

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

IN THE MATTER OF:



Registration. No: 2011-31907
Issue Nos: 1022
Case No: [REDACTED]
Hearing Date: June 30, 2011
Washtenaw County DHS

Administrative Law Judge: Mark A. Meyer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge in accordance with MCL 400.9, MCL 400.37 and 1999 AC, R 400.903. Claimant requested a hearing on April 5, 2011, and, after due notice, one was held on June 30, 2011. Claimant appeared at hearing and provided testimony. The Department of Human Services (the Department) was represented by agency personnel.

ISSUE

In dispute was whether the Department properly denied Claimant's application for Family Independence Program (FIP) benefits.

FINDINGS OF FACT

Based on the competent, material, and substantial evidence on the whole record, the Administrative Law Judge finds as relevant fact:

1. Beginning April 21, 1997, Claimant retained sole legal and physical custody of her minor son. (Department's Exhibit D-2.)
2. In March 2011, Claimant applied for FIP benefits. (Department's Exhibit D-3; Department's hearing summary, dated April 28, 2011.)
3. On her application for benefits, Claimant stated that her minor son stayed with her 20 days each month, and that the child stayed at another address 11 days each month. (Department's Exhibit D-3.)
4. On March 14, 2011, the Department requested that Claimant provide verification of her minor son's school enrollment, attendance, and progress. Claimant signed the verification form, permitting school officials to provide the requested information to the agency. (Department's Exhibit D-4.)

5. The school at which Claimant's minor son attended subsequently provided information to the Department indicating that the child was "[r]esiding" with his father. The information provided also stated, however, that the child "lives w/both parents at different addresses." (Department's Exhibit D-4, p. 2.)
6. Based on this information, the Department denied Claimant's application for FIP benefits. (Department's Exhibit D-5.) Claimant was notified of this decision on March 25, 2011. (Department's Exhibit D-1.)
7. From the Department's FIP benefits determination, Claimant filed a request for hearing. (Claimant's hearing request, dated April 5, 2011.)

CONCLUSIONS OF LAW

The hearing and appeals process for applicants and recipients of public assistance in Michigan is governed by 1999 AC, R 400.901 through 400.951, in accordance with federal law. An opportunity for hearing must be granted to an applicant who requests a hearing because his claim for assistance is denied or not acted on with reasonable promptness, and to any recipient who is aggrieved by Department action resulting in suspension, reduction, discontinuance, or termination of assistance. Rule 400.903(1). Indeed, an applicant or recipient holds the right to contest an agency decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department must provide an administrative hearing to review the decision and determine its appropriateness. Bridges Administrative Manual (BAM) 600, p. 1.¹

Here, the Department determined that Claimant's minor son was residing the majority of the time with his father, not Claimant. This determination resulted in the denial of Claimant's application for FIP benefits. Claimant's request for hearing followed.

The FIP was established under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 USC 601, *et seq.* The Department administers the FIP in accordance with MCL 400.10, *et seq.*, and Rules 400.3101 through 400.3131. The FIP replaced the Aid to Dependent Children (ADC) program, effective October 1, 1996. Agency policies pertaining to the FIP are found in the BAM, Bridges Eligibility Manual (BEM), and program reference manuals. The program's purpose is to provide temporary cash assistance to support a family's movement to self-sufficiency. BEM 230A, p. 1.

Group composition is the determination of which individuals living together are included in the FIP eligibility determination group (EDG). To be eligible, a child must live with a legal parent, stepparent, or other qualifying caretaker. BEM 210, p. 1. The EDG is comprised of those individuals living together whose information is needed to determine

¹ All citations are to Department of Human Services (Department) policy in effect at the time of the agency action in issue.

FIP eligibility. BEM 210, p. 1. Living together is defined as sharing a home where family members usually sleep except for temporary absences. BEM 210, p. 2.

A legal parent or stepparent who lives with a dependent child is always the child's caretaker. BEM 210, p 4. But, when a child spends time with more than one caretaker (defined as a legal parent or stepparent living in the home, or another adult who acts as a parent by providing physical care and supervision), the Department must determine who is the primary caretaker. BEM 210, pp. 1, 2. The child is always in the FIP group of the primary caretaker. BEM 210, pp. 1, 2, 3, 7.

When a child spends time in the home of multiple caretakers who do not live together, the primary caretaker is determined based on the number of days per month that the child sleeps in the home. BEM 210, p. 7. 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 the days of the month, when averaged over a twelve-month period. BEM 210, pp. 2, 7. If the child sleeps in the home of multiple caretakers an equal number of days in a month, when averaged over a twelve-month period, the caretaker who applies, and is determined eligible, for benefits first is the primary caretaker. BEM 210, p. 8.

Once the primary caretaker is determined, the child's other caretakers are considered to be absent caretakers. BEM 210, pp 2, 8.

When the number of days per month a child sleeps in the home of multiple caretakers is questionable or disputed, each caretaker must be provided the opportunity to present evidence of their respective claim. BEM 210, p. 8.

Here, the sole dispositive concern was whether Claimant was the primary caretaker of her minor son during the time period in issue; resolution of this concern determines whether her FIP benefit application was properly denied by the Department.

According to the agency, the denial of Claimant's application for FIP benefits was based on information provided by the minor child's school – "because the school [verification form – DHS-3380] said the child lived with the father." (Department's Exhibit D-5.) "With that information," the Department decided to deny Claimant's application and keep the child on the other parent's benefits case in Wayne County. (Department representative's hearing testimony, June 30, 2011.)²

The verification form submitted to the Department by the school in this matter leaves much to be desired, however. Although the school representative indicated on the form that the "[r]esponsible [p]erson [w]ith [w]hom the [child] is [r]esiding" was the minor child's father, there was no mention of the quantity of days the child actually slept at his

² It is noted that, according to the Department, Claimant was approved for benefits for a time period subsequent to the period in issue (March to April 2011).

father's address. To muddy the waters even further, the school representative noted that the child "lives w/both parents at different address." (Department's Exhibit D-4, p. 2.)

The Department also presented a copy of an email communication that appeared to be between Claimant's caseworker and the caseworker of the minor child's other parent. That caseworker provided in part:

(Although the parents live in different counties, they both are within the same school boundary[.]) The child was registered for school by the father. However, the child rides the bus home to both addresses, depending on who he is visiting at the time. The school says they have been aware of a parental dispute for over a year.

I believe the child has been/is with the father, but I think [Claimant] is presenting the legal documentation stating she has the child. I have told the father that [Claimant] has sole legal and physical custody until he can document otherwise from the courts. [Department's Exhibit D-5.]

Again, this piece of evidence did nothing to clarify the murkiness of the Department's rationale for denying Claimant's application for FIP benefits. The caseworker stated a belief that the minor child "has been/is with the father," but her purported statement to the father that Claimant had sole legal and physical custody "until he [could] document otherwise from the courts" significantly, and reasonably, undercuts support for such a belief.

Here, the Department conceded that Claimant had sole legal and physical custody of her minor son according to an April 1997 court order. No evidence was presented indicating that the order was superseded at any point in time. In the absence of better evidence than that presented by the Department, this court order reasonably represents the best documentation of who was the primary caretaker in this matter.

Further, it was sufficiently established that the minor child's father, not Claimant, registered the child for school. But, according to Claimant, this was why the school's verification information indicated that the child resided with his father. This is a reasonable conclusion, especially when viewed in light of the school's qualifying statement regarding where the child lived.

On her FIP application, Claimant indicated that her minor son stayed with her 20 days per month. At hearing, Claimant testified that her son resided with her approximately "90 percent of the time." (Claimant's hearing testimony, June 30, 2011.)

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of*

Community Health, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

Here, in light of the uncontroverted court order concerning custody, the Department's unpersuasive evidence, and Claimant's credible testimony, it may be reasonably concluded that the agency erred in denying her FIP benefits application for the time period in issue.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, the Administrative Law Judge decides that the Department improperly determined that Claimant's minor child was not eligible to be included as a group member and recipient of Claimant's FIP benefits case.

Accordingly, the Department's action in this matter is REVERSED. The agency shall begin the process of issuing supplemental FIP cash payments to Claimant for the time period in issue, to the extent she was otherwise entitled to such payments.

It is SO ORDERED.

Mark A. Meyer
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: _____

Date Mailed: _____

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.

Claimant may appeal this decision and order to the circuit court for the county in which she resides within 30 days of the mailing of this decision and order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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