

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201313086
Issue No.: 3014
Case No.: [REDACTED]
Hearing Date: January 7, 2013
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 January 7, 2013, 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 her child to her Food Assistance Program (FAP) group?

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 October 15, 2012, Claimant asked the Department to place her son in her FAP group.
2. At the time, the child was in his father's FAP group, and the local Department office that serviced the father's case refused to remove the child from the father's FAP group.
3. On October 16, 2012, the Department sent Claimant a Notice of Case Action denying Claimant's request to add the child to her FAP case on the basis that the child was eligible for FAP benefits under another case.

4. On November 26, 2012, Claimant filed a request for 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, Claimant requested the hearing because the Department denied her request to have her son removed from his father's FAP case and placed in her FAP case.

When a child spends time with multiple caretakers who do not live together, such as in a joint physical custody situation, the child is always included in the FAP group of the primary caretaker. BEM 212 (April 1, 2012), p 3. 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, p 1. The twelve-month period begins when a primary caretaker determination is made. BEM 212, p 3.

In this case, the Department worker testified that she had asked the local office that serviced the father's FAP case to remove the child from the father's FAP group so that the child could be added to Claimant's FAP group. The Department testified that the other office refused to do so, claiming that, because Claimant and the father had joint legal and physical custody, the father was entitled to have the child in his FAP case because he applied for FAP benefits first. However, Claimant provided evidence to the Department that the father paid Claimant child support for the child, and she advised the Department that the child attended school in the district in which she resided, which was different than the district in which the father lived. Claimant also noted that, even though the Consent Order entered by the Friend of the Court on January 23, 2008 granted Claimant and the father joint legal and physical custody, a review of the parenting time for the father as indicated on the Consent Order shows that the child would sleep in Claimant's home more than half of the days in a calendar month. Furthermore, Claimant testified at the hearing that since the child started attending school, he was sleeping at Claimant's home Sunday through Thursday nights.

BEM 212, p 3, provides that 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. Further, when a second caretaker applies for assistance for the same child, the Department must reevaluate primary caretaker status. BEM 212, p 4. 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, p 10. If the child spends virtually half of the days in each month, averaged over a twelve-month period with each caretaker, **then** the caretaker who applies and is found eligible first is the primary caretaker and the other caretaker is considered the absent caretaker. BEM 212, p 3.

In this case, where Claimant applied to have the child placed in her care and presented evidence disputing the designation of the father as the primary caretaker, the Department was required to reevaluate the primary caretaker status of the father and, if

the father contested Claimant's claim, allow both caretakers to provide evidence supporting their claims. Because the Department failed to do so, the Department did not act in accordance with Department policy when it denied Claimant's application to have the child placed in her FAP case.

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 the child placed in her FAP group without reevaluating the primary caretaker status of the parties.

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. Begin reevaluating the primary caretaker of the child as of October 15, 2012, in accordance with Department policy and consistent with this Hearing Decision;
2. If Claimant is determined to be the child's primary caretaker, begin recalculating Claimant's FAP budget to include the child in her FAP group as of October 15, 2012;
3. Issue supplements for any FAP benefits Claimant was eligible to receive but did not from October 15, 2012, ongoing; and
4. Notify Claimant in writing of its decision in accordance with Department policy.


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

Date Signed: January 14, 2013

Date Mailed: January 14, 2013

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/hw

cc:

