twelve-month period*. BEM 210, pp. 2, 7. If the child sleeps in the home of multiple caretakers an equal number of days in a month, *when averaged over a twelve-month period*, the caretaker who applies, and is determined eligible, for benefits *first* is the primary caretaker. BEM 210, p. 8.

Once the primary caretaker is determined, the child's other caretakers are considered to be absent caretakers. BEM 210, pp. 2, 8. When the number of days per month a child sleeps in the home of multiple caretakers is questionable or disputed, each caretaker must be provided the opportunity to present evidence of their respective claim. BEM 210, p. 8.

The CDC program was established under Titles IVA, IVE, and XX of the Social Security Act, 42 USC 301, *et seq.*, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193 (1996). The program is implemented under Title 45 of the Code of Federal Regulations, Parts 98 and 99. In accordance with this authority, the Department administers the program and provides services to adults and children under MCL 400.14(1) and Rules 400.5001 through 5015. Department policies pertaining to the CDC program are found in the BAM, BEM, and RFT. The goal of the CDC program is to preserve the family unit and to promote its economic independence and self-sufficiency by promoting safe, affordable, accessible, quality child care for qualified Michigan families. BEM 703, p. 1.

Group composition is the determination of which persons living together are included in the CDC program group. When CDC is requested for a child, each of the following persons who live together must be in the program group:

- Each child for whom care is requested.
- Each child's legal and/or biological parent(s) or stepparent.

BEM 205, p. 1.

If a child's parents live apart but have joint custody of the child, and both parents have applied and are eligible for CDC:

- Activate the child on *two* cases.
- Authorize care on *each* case only for time periods when the parent for that case has physical custody of the child.

The client's statement of joint custody is acceptable. BEM 205, p. 2.

FAP – formerly known as the Food Stamp Program – was established by the Food Stamp Act of 1977, 7 USC 2011, *et seq.*, as amended, and is implemented through federal regulations found in 7 CFR 273.1 *et seq.* The Department administers the FAP under MCL 400.10, *et seq.*, and Rules 400.3001 through 400.3015. Agency policies pertaining to the FAP are found in the BAM, BEM, and RFT. The goal of the FAP is to ensure sound nutrition among children and adults. BEM 230B, p.1.

FAP group composition is established by determining:

- Who lives together.
- The relationship(s) of the people who live together.
- Whether the people living together purchase and prepare food together or separately, and
- Whether the person(s) resides in an eligible living situation.

BEM 212, p. 1.

Parents and their children under 22 years of age who live together must be in the same FAP group. BEM 212, p. 1.

When a child spends time with multiple caretakers who do not live together (e.g., joint physical custody), determine a primary caretaker. Only one person can be the primary caretaker and the other caretaker is considered the absent caretaker. The child is always in the FAP group of the primary caretaker. If the child's parent is living in the home, she must be included in the FAP group. BEM 212, p. 3.

The primary caretaker is the person who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half of the days in a calendar month, on average, *in a twelve-month period*. BEM 212, p. 3. If primary caretaker status is questionable or disputed, *verification is needed*. Both caretakers are to be provided the opportunity to submit evidence supporting their respective claims. BEM 212, p. 3.

If the child spends virtually half of the days in each month with each caretaker, *averaged over a twelve-month period*, the caretaker who applies and is found eligible *first*, is the primary caretaker. BEM 212, p. 3.

Here, the sole dispositive issue was whether the Department properly determined that Claimant was no longer the primary caretaker of her minor daughter. The agency closed Claimant's MA, FIP, and CDC cases, and reduced her monthly FAP benefit allotment, based solely on the following evidence:

1. Email correspondence from the Washtenaw County caseworker for the biological father, which stated in full:

Please remove child . . . from [Claimant's] case. [T]he biological father has custody and is applying in Washtenaw Co[unty]. [Department's Exhibit 1.]

2. Email correspondence between the two caseworkers, which stated in full:

Claimant's caseworker: [Claimant] is quite adamant that [the minor child] is in her custody to the extreme of requesting a hearing[.] [A]ny additional info?

Biological father's caseworker: I spoke with [father] last week, he stated they now have 50/50 custody. His is suppose [sic] to send me proof of this. [Department's Exhibit 4.]

It appeared from the testimony provided at hearing that this was the extent of the Department's investigation into the matter before taking action against Claimant.¹ There was no indication that either Claimant's caseworker or the caseworker for the minor child's biological father obtained any verification, other than the word of the father, establishing him as the child's primary caretaker. Based on the evidence presented, it is concluded that this negative action constituted egregious error on the part of the agency.

Here, Claimant presented a copy of a judgment of divorce indicating that she and the biological father shared joint legal and physical custody of the minor child. Claimant also provided testimony that she cared for the child the majority of time in an average month. According to Claimant, she has had custody of the child on week days for the past two years, with the father having the child on weekends. Claimant further testified, however, that many times the father would not pick up the child on those weekends.

Claimant did state that an agreement was reached for this year's summer months that she and the child's biological father would equally share custody time. But, she also provided testimony indicating that the father picked up the child at a relative's home without Claimant's knowledge, and then refused to allow her to see the child.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of*

¹ In fact, the Department of Human Services' (the Department's) representative at hearing admitted that the negative action taken in this matter was based solely on these two pieces of email correspondence.

Community Health, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

Here, based on the entirety of Claimant's credible testimony, it may be reasonably determined that she, and not the biological father, was the primary caretaker of her minor child. Claimant's caseworker testified at hearing that because Claimant moved she did not timely receive the agency's notice of case action. Unfortunately for Claimant, an untimely address change precluded her from receiving the agency's notice before her MA, FIP, and CDC cases were closed and her monthly FAP benefit allotment reduced. According to the caseworker, had Claimant been able to timely respond, "*I would have stopped closure*" (emphasis added.); it appeared that this statement was made in response to Claimant's hearing testimony.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, the Administrative Law Judge decides that the Department improperly determined that Claimant was no longer the primary caretaker of her minor child, Alona Seager.

Accordingly, the Department's action in this matter is **REVERSED**. The agency shall return the minor child to Claimant's group for purposes of determining MA, FIP, CDC, and FAP benefits until such time as it can be reasonably and credibly determined that Claimant is no longer the child's primary caretaker, or to the extent Claimant is otherwise ineligible to receive such benefits. The child is to be returned to Claimant's respective benefits groups effective the date(s) on which she was removed.

It is SO ORDERED.

/s/ _____
Mark A. Meyer
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 8/15/11

Date Mailed: 8/15/11

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 90 days of the filing of the original request.

Claimant may appeal this decision and order to the circuit court for the county in which she resides within 30 days of the mailing of this decision and order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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