

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-9844
Issue No.: 1022; 3014
Case No.: [REDACTED]
Hearing Date: December 7, 2011
County: Wayne (15)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 December 7, 2011, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of Department of Human Services (Department) included [REDACTED] JET manager/Family Independence Specialist.

ISSUE

Did the Department properly refuse to include Claimant's grandson from Claimant's Family Independence Program (FIP) and Food Assistance Program (FAP) groups?

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 recipient of FIP and FAP benefits.
2. In September 2010, Claimant's grandson was removed from his mother's care and placed with Claimant.
3. On September 28, 2010, Claimant applied to have her grandson placed in her FIP and FAP groups.
4. On October 20, 2010, Claimant was granted full guardianship of her grandson.

5. In November 2010, the Department refused to include Claimant's grandson in Claimant's FIP and FAP groups.
6. On November 19, 2010, Claimant requested a hearing disputing the Department's actions.

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 AACS, 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, on September 28, 2010, Claimant applied to have her grandchild, who had been placed in her home that month by Protective Services, included in her FAP and FIP groups. The Department testified that the grandson was originally included in the group and Claimant received benefits for a month but then he was removed from the group because he was already a member of his mother's FIP and FAP groups. The Department also referenced the fact that the grandson was not in school full-time and not a participant in the Jobs, Education and Training (JET) program as an additional basis for his exclusion from Claimant's FIP group.

FAP Case

A caretaker is a related or unrelated person who provides care or supervision to a child under 18 who lives with the caretaker but who is not a natural, step or adopted child. BEM 212. The person acting as a parent and the child for whom she acts as a parent and who lives with her must be in the same FAP group. BEM 212.

In this case, Claimant credibly testified that her grandson was removed from his mother's care by Protective Services and placed in her care in September 2010. Since the time her grandson was placed in her care to the date of the hearing, he had stayed in Claimant's home and Claimant had been responsible for his care. Claimant also had Letters of Guardianship appointing her as her grandson's full guardian as of October 20, 2010. Under these facts, the Department should have found that Claimant was the child's caretaker. Accordingly, the Department did not act in accordance with Department policy when it failed to include the grandson as a member of Claimant's FAP group.

FIP Case

The FIP group must include a dependent child who lives with a legal parent, stepparent or other qualifying caretaker. BEM 210. For FIP cases, a caretaker is a legal parent or stepparent living in the home, or when no legal parent or stepparent lives in the home, another adult who acts as a parent to a dependent child by providing physical care and supervision. BEM 210. Claimant's credible testimony that she had provided for her grandson's needs and care since he was placed in her care in September 2010 established that she was the child's caretaker.

At the time he was placed in Claimant's care, the grandson, who was born on [REDACTED] was 16 years old. A dependent child is an unemancipated child who lives with a caretaker and is (i) under age 18 or (ii) age 18 or 19 and a full-time high school student and expected to graduate before age 20. BEM 210. Because Claimant's grandson was under the age of 18 at the time of Claimant's FIP application, he was a dependent child. The Department's evidence concerning Claimant's grandson's lack of full-time school attendance in December 2010 and his failure to participate in the JET program was irrelevant in light of the grandson's age. Because Claimant was the caretaker of a

dependent child, the Department did not act in accordance with Department policy when it failed to include Claimant's grandson in Claimant's FIP group.

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 excluded Claimant's grandson from Claimant's FIP and FAP groups.

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is AFFIRMED REVERSED for the reasons stated above and 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. Remove the negative action excluding Claimant's grandson from Claimant's FIP and FAP groups;
2. Recalculate Claimant's FIP and FAP budgets for September 28, 2010, ongoing to include Claimant's grandson as a member of Claimant's FIP and FAP groups;
3. Issue supplements for any FIP and any FAP benefits Claimant was entitled to receive but did not based on her grandchild being a member of her FIP and FAP groups from September 28, 2010, ongoing in accordance with Department policy.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 14, 2011

Date Mailed: December 14, 2011

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

ACE/ctl

cc:

[REDACTED]

Wayne County DHS (15)/1843

[REDACTED]

A.

Elkin

File