

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

**IN THE MATTER OF:**



Reg. No.: 2012-9231  
Issue No.: 3014; 6019  
Case No.: [REDACTED]  
Hearing Date: December 1, 2011  
County: Wayne (19)

**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 1, 2011, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of Department of Human Services (Department) included [REDACTED] Eligibility Specialist.

**ISSUE**

Did the Department properly deny Claimant's application to add his children to his Food Assistance Program (FAP) group?

Did the Department properly deny Claimant's application for Child Development and Care (CDC) 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 August 30, 2011, Claimant applied for CDC benefits and to have his three children placed on his FAP case.
2. At the time, the children were in Claimant's ex-wife's FAP group and the ex-wife was receiving full benefits.
3. The Department denied Claimant's application.
4. On October 17, 2011, Claimant filed a hearing request disputing the Department's action.

### 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, Claimant contended that the Department erred when it failed to place his three children in his FAP group and denied his application for CDC benefits on the basis that the children were in the care of his ex-wife.

#### FAP Case

A child is always included in the FAP group of the primary caretaker. BEM 212. 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 of the days in a calendar month, on average, in a twelve-month period. BEM 212. The twelve-month period begins when a primary caretaker determination is made. BEM 212. If 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 and the other caretaker is considered the absent caretaker. BEM 212.

In this case, the Department testified that it denied Claimant's application to have the children placed in his FAP group because it concluded that Claimant's ex-wife was the children's primary caretaker based on the Consent Judgment of Divorce and statements from the ex-wife's caseworker that the ex-wife had the children in her care. If the primary caretaker status is questionable or disputed, verification is needed and the Department must allow both caretakers to provide evidence supporting his or her claim. BEM 212. Suggested verifications include the most recent court order addressing custody and/or visitation; school records indicating who enrolled the child in school, who is contacted first in case of emergency, and/or who arranges for the child's transportation to and from school; child care records showing who makes and pays for child care arrangements, and who drops off and picks up the child; and medical providers' records showing where the child lives and who generally takes the child to medical appointments. BEM 212.

The Department improperly relied on the statements of the caseworker to establish that the ex-wife was the primary caretaker because such statements are not acceptable verifications under BEM 212. The Consent Judgment indicates that the primary residence of the children was with Claimant. It also provides parenting time for Claimant's ex-wife four nights a week; however, it states that she could exercise her parenting time in Claimant's home because she did not have her own housing.

Claimant testified that, contrary to the terms of the Consent Judgment concerning the parenting time granted to his ex-wife, the children stayed with him all week long and every other weekend, all year long. Because he disputed the issue of the children's primary caretaker, the Department should have given Claimant the opportunity to present documents establishing that he is primarily responsible for the child's day-to-day care and supervision in the home where the children sleep more than half of the days in a calendar month, on average, in a twelve-month period. BEM 212. In support of his argument that he was the children's primary caretaker, at the hearing, in addition to the Consent Judgment, Claimant introduced documentary evidence showing that he was the parent who brought his diabetic child to her quarterly diabetic appointments beginning July 2, 2009, through July 21, 2011. He also introduced medical bills for medical services to his children which were addressed to Claimant at his home.

The foregoing evidence, coupled with the statements in the Consent Judgment that Claimant's home was the children's primary residence and that Claimant's ex-wife, while granted four nights a week of parenting time, could exercise her parenting time in

Claimant's home because she lacked her own housing, were sufficient to establish that Claimant is primarily responsible for the children's day-to-day care and supervision in the home where they sleep more than half of the days in a calendar month, on average. Thus, the Department failed to act in accordance with Department policy when it concluded that Claimant was not the children's primary caretaker and denied his application to have the children placed on his FAP case.

CDC Case

An applicant for CDC benefits must live with the child for whom care is requested. BEM 205. If a child's parents live apart but have joint custody of the child, and both parents have applied and are eligible for CDC, the Department must activate the child on two cases but authorize care on each case only for time periods when the parent for that case has physical custody of the child. BEM 205. The client's statement of joint custody is acceptable. BEM 205.

The Consent Judgment in this case states that the parties have joint legal and physical custody of the children. Accordingly, if Claimant was otherwise eligible for CDC benefits, Claimant was entitled to have a CDC case open in his name and was entitled to CDC benefits for those periods during which the children were in his physical custody. Thus, the Department did not act in accordance with Department policy when it denied Claimant's CDC application on the basis that he was not the children's primary caretaker.

**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

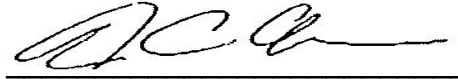
- did act properly when .
- did not act properly when denied Claimant's application to have his three children placed on his FAP case and for CDC benefits.

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. Reregister Claimant's August 30, 2011, application seeking to add his children to his FAP case and seeking CDC benefits for the children;
2. Begin reprocessing the application by adding the children to his FAP group and opening a CDC case if Claimant is eligible in accordance with Department policies;
3. Issue supplements for any FAP benefits Claimant was entitled to receive but did not from August 30, 2011, ongoing;

4. Issue supplements to Claimant's provider for any CDC benefits Claimant was entitled to receive but did not from August 30, 2011, ongoing.
- 5.



**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  
Reconsideration/Rehearing Request  
P. O. Box 30639  
Lansing, Michigan 48909-07322

ACE/ctl

cc: [REDACTED]  
Wayne County DHS (19)/1843

A. [REDACTED]  
Elkin

2012-9231

File