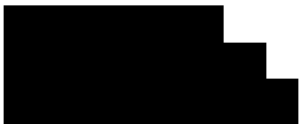


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201152715
Issue No: 1022, 3014
Case No: [REDACTED]
Hearing Date: October 12, 2011
Shiawassee County DHS

ADMINISTRATIVE LAW JUDGE: Christopher S. Saunders

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on October 12, 2011. The claimant appeared and provided testimony.

ISSUE

Did the department properly determine the claimant's group composition for the purposes of establishing eligibility for the Food Assistance Program (FAP) and the Family Independence Program (FIP)?

FINDINGS OF FACT

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

1. The claimant was a recipient of FAP and FIP benefits prior to August 1, 2011.
2. The claimant is divorced from his children's mother and has a court ordered custody arrangement.
3. The claimant was mailed a Notice of Case Action (DHS 1605) on July 14, 2011 informing him that his FIP benefit case was being closed due to the fact that there were no longer any eligible children residing with him and that his FAP case was being reduced based on the children no longer being included in his group composition as of August 1, 2011. (Department Exhibits 28-34).

4. The claimant submitted a hearing request on September 2, 2011.

CONCLUSIONS OF LAW

Clients have the right to contest a department decision affecting eligibility for benefit levels whenever it is believed that the decision is incorrect. BAM 600. 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 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) and the Program Reference Manual (PRM).

The Food Assistance Program (FAP) was established pursuant to 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 400.30001-3015. The Adult Medical Program (AMP) was established by Title XXI of the Social Security Act; (1115)(a)(1) of the Social Security Act, and is also administered by the department pursuant to MCL 400.10, *et seq.* Department policies for both programs are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), the Bridges Reference Manual (BRM), and the Reference Tables Manual (RFT).

For the FIP program, the department is to determine the size of the claimant's group for purposes of determining benefit eligibility and amount. For FIP, department policy states as follows:

Group composition is the determination of which individuals living together are included in the FIP eligibility determination group (EDG) and the FIP certified group. To be eligible for FIP, a child must live with a legal parent, stepparent or other qualifying caretaker.

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 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. When a child spends time in the home of multiple caretakers who do not live together (such as joint physical custody or parent/grandparent), Bridges determines the primary caretaker based on the number of days per month a child sleeps in the home. Accept the client's statement regarding number of days the child sleeps in the caretaker's home unless questionable or disputed by another caretaker. BEM 210.

In relation to the claimant's FAP case, policy again requires that a determination be made as to group composition to determine eligibility and benefits amount. Policy states as follows:

FAP group composition is established by determining:

1. Who lives together.
2. The relationship(s) of the people who live together.
3. Whether the people living together purchase and prepare food together or separately, and
4. Whether the person(s) resides in an eligible living situation (see Living Situations).

RELATIONSHIPS

The relationship(s) of the people who live together affects whether they must be included or excluded from the group. First determine if they must be included in the group. If they are not mandatory group members, then determine if they purchase and prepare food together or separately.

Spouses

Spouses who are legally married and live together must be in the same group.

LIVING WITH

Living with means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. Persons who share only an access area (e.g., entrance or hallway) or non-living area (e.g., laundry) are not considered living together. BEM 212.

Policy also provides that in relation to FAP benefits, the primary care taker will be determined using the determination as to whom the child spends the majority of nights with during a month, averaged over a twelve month period. BEM 212.

For both FIP and FAP benefits, a determination of primary caretaker will not be changed if child is absent from for thirty consecutive days or less. If the child is absent from the primary caretaker's residence for thirty consecutive days or less, such absence will be considered temporary or a vacation. BEM 212, BEM 210.

In a situation where a group member should be added or deleted from an existing case, department policy states as follows:

FAP MEMBER ADDS/DELETES

A member add that increases benefits is effective the month after it is reported or, if the new member left another group, the month after the member delete. In determining the potential FAP benefit increase, Bridges assumes the FIP/SDA supplement and new grant amount have been authorized.

When a member leaves a group to apply on his own or to join another group, do a member delete in the month you learn of the application/member add. Initiate recoupment if necessary. If the member delete decreases benefits, adequate notice is allowed. BEM 212.

For both FIP and FAP benefits, if there has been an assertion that a primary caretaker of a child has changed, there is to be a re-evaluation of who the primary caretaker is for the child in question. BEM 210, BEM 212. In the case at hand, the department testified that the claimant's children's mother filed an application for assistance and listed the children as living with her. The claimant testified that the children enjoy extended visitation with their mother during the summer months, but that they return to his home every weekend during this time period.

At the time of the mother's application, the children were already active on the claimant's case, and were removed from the claimant's case after the application was submitted. There was no testimony as to any verification obtained from the mother to show that the children were living with her in accordance with policy definitions or any testimony showing that the claimant was given an opportunity to contradict the mother's assertion that the children were living with her. In fact, the claimant testified that when he called the department to question why his FIP case was being closed and his FAP case was being reduced, he was told by his department worker to re-apply in August.

Policy states that in determining who the primary caretaker of a child is, the department is to accept the statements of the caretaker unless those statements are questionable or disputed by another caretaker. If the statements are questionable or disputed by another caretaker, the department is to obtain verification to corroborate or contradict the statements given by the caretaker(s). BEM 210, BEM 212.

In the present case, the fact that the children were already listed on the claimant's case at the time of the mother's application should have been reason enough to consider the mother's statements as to who the primary caretaker was questionable. Additionally, the claimant testified that he contacted the department to question the action taken in the case and was simply told to reapply in August. This Administrative Law Judge finds that the department should have verified the mother's assertion that she was the children's primary caretaker on her application and should have given the claimant an opportunity to refute said assertion. Therefore, this Administrative Law Judge finds that the department improperly closed the claimant's FIP case and improperly reduced his FAP case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did not properly determine the claimant's group size and therefore eligibility for the FAP and FIP programs.

Accordingly, the department's actions are **REVERSED**.

It is HEREBY ORDERED that the department shall:

1. Determine the claimant's children's primary caretaker in accordance with policy directives for the period beginning August 1, 2011 and continuing.
2. Redetermine the claimants eligibility for the FIP and FAP programs in accordance with the primary caretaker determination.
3. If the claimant is otherwise eligible, reinstate his FIP and FAP benefits and if applicable, supply him with any past due benefits that may be due and owing.

/s/

Christopher S. Saunders
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: October 20, 2011

Date Mailed: October 20, 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 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

CSS/cr

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