

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-25221
Issue No: 1022, 2015, 3014

[REDACTED]

Kent County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris

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 received on March 21, 2011. After due notice, a telephone hearing was held on June 7, 2011. Claimant personally appeared and provided testimony.

ISSUE

Whether the department properly determined that Claimant's child was not eligible to be included as a group member of Claimant's Food Assistance Program (FAP) benefits; Family Independence Program (FIP) benefits 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. The claimant was a recipient of FAP, FIP and MA.
2. The department received information that the claimant's child was now residing with her father. (Department Exhibit 1 – 7)
3. The department mailed the claimant a Notice of Case Action (DHS-1605) on March 9, 2011, informing her that her FIP and MA would close and her FAP would be reduced because her daughter was removed from each program group. (Department Exhibit 16 – 22)
4. The claimant submitted a hearing request on March 21, 2011.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1)

Clients have the right to contest a department decision affective eligibility for benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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. Department 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) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

For purposes of establishing group composition and eligibility for benefit programs, 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 211, BEM 210, BEM 110. The primary caretaker is the parent 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. 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, BEM 210.

In this case, the department received information that the minor child was living with the father, not the mother. The claimant testified that while she had originally had sole physical custody of the child, a temporary parenting time order had changed the circumstances of the custody arrangement (a copy of which was provided to the undersigned). The claimant testified that she now has custody of the child on Sundays, one weekday each week and alternate holidays. The claimant further testified that the parties were attempting to work out a joint custody agreement, but that it hadn't been completed yet or adopted by the court.

The claimant's testimony establishes that she would not currently meet the definition of primary caretaker for her daughter. The child's father is currently the parent 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.

Thus, the department properly removed the child from the mother's FAP, FIP and MA case. As the eligibility for FIP and MA were predicated on the minor child being in the home (there are no other minor children in the house), the department's closure of the

MA and FIP was proper. Also, the department properly reduced the claimant's FAP benefits as her group size went from two individuals to one individual.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly determined that Claimant's child was not eligible to be included as a group member of Claimant's Food Assistance Program (FAP) benefits; Family Independence Program (FIP) benefits and Medical Assistance (MA) benefits.

Accordingly, the department's determination is UPHELD.

It is SO ORDERED.

/s/
Suzanne Morris
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 6/23/11

Date Mailed: 6/23/11

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.

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.

SM/ds

