

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201222864
Issue No.: 3014
Case No.: [REDACTED]
Hearing Date: February 6, 2012
County: Macomb County DHS (20)

ADMINISTRATIVE LAW JUDGE: Andrea J. Bradley

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 February 6, 2012, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant, [REDACTED]. Participants on behalf of Department of Human Services (Department) included [REDACTED] Eligibility Specialist.

ISSUE

Did the Department properly determine the Claimant's group composition and primary caretaker status when processing the Claimant's application for Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

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

1. On December 8, 2011, the Claimant submitted an Assistance Application for FAP benefits.
2. On the December 8, 2011 Assistance 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 Claimant 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 requested a hearing to contest the FAP grant allotment based on the certified group size.
7. On December 27, 2011, the Claimant submitted a judgment of divorce, which verified that the Claimant had sole custody of the children that were active on the Claimant's ex-spouse's FAP case.
8. On February 2, 2012, the Department 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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 (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social 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 Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 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 Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 AACRS, R 400.3151 through R 400.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development 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 Federal Regulations, Parts 98 and 99. The Department provides services 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 Department must determine a primary caretaker. BEM 212. Only one person can be the primary caretaker and 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. BEM 212.

When primary caretaker status is questionable or disputed, the Department must base the determination on the evidence provided by the caretakers. Each caretaker should be given the opportunity to provide evidence 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 for benefits prior to the Claimant making 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 should 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 consequence that the Claimant applied for the benefits first, because the children do not spend the requisite 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 children that were active on her ex-spouse'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 deductions she was eligible for \$16 per month, which was prorated for December of 2011.

Then on December 22, 2011, the Department sent the Claimant an updated notice of case action, based on new shelter expense 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. Also in that notice, the Department specialist stated in the comments that she had received correspondence from the Claimant regarding the group size, but that the children were active on another FAP case, and that it was the Claimant's responsibility to contact her ex-spouse to get the issue resolved. During the hearing, the Claimant testified that she was advised by another Department worker that she needed to provide a custody agreement to verify that she was the primary caretaker. The Claimant submitted that verification on December 27, 2011. Based on these facts, the status of the primary caretaker for three of the minor children was disputed when the application was made and when the correspondence was sent to the Department which was referenced in the December 22, 2011 notice of case action. According to Department policy, once disputed, the Department was obligated to verify the status of the primary caretaker. Under these facts, the Department failed to act in accordance with Department policy when it did not verify the primary caretaker status at the time that it processed the Claimant's application, or at a minimum, at the time it re-calculated the Claimant'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 the minor children being excluded from the group.

The Department submitted evidence showing that on January 11, 2012, it sought information from the ex-spouse's local office to get the issue regarding group composition resolved. Then on February 2, 2012, the Department 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 certified group size has appropriately 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 is 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 Claimant for lost 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 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
Re consideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

AJB/cl

cc:

