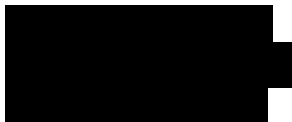


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2011-29406

Issue No: 3014



Bay County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 April 4, 2011. After due notice, a telephone hearing was held on May 18, 2011. Claimant personally appeared and provided testimony.

ISSUE

Whether the department properly determined that Claimant's children were ineligible to be included in Claimant's Food Assistance Program (FAP) group?

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 receiving FAP at all times pertinent to this hearing for his two children. (Hearing Summary).
2. On April 29, 2010, the children's mother submitted paperwork to the department showing Claimant and she now had joint legal and physical custody and requested the children be placed on her FAP case. The department had both parents complete the calendar month of April which showed Claimant had the children 17 days of the month, while their mother had physical custody only 14. Therefore, the department left the children on Claimant's FAP case. (Department Exhibits 2-4).
3. On December 9, 2010, the children's mother submitted documentation from the children's school showing their primary address was hers. The caseworker showed the documentation to a supervisor who made the

decision to remove the children from Claimant's FAP case and place them on their mother's. (Hearing Summary; Department Exhibits 5-6).

4. The department mailed Claimant a Notice of Case Action on December 9, 2010, informing him that his children were being removed from his FAP case and placed on their mother's. (Department Exhibits 8-10).
5. Claimant submitted a hearing request on April 4, 2011, protesting the removal of his children from his FAP case. (Request for a Hearing).

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 affecting eligibility or 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. 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).

Department policy states 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. When a child spends time with multiple caretakers who do not live together (e.g., joint physical custody or parent/grandparent), the department must determine a Primary Caretaker. Only one person can be the Primary Caretaker and the other caretaker(s) is considered the Absent Caretaker(s). The child is always in the FAP group of the Primary Caretaker. If the child's parent(s) is living in the home, he/she must be included in the FAP group. If otherwise eligible, the Absent Caretaker may receive FAP benefits for the child, when the child is visiting the Absent Caretaker for more than 30 days (i.e., not temporarily absent from the Primary Caretaker's home). BEM 212.

The Primary Caretaker is determined by using a twelve-month period. The twelve-month period begins when a Primary Caretaker determination is made. To determine the Primary Caretaker:

- . Ask the Client how many days the child sleeps at his/her home in a calendar month.
- . Accept the Client's statement unless questionable or disputed by another caretaker.
- . If Primary Caretaker status is questionable or disputed, verification is needed.
- . Allow both caretakers to provide evidence supporting his/her claim.
- . Base your determination on the evidence provided by the caretakers. See "Verification Sources."
- . Document who the Primary Caretaker is, in the case record.

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(s) is considered the Absent Caretaker(s). BEM 212.

When the primary caretaker status is questionable or disputed, the department shall base the determination on the evidence provided by the caretakers. Give each caretaker the opportunity to provide evidence supporting his/her claim. Suggested verifications include:

- The most recent court order that addresses custody and/or visitation.
- School records indicating who enrolled the child in school, first person contacted in case of emergency, and/or who arranges for 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(ren).
- Medical providers' records showing where the child lives and who generally takes the child to medical appointments. BEM 212.

In this case, the mother of Claimant's children provided the department with paperwork from the children's school on December 9, 2010, that showed the children's primary address was the mother's and requested the children be put on her FAP case. The caseworker took the documentation to her supervisor. The supervisor made the

decision to put the children on their mother's case and the department mailed Claimant a Notice of Case informing him that his children had been removed from his case and put on their mother's FAP case.

Claimant credibly testified that nothing had changed since April 2010, and that he and the mother of his children, still alternated weeks and had joint custody. Claimant stated that their mother was constantly changing the address on their children's school records to hers, but that the children's schedule had not changed. The department provided the April 2010 schedule where the department determined that the children were with Claimant 17 days of the month and with their mother only 14.

According to departmental policy, when the primary caretaker status is questionable or disputed, the department shall base the determination on the evidence provided by the caretakers. The department shall give each caretaker the opportunity to provide evidence supporting his/her claim. BEM 212.

Here, the department received information from the children's mother that she was now the primary caretaker. Without giving Claimant the opportunity to dispute the children's mother's claim, the department removed the children from Claimant's FAP case and put them on their mother's. As a result, the department improperly removed the children from Claimant's FAP case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department failed to establish that it properly determined that Claimant was not eligible for FAP benefits for his two children. The department shall allow Claimant the opportunity to present evidence concerning his children's living arrangements in accordance with the applicable policy and redetermine Claimant's eligibility for FAP benefits. In addition, the department shall issue any FAP supplement that Claimant is otherwise eligible to receive.

Accordingly, the department's eligibility determination is REVERSED.

It is SO ORDERED.

/s/ _____
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 5/23/11

Date Mailed: 5/23/11

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 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.

VLA/ds

■ [REDACTED]