

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201337211
Issue No: 1022, 3014
Case No: [REDACTED]
Hearing Date: April 25, 2013
Muskegon County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing received by the Department of Human Services (department) on March 18, 2013. After due notice, a telephone hearing was held on April 25, 2013. Claimant appeared and provided testimony. The department was represented by [REDACTED], a family independence manager with the department's Muskegon County office.

ISSUE

Whether the department properly determined Claimant's eligibility for Family Independence Program (FIP) benefits and Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On December 27, 2012, Claimant applied for FIP and FAP benefits for himself and his daughter. In doing so, Claimant indicated that his daughter stays with him 21 days each month. (Department Exhibit 1)
2. On January 2, 2013, the department mailed Claimant a Notice of Case Action (DHS 1605) advising him that his application for FIP benefits for himself and his daughter and for FAP benefits for his daughter had been denied for the reason that his daughter is active on the daughter's mother's benefits cases and Claimant failed to provide verification that he now has custody. (Department Exhibit 9)

3. On January 14, 2013, Claimant again applied for FIP and FAP benefits for himself and his daughter. In doing so, Claimant indicated that his daughter stays with him 31 days each month. Claimant also included a copy of his daughter's social security card as well as her birth certificate, the latter of which did not identify the father. (Department Exhibit 2)
4. On January 14, 2013, the department received a Change Report from the mother of Claimant's daughter, advising the department that her daughter moved out of her home on January 14, 2013. (Department Exhibit 5)
5. On January 15, 2013, the department mailed Claimant a Notice of Case Action (DHS 1605) advising him that his application for FIP benefits for himself and his daughter had been denied for the reason that he failed to provide verification that he is the caretaker/relative of a child or otherwise meets the criteria for eligibility for FIP benefits. The Notice did not address Claimant's application for FAP benefits for his daughter. (Department Exhibit 3)
6. On January 15, 2013, the department referred Claimant's case for a Front End Eligibility (FEE) determination regarding a change in the living arrangements for Claimant's daughter from her mother's home to Claimant's home.
7. On February 27, 2013, Claimant again applied for FIP and FAP benefits for himself and his daughter and his newborn child, born February 6, 2013. In support of his application, Claimant reported that he has custody of both children, but has no court order awarding him custody. (Department Exhibit 6)
8. On February 27, 2013, the department received a Change Report from the mother of Claimant's newborn child, advising the department that the child, born [REDACTED], was not in the mother's home, effective February 27, 2013. (Department Exhibit 7)
9. During the week of March 11, 2013, an agent with the department's Office of Inspector General, visited Claimant's home and concluded that Claimant's two children reside with him and are in his care, and the mother of the children is not living in the home. (Department Exhibit 4)
10. On March 15, 2013, the department approved Claimant for FIP and FAP benefits for him and his two children effective February 27, 2013.
11. On March 18, 2013, Claimant submitted a hearing request, protesting the department's January 15, 2013 denial of his application for FIP and FAP benefits. (Department Exhibit 8)

CONCLUSIONS OF LAW

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Department of Human Services Bridges Administrative Manual (BAM) 600 (2011), p. 1. The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in sections 400.901 to 400.951 of the Michigan Administrative Code (Mich Admin Code). An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. Mich Admin Code R 400.903(1).

The Food Assistance Program (FAP) was established pursuant to the Food Stamp Act of 1977, as amended, and is implemented by Title 7 of the Code of Federal Regulations (CFR). The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services (DHS or department) administers these programs pursuant to MCL 400.10, *et seq.*, and pursuant to Mich Admin Code R 400.30001-3015 and Mich Admin Code R 400.3101-3131, respectively. Department policies for these programs are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), the Bridges Reference Manual (BRM), and the Reference Tables Manual (RFT).

For purposes of establishing group composition and eligibility for FAP and FIP benefits, department policy provides that children in a joint custody arrangement are considered to be living with only one parent, who is designated the primary caretaker. BEM 212, BEM 210, BEM 110. The primary caretaker is the parent who provides the home where the child sleeps more than half of the days in a month, when averaged over a twelve month period. BEM 212, BEM 210, BEM 110. The twelve month period begins when a primary caretaker determination is made. BEM 212, BEM 210, BEM 110. The department makes this determination by following these steps:

- The client is asked how many days the child sleeps at his/her home in a calendar month.
- The client's statement is accepted unless questionable or disputed by another caretaker – in which case, verification is needed and may include, but not be limited to:
 - the most recent court order addressing custody and/or visitation;
 - school records indicating who enrolled the child in school, who is to be contacted 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.
- The department's determination should be based on the evidence provided by both caretakers in support of his/her claim. BEM 212.

Department policy further provides that 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. BEM 212. The other caretaker is considered the absent caretaker. BEM 212.

In this case, on December 27, 2012 and January 14, 2013, Claimant applied for FIP and FAP benefits for himself and his daughter. The department denied both applications, on January 2, 2013 and January 15, 2013, respectively, because Claimant failed to provide verification that he was the father of his daughter and had custody of her and because the daughter remained active on her mother's benefits cases. However, in support of his January 14, 2013 application, Claimant provided a copy of the child's birth certificate (with no father identified) and social security number. Moreover, on January 14, 2013, the child's mother provided the department with a Change Report indicating that the child was no longer in the mother's home as of January 14, 2013. On February 27, 2013, Claimant applied for the same benefits a third time for himself and his daughter (and also a child born [REDACTED]) and, while Claimant provided no additional verification that he was the children's father and had custody of them, the department ultimately approved this application on March 15, 2013 following a January 14, 2013 FEE referral that determined that the children were in Claimant's custody and care.

At the April 25, 2013 hearing, the department's representative confirmed that Claimant's January 14, 2013 application for FIP and FAP benefits for himself and his daughter was denied on January 15, 2013 because his daughter remained active on his mother's FIP case and because Claimant failed to provide verification that he was the father of his daughter and had custody of her. The department's representative acknowledged, however, that the daughter's mother's FIP case had in fact closed on November 30, 2012 due to time limits. The department's representative further acknowledged that at the time of the department's January 15, 2013 denial of Claimant's application, the department had in its possession a Change Report from the daughter's mother indicating that the daughter had moved out of her home on January 14, 2013. Moreover, the department had also referred Claimant's application on January 14, 2013 for a FEE investigation and this investigation was still pending at the time the department denied Claimant's January 15, 2013 application.

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). Moreover,

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). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds that, based on the competent, material, and substantial evidence presented during the hearing, the department improperly denied Claimant's January 14, 2013 application for FIP and FAP benefits for himself and his daughter because Claimant's statement that his daughter lived with him was not disputed by another caretaker – and, indeed, was supported by his daughter's mother, who reported that her daughter was no longer living with her. Moreover, the department denied the January 14, 2013 application without awaiting the results of the department's January 15, 2013 FEE referral, which results ultimately verified Claimant's statement that his daughter was in his custody and care.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly denied Claimant's January 14, 2013 application for FIP and FAP benefits for himself and his daughter. Accordingly, the department's actions are **REVERSED** and the department shall immediately reinstate and reprocess Claimant's January 14, 2013 application for FIP and FAP benefits and issue supplement checks for any months he did not receive the correct amount of benefits if he was otherwise entitled to them.

It is **SO ORDERED**.

/s/

Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 2, 2013

Date Mailed: May 2, 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 60 days of the filing of the original request.

The Claimant may appeal this 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 errors, or other obvious errors in the hearing decision that effect the substantial rights of 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 System
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, MI 48909-07322

SDS/aca

cc:

