

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-9314
Issue Nos.: 1022, 2015, 3014
Case No.: [REDACTED]
Hearing Date: January 5, 2011
DHS County: Wayne (82-43)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37 and Claimant [REDACTED] request for a hearing. After due notice, a telephone hearing was held on January 5, 2011. Claimant appeared and testified. [REDACTED]

[REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether DHS properly denied Claimant's application for Family Independence Program (FIP), Food Assistance Program (FAP), and Medical Assistance (MA or Medicaid) benefits for herself and her five children?

FINDINGS OF FACT

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

1. In 2010, Claimant received FIP, FAP and MA benefits for herself and her five children.
2. On or about September 26, 2010, Claimant was evicted from her residence and the children's father, [REDACTED], took custody of the children.
3. On October 5, 2010, DHS certified FIP, FAP and MA benefits for [REDACTED] and the five children.

4. Also on October 5, 2010, DHS closed Claimant's FIP, FAP and MA benefits. The closures became effective November 1, 2010.
5. On or about November 1, 2010, Claimant obtained housing for herself and the children.
6. On November 4 and 5, 2010, the children were returned to Claimant's custody.
7. On or about November 5, 2010, Claimant applied for FIP, FAP and MA benefits for herself and the five children.
8. As part of the application process, DHS required verification from Claimant that she was the children's custodian.
9. On November 6, 2010, DHS certified FAP and MA benefits for Claimant only.
10. On December 1, 2010, Claimant filed a notice of hearing request with DHS.
11. On December 2, 2010, DHS received verification that Claimant assumed full custody of the children on November 4, 2010.

CONCLUSIONS OF LAW

FIP was established by the U.S. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 United States Code 601 *et seq.* DHS administers the FIP program pursuant to MCL 400.10 *et seq.*, and Michigan Administrative Code Rules (MACR) 400.3101-400.3131. DHS' policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

FAP was established by the U.S. Food Stamp Act of 1977 and is implemented by federal regulations in Title 7 of the Code of Federal Regulations (CFR). DHS administers the FAP program pursuant to MCL 400.10 *et seq.*, and MACR 400.3001-400.3015. DHS' policies are found in BAM, BEM and RFT. *Id.*

MA was established by Title XIX of the U.S. Social Security Act and is implemented in CFR Title 42. DHS administers the MA program pursuant to MCL 400.10 *et seq.*, and MCL 400.105. DHS' policies are found in BAM, BEM and RFT. *Id.*

The administrative manuals are the policies and procedures that DHS officially created for its own use. While the manuals are not laws created by Congress or the Michigan

State Legislature, they constitute legal authority which DHS must follow. It is to the manuals that I look now, in order to see what policy applies in this case. After setting forth what the applicable policies are, I will examine whether they were in fact followed in this case.

The applicable policies that the Department refers me to are BAM 130, "Verification and Collateral Contacts," and BEM 110, "Low Income Family MA (LIF)." I will start by looking to see if they provide guidance in this case.

Looking first at BAM 130, "Verification and Collateral Contacts," this manual Item states that verification means documentation. BAM 130, p. 1. In this case, the fact that requires documentation is the custody of the children, because it is undisputed that the children went to live with their father from about September 26, 2010, to November 4, 2010, which is a period of over five weeks. I consider that two changes of custody occurred in this case, first when the father took the children and the second when the children were returned to Claimant. Because two changes in custody occurred, I find and conclude that the DHS requirement of documentation in this case is reasonable and necessary.

I look also to BEM 210, "FIP Group Composition," and find that it requires that in order for a customer to be eligible for FIP, the child "*must live with the legal parent or stepparent.*" BEM 210, p. 1 (emphasis added). This also causes me to decide and conclude that verification is a DHS requirement that must be applied in this case.

The DHS verification requirement appears a second time in BEM 210, "FIP Group Composition," which states that in determining who the primary caretaker is for an FIP certified group, DHS must

[a]ccept the client's statement regarding the number of days per month a child sleeps in the home. If questionable or disputed by another caretaker, **request verification from both caretakers.** BEM 210, p. 11 (emphasis added).

I read this language to mean that if there are two possible caretakers, DHS must first determine if a question of custody exists and, if it does, DHS must request verification from both caretakers. I find that in this case DHS failed in its duty to request verification from both caretakers at the point in time that the question arose.

I have reviewed all of the evidence and testimony in this case as a whole. I find that DHS presumed that because the father was receiving DHS benefits effective October 5, 2010, one month later on November 5, 2010, he was still the caretaker and he was still eligible for those benefits. I find that on November 5, 2010, when the Claimant applied

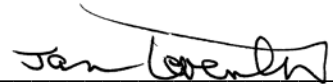
for DHS benefits and stated she now had custody, DHS had a duty to accept her statement and request verification from both caretakers.

I therefore REVERSE the Department's denial of Claimant's application. I ORDER that DHS shall:

1. Reinstate Claimant's application;
2. Accept Claimant's verification, which is a Wayne County Friend of the Court Recommendation that she has, and shall continue to have, full custody of the children;
3. Process Claimant's application effective November 5, 2010, in accordance with DHS policies and procedures; and
4. Request verification from the father regarding his custody of the children as of November 5, 2010.

DECISION AND ORDER

Based on the findings of fact and conclusions of law above, I find and determine that DHS is REVERSED in this matter. IT IS ORDERED that DHS shall reinstate Claimant's application for FIP, FAP and MA benefits for herself and her children, and process the application as directed above and in accordance with all DHS policies and procedures.



Jan Leventer
Administrative Law Judge
for Duane Berger, Director
Department of Human Services

Date Signed: January 10, 2011

Date Mailed: January 11, 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.

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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.

JL/pf

cc:

