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

IN THE MATTER OF:



Reg. No.: 201222864

Issue No.: 3014

Case No.:

Hearing Date: February 6, 2012

County: Macomb County DHS (20)

ADMINISTRATIVE LAW JUDGE: Andrea J. Bradley

HEARING DECISION

This matter is before the undersigned Administ rative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claim ant's request for a hearing. After due notice, a telephone hearing was held on F ebruary 6, 2012, from Detroi t, Michigan. Participant s on behalf of Claimant included t he Claimant, Department of Human Servic es (Department) included Eligibilit y Specialist.

<u>ISSUE</u>

Did the Department pr operly determine the Claimant's group composition and primary caretaker status when proces sing the Claim ant's applic ation for Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on t he competent, material, and substantial evidence on the whole record, finds as material fact:

- 1. On December 8, 2011, the Claimant's ubmitted an Assistance Applic ation for FAP benefits.
- On the December 8, 2011 Assis tance Application, the Claimant indicated that she
 had four minor children in the home, and was therefore requesting benefits for a
 group size of five.
- 3. Prior to the Claimant submitting an Assistance Application, the Claimant's ex-spouse requested FAP benefits and had an open active case with three of the minor children for which the Claimant requested benefits.

- 4. On December 14, 2011, the Department sent the Claimant a notice of case action stating that her certified group size was two, that her monthly income after deductions (for purposes of FAP) was \$1,420, and that her monthly FAP grant would be \$16 per month.
- 5. On December 22, 2011, the Department sent the Claim ant a new notice of case action stating that her certified group size was two, that her monthly income after deductions (for purposes of FAP) was \$961, and that her monthly FAP grant would be \$78.
- 6. On December 22, 2011, the Claimant r equested a hearing to contest the FAP grant allotment based on the certified group size.
- 7. On December 27, 2011, the Claimant submitted a just digment of divorce, which verified that the Claimant had sole custody of the children that where active on the Claimant's ex-spouse's FAP case.
- 8. On February 2, 2012, the D epartment sent the Claimant a new notice of case action stating that her certified group size was five, that her monthly income after deductions (for purposes of FAP) was \$1,335, and that her monthly FAP grant would be \$392.

CONCLUSIONS OF LAW

Department policies are contained in the Br idges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT). The Family Independence Program (FIP) was established purs uant to the Personal Responsibility and W ork Opportunity Reconc iliation Act of 1996, Public Law 104-193, 42 USC 601, et seq. The Department (formerly k nown as the Family Independence Agency) administers FIP pursuant to MCL 400.10, et seq., and Mich Admin Code, R 400.3101 t hrough R 400.3131. FI P replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. The Food Assistance e Program (FAP) [for merly known as the Food Stamp (FS)] program] is establis hed by the Food St amp Act of 1977, as amend ed. and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independenc e Agency) administers FAP pursuant to MCL 400.10, et seq., and Mich Admin Code, R 400.3001 through R 400.3015. The Medical Ass istance (MA) program is es tablished by the Title XIX of the Soc ial Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independ ence Agency) administers the MA pr ogram pursuant to MCL 400.10, et seg., and MC L 400.105. The Adult Medical Program (AMP) is established by 42 USC 1315, and is administered by the Department pursuant to MCL 400.10, et seq.

☐ The State Disabilit y Assistance (SDA) program, which provides financial ass istance
for disabled persons, is established by 2004 PA 344. The D epartment of Human
Services (formerly known as the Family Independence Agency) administers the SDA
program pursuant to MCL 400.10, et seq., and 2000 AACS, R 400.3 151 through R
400.3180.
☐ The Child Development and Care (CDC) program is establishhed by Titles IVA, IVE
and XX of the Soc ial Security Act, the Ch ild Care and Developm ent Block Grant of
1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.
The program is implemented by Title 45 of the Code of Fede ral Regulations, Parts 98
and 99. The Depart ment provides servic es to adults and children pursuant to MCL
400.14(1) and Mich Admin Code, R 400.5001 through R 400.5015.

Additionally, the Department policy states that parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212.

The Department policy goes on to state that when a child spends time with multiple caretakers who do not live together, such as joint physical custody, parent/grandparent, etc., the D epartment must determine a primary caretaker. BEM 212. Only one person can be the primary caretaker and the child is always in the FAP gr oup of the primar y caretaker. If the child's parent(s) is liv ing in the home, he/she must be included in the FAP group. BEM 212.

When primary caretaker status is questionable or disputed, the D epartment must base the determination on the eviden ce provided by the c aretakers. Each caret aker should be given the opportunity to provide eviden ce supporting his/her claim. Suggested verifications include, but are not limited to, the most recent court order that addresses custody and/or visitation. BEM 212. If the verification process shows that 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. BEM 212.

In the present case, the evidence shows — that the Claimant's ex -spouse applied f or benefits prior to the Claimant ma king her application. The Claimant's ex-spouse's case was opened with the three minor—children on that case, despite—the fact that the case comments state that he shoul d be a group size of one and that he indicated the minor children live with the Claimant. The Claimant has provided verification that she has sole physical custody, so it is of no c—onsequence that the Claimant a pplied for the benefits first, because the children do not spend the r—equisite amount of time with him for that provision of the policy to apply in this case.

On December 8, 2011, the Claimant submitted an application and requested benefits on behalf of the minor c hildren that were acti ve on her ex-spous e's case. In total, the Claimant was requesting a group size of five. On December 14, 2011, the Department sent the Claimant a notice of case action showing that she was certified for a group size

of two and based on her monthly income after dedcutions she was eligible for \$16 per month, which was prorated for December of 2011.

Then on December 22, 2011, the Department sent the CI aimant an updated notice of case action, based on new shelter ex pense information, but the group size was still certified as two. The Claimant was advised in the new notice of case action that she was entitled to \$78 per month in FAP benefits. Als o in that notice, the Department specialist stated in the comments that she had received cor respondence from the Claimant regarding t he group s ize, but that the children were active on another FAP case, and that it was the Claimant's responsibility to contact her ex-spous e to get the issue resolved. During the he aring, the Claimant testified that she was advised by another Department worker that she needed to provide a c ustody agreement to verify that she was the primary caretaker. The Claimant submitte d that verification on December 27, 2011. Based on these facts, the status of the primary caretaker for three the applic ation was made and when the of the minor children was disputed when correspondence was sent to the Department which was referenced in the December 22, 2011 notic e of case action. According to Department polic y, once disputed, the Department was obligated to ver ify the status of the primary caretaker. Under these facts, the Department failed to act in accordance with Department policy when it did n ot verify the primary caretaker status at t he time that it processed the Claimant's application, or at a minimum, at the time it re-calculated the Cla imant's budget as was set forth in the December 22, 2011 notice of case action. As evidenced from the notice, the Claimant sent correspondence to the Department prior to that date clearly disputing the group size determination based on t he minor children being excluded from the group.

The Depar tment submitted evidence sho wing that on Januar y 11, 2012, it sought information from the ex-spous e's local offi ce to get the issue regarding grou p composition resolved. Then on February 2, 2012, the Departm ent sent a new notice of case action to the Claimant showing that the three minor children were added to the FAP group and that her monthly FAP grant would be \$392 effective March 1, 2012.

Based on the foregoing, the undersigned finds that the Claimant should have been certified as a group size of five in December of 2011. The December 14, 2011 notice of case action states that the Claimant's monthly income after deductions was \$1,420. According to RFT 260, for a group size of five, the Claimant was entitled to \$367 in monthly FAP benefits, which would have been prorated based on the original date of the application. The December 22, 2011 notice of case action states that the Claimant's monthly income after deductions was \$961. According to RFT 260, for a group size of five, the Claimant was entitled to \$504 in monthly FAP benefits, which would have been effective January 1, 2012 and continued on through February of 2012. The February 2, 2012 notice of case action states that the Claimant's monthly income after deductions is \$1,335 (the Department shows there was an increase in unearned income). According to RFT 260, for a group size of five, the Claimant is entitled to \$392 effective March 1, 2012 and on-going, as is set forth in the notice of case action. The evidence provided by the Department shows that the ceri tfied group size has appropriatety been updated

to five; however, the undersigned finds that the Claimant is entitled to a supplement of lost benefits she was entitled to receive had the primary caretaker status been verified according to Department policy.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department did act properly when did not act properly when it failed to verify the primary caretaker of the three minor children when the Claimant submitted her Assistance Application.
Accordingly, the Department's AMP FIP FAP MA SDA CDC decision AFFIRMED REVERSED for the reasons stated on the record.
☐ THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall supplement the Cla imant for I ost benefits from December 2011, January 2012, and February of 2012 in accordance with Department policy.

Andrea J. Bradley
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 17, 2012

Date Mailed: February 17, 2012

NOTICE: Michigan Administrative Hearing Syst em (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a par ty within 30 days of the mailing date of this Dec ision and Order. MAHS will not or der a rehearing or reconsideration on the Department's mo tion where the final decis ion cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing <u>MAY</u> be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at Michigan Administrative Hearings

Re consideration/Rehearing Request P. O. Box 30639 Lansing, Michigan 48909-07322

AJB/cl

