

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

IN THE MATTER OF:

[REDACTED]

[REDACTED]
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the DHS client's (also referred to as "Claimant") request for a hearing received on August 11, 2011. After due notice, a telephone hearing was held on September 21, 2011. Claimant personally appeared and provided testimony.

ISSUE

Whether the department properly determined Claimant's eligibility for Food Assistance Program (FAP), Family Independence Program (FIP) and Medical Assistance (MA) benefits?

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 was actively receiving FAP, FIP and MA benefits in early June, 2011. (Hearing Summary & Department Exhibits 10-17).
2. While Claimant's daughter [REDACTED] was incarcerated, Claimant had guardianship over her granddaughter [REDACTED] (Hearing Summary).
3. Claimant had a household group size of 3 (three) which consisted of Claimant, "D.R." [REDACTED] and Claimant's granddaughter [REDACTED]. (Hearing Summary & Department Exhibits 10-16).
4. Claimant received a monthly FAP allotment of [REDACTED] her FIP allotment was [REDACTED] (as an ineligible grantee on behalf of G.A.) and MA benefits for herself and G.A. as her caretaker. (Department Exhibits 10-16).

5. On June 28, 2011, M.R. was released from prison and moved into Claimant's household. (Hearing Summary).
6. On July 27, 2011, M.R. applied for FAP, Child Development & Care (CDC), MA and FIP benefits. (Hearing Summary & Department Exhibit 18). The Department (on case number Case number 100718412) granted M.R.'s application for FIP (for G.A.), FAP and MA. (Hearing Summary).
7. On August 1, 2011, the department mailed Claimant a Notice of Case Action (DHS-1605) closing Claimant's FIP and MA because G.A.'s mother, M.R., had moved in and applied for FIP and reducing FAP to [REDACTED] due to reduction in group size to 2 (two). (Department Exhibits 2-7).
8. Claimant requested a hearing on August 11, 2011. (Request for Hearing).

CONCLUSIONS OF LAW

The client has the right to request a hearing for any action, failure to act or undue delay by the department. BAM 105. The department provides an administrative hearing to review the decision and determine its appropriateness. BAM 600.

The regulations that govern the hearing and appeal process for applicants and recipients of public assistance in Michigan are contained in the Michigan Administrative Code (Mich Admin Code) Rules 400.901 through 400.951. An opportunity for a hearing shall be granted to a recipient who is aggrieved by an agency action resulting in suspension, reduction, discontinuance, or termination of assistance. Mich Admin Code 400.903(1).

The Food Assistance Program (FAP) (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 of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. The department's policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services (DHS or Department) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

The MA program is also referred to as Medicaid. BEM 105. The goal of the Medicaid program is to ensure that essential health care services are made available to those

who otherwise could not afford them. BEM 105. The Medicaid program is comprised of several sub-programs or categories. One category is FIP recipients. BEM 105. Another category is SSI recipients. BEM 105. There are several other categories for persons not receiving FIP or SSI. BEM 105. However, the eligibility factors for these categories are based on (related to) the eligibility factors in either the FIP or SSI program. BEM 105. Therefore, these categories are referred to as either FIP-related or SSI-related. BEM 105.

To receive Medicaid under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. BEM 105. Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant women, receive Medicaid under FIP-related categories. BEM 105. For MA only, a client and the client's community spouse have the right to request a hearing on an initial asset assessment only if an application has actually been filed for the client. BEM 105.

The Department of Human Services (DHS) believes that children are best served by living in supportive family settings. BEM 210. The mutual responsibility of family members for each other and their commitment to caring for each other are key to building strong families. BEM 210. Parents are responsible for the care and support of their minor children. In the absence of parents, children may be cared for by other adults having specific relationships to the children. BEM 210.

Group composition is the determination of which individuals living together are included in the FIP eligibility determination group (EDG) and the FIP certified group. BEM 210. To be eligible for FIP, a child must live with a legal parent, stepparent or other qualifying caretaker. BEM 210. A caretaker is a legal parent or stepparent living in the home, or when no legal parent or stepparent lives in the home, another adult who acts as a parent to a dependent child by providing physical care and supervision. BEM 210.

The certified group means those individuals in the FIP EDG who meet all non-financial FIP eligibility factors. BEM 210. Certified group members have a FIP EDG participation status of Eligible Child or Eligible Adult. BEM 210. The EDG means those individuals living together whose information is needed to determine FIP eligibility. BEM 210. Joint physical custody occurs when parents or other caretakers alternate taking responsibility for the child's day-to-day care and supervision in separate homes. BEM 210. It may be included in a court order or may be an informal arrangement between parents or other caretakers. BEM 210.

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 of the days in a month, when averaged over a twelve-month period. The twelve-month period begins at the time the determination is being made. BEM 210. Once a caretaker is determined to be the primary caretaker, the child's other caretakers are considered absent caretakers. BEM 210.

A temporarily absent person is considered to be living in the home when **all** of the following are true:

- Individual's location is known.
- There is a definite plan to return.
- The individual lived with the FIP EDG before the absence (newborns are considered to have lived with the FIP EDG).
- The absence has lasted or is expected to last 30 days or less.

A court ward is under the care and supervision of the court. Even if they meet the temporary absence requirements above, the child is NOT considered to be living in the parent's home. BEM 210.

For purposes of establishing group composition and eligibility for FIP, department policy provides that children in a joint custody arrangement are considered to be living with only one parent, who is designated the primary caretaker. BEM 212, BEM 210, BEM 110. The primary caretaker is the parent who provides the home where the child sleeps more than half of the days in a month, when averaged over a twelve month period. BEM 212, BEM 210, BEM 110. The twelve month period begins when a primary caretaker determination is made. BEM 212, BEM 210, BEM 110. The department makes this determination by following these steps:

- The client is asked how many days the child sleeps at his/her home in a calendar month.
- The client's statement is accepted unless questionable or disputed by another caretaker – in which case, verification is needed and may include, but not be limited to:
 - the most recent court order addressing custody and/or visitation;
 - school records indicating who enrolled the child in school, who is to be contacted in case of emergency, and/or who arranges for the child's transportation to and from school;
 - child care records showing who makes and pays for child care arrangements, and who drops off and picks up the child; and
 - medical providers' records showing where the child lives and who generally takes the child to medical appointments.
- The department's determination should be based on the evidence provided by both caretakers in support of his/her claim. BEM 212.

Department policy further provides that if the child spends virtually half of the days in each month, averaged over a twelve month period with each caretaker, the caretaker who applies and is found eligible first, is the primary caretaker. The other caretaker is considered the absent caretaker. BEM 212.

In this case, there is a dispute between Claimant and Claimant's daughter regarding who is the primary caretaker over Claimant's granddaughter. Claimant's daughter moved into the household after being released from prison. Claimant's daughter then applied for FIP on behalf of Claimant's granddaughter. The Department granted FIP and MA benefits on behalf of Claimant's daughter but closed Claimant's FIP and MA then reduced her FAP. Claimant testified that she was the legal guardian over her granddaughter. There is no evidence that the Department verified Claimant's legal status concerning her grandchild (G.A.). The Department should have resolved the conflict by obtaining the proper verifications including but not limited to any court orders concerning guardianship or termination of parental rights. For these reasons, the department improperly determined Claimant's FIP, MA and FAP based on the notion that Claimant's legal rights over her grandchild were terminated when her daughter (M.R.) moved into the household. The Department did not properly determine that Claimant was not the primary caretaker for purposes of establishing the inclusion and eligibility of her granddaughter in Claimant's household group. The Administrative Law Judge finds that based on the substantial, material and competent evidence, the department improperly excluded Claimant's granddaughter from her group eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly excluded Claimant's granddaughter from her household group for purposes of FIP, FAP and MA.

The department's actions are REVERSED and the department is hereby instructed to do the following:

- Redetermine Claimant's eligibility for FAP, FIP and MA benefits including:
 - Verification of who is the primary caretaker over G.A.,
 - Verification regarding Claimant's legal status over her grandchild (G.A.),
 - Determination of Claimant's proper fiscal group size,

The department shall also issue any retroactive benefits that Claimant is entitled to receive.

2011-48668/CAP

It is SO ORDERED.

/s/

C. Adam Purnell
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 9/28/11

Date Mailed: 9/28/11

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 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.

CAP/ds

■ [REDACTED]