

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

**IN THE MATTER OF:**



Reg. No.: 201265168  
Issue No.: 2015, 3014  
Case No.:   
Hearing Date: August 22, 2012  
County: Wayne DHS (35)

**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 August 22, 2012 from Detroit, Michigan. Participants included the above named claimant. Participants on behalf of Department of Human Services (DHS) included , Specialist.

**ISSUE**

The issue is whether DHS properly determined Claimant's group composition for Food Assistance Program (FAP) and Medical Assistance benefit eligibility.

**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 FAP and MA benefit recipient.
2. Claimant's FAP and MA benefit eligibility was based on being a primary caretaker to her minor children.
3. On 9/23/11, an Order Modifying Parenting Time (Exhibit 1) was issued giving Claimant's children's father the majority of parenting time to Claimant's minor children.
4. On 7/9/12, DHS removed Claimant's minor children from Claimant's FAP and MA benefit group resulting in a reduction of FAP benefit eligibility and termination of MA benefit eligibility, effective 8/2012.

5. On 7/12/12, Claimant requested a hearing to dispute the adverse actions taken to her FAP and MA benefit eligibility.

### **CONCLUSIONS OF LAW**

The Food Assistance Program (formerly known as the Food Stamp 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). DHS administers the FAP pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Claimant requested a hearing concerning a FAP benefit reduction effective 8/2012. DHS credibly testified that the only change made to Claimant's ongoing eligibility was the result of a determination that Claimant was not the primary caretaker to her minor children.

When a child spends time with multiple caretakers who do not live together such as joint physical custody, parent/grandparent, etc., determine a primary caretaker. BEM 212 (4/2012), p 3. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent caretaker(s). *Id.* The child is always in the FAP group of the primary caretaker. *Id.* DHS is to determine primary caretaker by using a twelve-month period. *Id.*

Claimant testified that she had custody of her minor children over half the days in 8/2012. Claimant contended that this supported a finding that she was a primary caretaker to her children. As noted above, the determinative factor is how many days the children are with Claimant over the course of a year, not a given month.

Claimant testified that she thought that she had the children half of the days within a year. A parenting time court order (Exhibit 1) was presented to verify which parent had the children more. The order established that Claimant had her children on weekends (two days), Wednesdays, spring break (five days) and various school off-days (10 days). The court order split summer hours and Christmas between the parents. Based on the information in the order, it was verified that Claimant's children spent the majority of days within a calendar year with their father and not with Claimant.

Based on the above reasoning, DHS properly determined Claimant's FAP benefit eligibility based on a group composition that excluded Claimant's children. Accordingly, the FAP benefit determination effective 8/2012 is found to be proper. Claimant also raised a dispute concerning MA benefit eligibility.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS

(formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 at 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* Claimant alleged that she is disabled and is currently undergoing a process to determine whether she is disabled. It was not disputed that Claimant has not been certified as disabled by the Social Security Administration. It was also not disputed that Claimant's basis for receiving Medicaid prior to the DHS action of 7/9/12 was by virtue of Claimant being a caretaker.

Sometimes a court awards custody of children to both parents jointly. BEM 135 (1/2011), p 4. A child is considered to be living with only one parent in a joint custody arrangement. *Id.* This person is the primary caretaker. *Id.* 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. *Id.* The twelve month period begins at the time the determination is being made. *Id.* When parenting time is disputed or questionable, DHS is to base the determination on a court order that addresses custody or visitation, if one is available. *Id.*

The MA policy concerning group composition is functionally identical to the FAP benefit group composition policy. For each benefit program, DHS is to determine where the children reside over the course of a calendar year. It has already been established that Claimant's children spend the majority of a calendar year with their father and not with Claimant. Accordingly, it is found that Claimant's MA benefit eligibility should not factor Claimant's children because she is not a primary caretaker.

It was not disputed that the only basis for Claimant's MA benefit eligibility was by being a caretaker to minor children. As Claimant is not the primary caretaker to the minor children, it is found that DHS properly terminated Claimant's MA benefit eligibility effective 8/2012.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly removed Claimant's minor children from Claimant's FAP and MA benefit groups in determining Claimant's eligibility effective 8/2012.

The actions taken by DHS are AFFIRMED.



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

Date Signed: August 27, 2012

Date Mailed: August 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 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:

