

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201233344
Issue No.: 1022
Case No.: [REDACTED]
Hearing Date: June 13, 2012
County: Wayne DHS (19)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on June 13, 2012 from Detroit, Michigan. Participants included the above named claimant and [REDACTED]. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist, and [REDACTED], Manager.

ISSUE

The issue is whether DHS properly terminated Claimant's Family Independence Program (FIP) eligibility effective 9/2012 based on an alleged failure by Claimant to establish a FIP benefit eligible group.

FINDINGS OF FACT

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

1. Claimant was an ongoing FIP benefit recipient.
2. Claimant and his ex-wife lived in separate residences.
3. At various times, Claimant and his ex-spouse reported to DHS that each was the primary caretaker for Claimant's son.
4. Claimant was the primary caretaker for his son since at least 9/2011.

5. On 8/12/11, DHS determined that Claimant's ex-spouse was the primary caretaker for Claimant's child and removed the child from Claimant's FIP benefit group.
6. On 8/12/11, DHS terminated Claimant's FIP benefit eligibility effective 9/2011 due to Claimant lacking a minor child in the FIP benefit group (see Exhibit 1A).
7. On 11/9/11, Claimant requested a hearing to dispute the FIP benefit termination.

CONCLUSIONS OF LAW

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.* DHS administers the FIP pursuant to MCL 400.10, *et seq* and MAC R 400.3101-3131. DHS policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Group composition is the determination of which individuals living together are included in the FIP eligibility determination group/program group and the FIP certified group. BEM 210 at 1. To be eligible for FIP, the group must include a dependent child who lives with a legal parent, stepparent or other qualifying caretaker. *Id.*

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. *Id.* at 7. When the number of days per month a child sleeps in the home of multiple caretakers is questionable or disputed, DHS is to give each caretaker the opportunity to provide evidence of their claim. *Id.* at 8. DHS is to base a primary caretaker determination upon best available information and evidence supplied by the caretakers. *Id.*

In the present case, DHS terminated Claimant's ongoing FIP benefit eligibility after DHS determined that Claimant's son resided with his mother and not with Claimant. Thus, the issue in the present case is to determine whether Claimant or his ex-spouse is the primary caretaker for Claimant's son.

A custody order (Exhibit 3) dated [REDACTED] awarding Claimant's ex-spouse sole legal and physical custody of Claimant's son was presented. Claimant conceded that he did not have a legal document to affect the accuracy of the presented court order. Claimant and his mother testified that Claimant had custody of his son since 2008 but no court order existed to verify Claimant's custody. The court order was persuasive evidence supporting that Claimant was not the primary caretaker of his child.

Various school enrollment documents were also presented. An Enrollment Record (Exhibit 4A) dated [REDACTED] by Claimant listed himself as parent/guardian of his child. The form failed to note his child's mother as a parent. A Student Enrollment Form (Exhibit 4B) dated [REDACTED] by Claimant similarly listed Claimant as a parent and made no mention of Claimant's ex-spouse. An untitled document (Exhibit 5) dated [REDACTED]

which was completed by Claimant's son's school listed Claimant as the parent with whom his son resided. Each of the school documents tended to support a finding that Claimant was the primary caretaker for his son.

Claimant's DHS specialist testified that she spoke with Claimant's son's school and the school informed her that Claimant was believed to be the primary caretaker. The DHS specialist stated that she believed Claimant to be the primary caretaker.

The most compelling evidence was a notarized letter from Claimant's ex-spouse. The letter was submitted to DHS [REDACTED]. The letter stated that Claimant was the primary caretaker for his son. Though a non-notarized letter may raise problems of authenticity, a notarized letter has no such problems. The recently signed notarized letter is found to be far more persuasive evidence of Claimant's son's custody than a 15 year old court order. It is found that the notarized statement from Claimant's ex-spouse conceding that Claimant is the primary caretaker is definitive evidence that Claimant is the primary caretaker for his son.

Based on the presented evidence, it is found that Claimant is the primary caretaker for his son. Accordingly, it is found that the termination of Claimant's FIP benefit eligibility effective 9/2011 was improper.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly terminated Claimant's eligibility for FIP benefits effective 9/2011. It is ordered that DHS:

- (1) reinstate Claimant's FIP benefit eligibility effective 9/2011;
- (2) process Claimant's ongoing eligibility subject to the finding that Claimant was the primary caretaker for his son since 9/2011; and
- (3) supplement Claimant for any FIP benefits not issued due to the improper FIP benefit termination.

The actions taken by DHS are REVERSED.



Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 18, 2012

Date Mailed: June 18, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (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 **MAY** 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
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

