

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201241939
Issue Nos: 1022, 3014
Case No: [REDACTED]
Hearing Date: April 25, 2012
Genesee County DHS #6

Administrative Law Judge: Corey A. Arendt

HEARING DECISION

In accordance with MCL 400.9, MCL 400.37, and Mich Admin Code, R 400.903, a hearing was held in this matter on April 25, 2012. Claimant appeared at hearing and provided testimony. The Department of Human Services (the Department) was represented by agency personnel.

ISSUE

The following issues were in dispute: whether the Department properly closed Claimant's Family Independence Program (FIP) cash assistance case, where it was determined the Claimant was no longer the primary caretaker and whether the Department properly closed Claimant's Medical Assistance (MA) case, again based on his determined primary caretaker status.

FINDINGS OF FACT

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

1. At all times relevant to this matter, Claimant was receiving FIP, and MA benefits.
2. On February 15, 2012, Claimant's Department caseworker received information from another Department caseworker, informing her that [REDACTED] reported the Claimant's child was living with her rather than the Claimant.
3. Without any apparent investigation, the Department determined [REDACTED] was the primary caretaker of the Claimant's child.
4. On March 9, 2012, the Department issued a notice of case action against Claimant, informing him his FIP and MA benefits would cease because Claimant was no longer considered by the agency to be the child's primary caretaker.

5. From the Department's actions in this matter, Claimant filed a request for hearing.

CONCLUSIONS OF LAW

The hearing and appeals process for applicants and recipients of public assistance in Michigan is governed by Mich Admin Code, R 400.901 through R 400.951, in accordance with federal law. An opportunity for hearing must be granted to an applicant who requests a hearing because his claim for assistance is denied or not acted on with reasonable promptness, and to any recipient who is aggrieved by Department action resulting in suspension, reduction, discontinuance, or termination of assistance. Rule 400.903(1). Indeed, an applicant or recipient holds the right to contest an agency decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department must provide an administrative hearing to review the decision and determine its appropriateness. Bridges Administrative Manual (BAM) 600, p 1.

Here, based on a statement ostensibly signed by [REDACTED], the agency determined the Claimant's child was residing the majority of the time with [REDACTED], not Claimant. The agency's determination resulted in the closure of Claimant's MA and FIP cases. Claimant's request for hearing followed.

The MA program was established by Title XIX of the Social Security Act, 42 USC 1396, *et seq.*, and is implemented through federal regulations found in 42 CFR 430, *et seq.* The Department administers the MA program under MCL 400.10, *et seq.*, and MCL 400.105. Department policies developed from this authority are found in the BAM, the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

MA is available to parents and other caretaker relatives who meet certain nonfinancial and financial eligibility factors. BEM 135, pp 1-2.

A caretaker relative is a person who, among other things, meets the following requirements:

- Except for temporary absences, the person lives with a dependent child.
- The person is:
 - The parent of the dependent child; or
 - The specified relative (other than a parent) who acts as parent for the dependent child. (Acts as parent means provides physical care and/or supervision.) BEM 135, p 2.

A child can have only one caretaker relative. This means that if a person is an MA applicant or recipient based on being a caretaker relative, *no other person can apply for*

or receive MA based on being a caretaker relative for the same dependent child. BEM 135, p 2.

A child is considered to be living with only one parent in a joint custody arrangement. This person is the primary caretaker. This is the person who provides the home where the child sleeps more than half of the days in a month, averaged over a twelve month period. The twelve month period begins at the time the determination is being made. This is the parent who is responsible for the child's day-to-day care and supervision. For purposes of determining a primary caretaker accept the client's statement unless questionable or disputed by the other parent. When parenting time is disputed or questionable, a determination should be based on a court order that addresses custody or visitation. In the absence of a court order, each parent must be provided an opportunity to present evidence of their claim. BEM 135, p 4.

The FIP was established under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 USC 601, *et seq.* The Department administers the FIP in accordance with MCL 400.10, *et seq.*, and the Mich Admin Code, R 400.3101 through R 400.3131. The FIP replaced the Aid to Dependent Children (ADC) program, effective October 1, 1996. Agency policies pertaining to the FIP are found in the BAM, BEM, and (RFT). The program's purpose is to provide temporary cash assistance to support a family's movement to self-sufficiency. BEM 230A, p 1.

Group composition is the determination of which individuals living together are included in the FIP eligibility determination group (EDG). To be eligible, a child must live with a legal parent, stepparent, or other qualifying caretaker. BEM 210, p 1. The EDG is comprised of those individuals living together whose information is needed to determine FIP eligibility. BEM 210, p 1. Living together is defined as sharing a home where family members usually sleep except for temporary absences. BEM 210, p 2.

A legal parent or stepparent who lives with a dependent child is always the child's caretaker. BEM 210, p 4. But, when a child spends time with more than one caretaker (defined as a legal parent or stepparent living in the home, or another adult who acts as a parent by providing physical care and supervision), the Department must determine who is the primary caretaker. BEM 210, pp 1, 2. The child is always in the FIP group of the primary caretaker. BEM 210, pp 1, 2, 3, 7.

When a child spends time in the home of multiple caretakers who do not live together, the primary caretaker is determined based on the number of days per month that the child sleeps in the home. BEM 210, p 7. The primary caretaker is the caretaker 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 of the month, when averaged over a twelve-month period. BEM 210, pp 2, 7. If the child sleeps in the home of multiple caretakers an equal number of days in a month, when averaged over a twelve-month period, the caretaker who applies, and is determined eligible, for benefits first is the primary caretaker. BEM 210, p 8.

Once the primary caretaker is determined, the child's other caretakers are considered to be absent caretakers. BEM 210, pp 2, 8. When the number of days per month a child sleeps in the home of multiple caretakers is questionable or disputed, each caretaker must be provided the opportunity to present evidence of their respective claim. BEM 210, p 8.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

Here, the sole dispositive issue regarding the closure of Claimant's FIP and MA cases was whether the Department properly determined the Claimant was no longer the primary caretaker of his child. As noted above, the agency closed Claimant's FIP and MA cases, based entirely on the receipt of a statement signed by [REDACTED] contending the children resided with her more than the Claimant.

It appeared from the testimony provided at hearing this was the extent of the Department's "investigation" into the matter before taking action against the Claimant. There was no indication either Claimant's caseworker or the caseworker for [REDACTED] obtained any verification, other than the statement, establishing her as the child's primary caretaker. Based on the evidence presented, it is concluded that the negative action against Claimant constituted egregious error on the part of the agency.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I find the Department improperly closed the Claimant's FIP and MA benefits.

Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Return the minor children to Claimant's respective program groups for purposes of determining FIP and MA eligibility until such time as it can be reasonably and credibly determined that he is no longer the child's primary caretaker, or to the extent he is determined otherwise ineligible to receive such benefits. The children are to be returned to Claimant's respective program groups effective the date(s) on which they were removed.

/s/ _____
Corey A. Arendt
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 26, 2012

Date Mailed: April 27, 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 receipt 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

CAA/cr

cc:

