

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

IN THE MATTER OF:



Reg. No: 201145047
Issue No: 1022, 3014, 2018
Case No: [REDACTED]
Hearing Date: September 15, 2011
Genesee 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 September 15, 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), the Medical Assistance (MA) program, 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 applied for FIP, MA, and FAP benefits on June 24, 2011. (Department Exhibits 1-20).
2. The claimant stated on her application that her children were currently listed on their father's case but that they were presently living with her at the shelter. (Department Exhibit 19).
3. The claimant was mailed a Notice of Case Action (DHS 1605) on July 20, 2011 informing her that her application for FIP benefits was denied because she did not have dependent children, her application for MA benefits was denied because she did not have dependent children, and her FAP application was denied because she was eligible for the same program in another case and because her children were not living with her. (Department Exhibits 26-31).

4. The claimant submitted a hearing request on July 20, 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).

The Medical Assistance (MA) program was established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The department administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. Medicaid is also known as Medical Assistance (MA).

For the FIP and MA programs, 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.

Therefore, according to policy it is imperative to determine who the primary care taker of any minor children is so that FIP eligibility may be established. In order to do so, the location where the children sleep for the majority of the month must be ascertained.
BEM 210.

Likewise, for determining MA benefits, group composition is essential to making an eligibility determination. Policy states as follows:

For all Group 2 FIP-related MA and Healthy Kids categories, when a child lives with both parents who do not live with each other (e.g., child lives with his mother two weeks each month and his father the other two weeks), only one parent, the primary caretaker, is in the fiscal group. You must determine a primary caretaker. 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 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. Vacations and visitation with the absent parent do not interrupt primary caretaker status. BEM 211.

Again, policy establishes that determining the primary caretaker of any minor children is essential to determining MA eligibility.

With respect to the claimant's applications for FIP and MA benefits, the department denied the claimant's applications asserting that the claimant did not have any minor children sleeping at her residence for more than half the time during a month, as required by BEM 201 and BEM 211. At the time the claimant applied for benefits, she was married but separated from her husband. When she applied, the claimant stated

that her husband had an open FAP case and that the children were no longer staying with him (see Department Exhibit 19). The claimant further provided the department with shelter verification from the YWCA she was staying at stating that she and her five children had been staying at the facility since June 21, 2011 (see Department Exhibit 24).

The department testified that the claimant was denied on her applications because the claimant's husband had an open case through Child Protective Services at the time, and that the department was told by the CPS worker that the children were staying with the claimant's husband. However, the evidence supplied by the department does not convince this Administrative Law Judge that the claimant's children were staying with their father. Department Exhibits 24 and 25 show email conversations with the CPS worker where he asserts that the children were staying with their father. The department was not able to produce any court order indicating a placement for the children nor was the department able to produce any custody order for the children pertinent to the time in question.

The department did produce a letter from the CPS worker indicating why he felt that the children were living with their father (see Department Exhibit 34). The letter stated that the CPS worker was required to visit the children once per week and that the children were there on the weeks of June 8 and 14, July 12, and August 11. Assuming that the CPS worker made his weekly visits as required, that means that the children were only present four days over a span of at least 10 weeks. This can in no way be construed as enough evidence to rebut the claimant's assertion that the children were staying with her and visiting their father on occasion, let alone to refute the statement provided by the claimant from the YWCA indicating that the children were staying with the claimant. Because the statement of the CPS worker was the only reason the department gave for their finding that the claimant was not the primary caretaker of any minor children, this Administrative Law Judge finds that the department erred in making that determination absent any other evidence. The time the CPS worker saw the children simply does not provide enough time to make a determination as to how often the children slept at their father's as opposed to their mother's.

In relation to the claimant's FAP application, 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. BEM 212. In the case at hand, this Administrative Law Judge again finds that the department improperly determined that the claimant's children were not staying with her for more than half of the month for the reasons stated above.

Additionally, in this case, the department found that the claimant herself was not eligible for FAP benefits because she was an eligible member of her husband's FAP group. However, according to policy, the claimant was clearly not an eligible member of her husband's FAP group because she was not living with him at the time she applied for benefits. In a situation where a group member should be added or deleted from an existing case, department policy states as follows:

AP 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.

In this case, the department was made aware that the claimant was no longer living with her husband and was therefore not eligible to be included on his FAP case. The claimant indicated on her application that her husband had an open case and that she was no longer living with him. Therefore, the department should have removed the claimant from her husband's case and determined eligibility for her case alone. The department therefore improperly determined that the claimant was ineligible for FAP benefits due to being active on another 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 eligibility for the FAP, FIP, and MA programs.

Accordingly, it is HEREBY ORDERED that the department shall redetermine the claimants eligibility for the FIP, FAP, and MA programs and redetermine whom the primary caretaker of the children was during the time period in question for purposes of determining the claimant's proper group size.

/s/

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

Date Signed: October 3, 2011

Date Mailed: October 3, 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.

2011-45047/CSS

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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