

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201326774
Issue No.: 2018, 3019
Case No.: [REDACTED]
Hearing Date: June 19, 2013
County: Oakland County (#03)

ADMINISTRATIVE LAW JUDGE: MICHELLE HOWIE

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's January 28, 2013 request for a hearing. After due notice, a telephone hearing was conducted on Wednesday, June 19, 2013, from Detroit, Michigan. Participants on behalf of Claimant included [REDACTED] (Attorney) and Claimant. Participant on behalf of Department of Human Services (Department) was [REDACTED] (Family Independence Manager).

ISSUE

Whether the Department properly closed the Claimant's Medical Assistance (MA) and Food Assistance Program (FAP) 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. The Claimant was on ongoing MA and FAP recipient with a group size of four.
2. In December 2012, the Claimant requested to add FIP benefits to his case.
3. The Department initiated an investigation with OIG because the children were active on the mother's case in Wayne County.
4. On December 20, 2012, an OIG agent made a home visit to Claimant's residence but no one was home. (Exhibit 2)

5. The Department obtained Claimant's lease agreement which did not list the children as living in the Claimant's apartment; and the school profile records for the children that listed their home address as residing in Detroit with both their mother and father (the Claimant). (Exhibits 6 & 7)
6. After reviewing the lease agreement and student profile records, the Department determined the children did not live in Claimant's home.
7. On December 26, 2012, the Department received in writing Claimant's withdrawal of his request for FIP benefits. (Exhibit 1)
8. On January 3, 2013, the Department sent Notice of Case Action informing Claimant that the cash assistance was denied.
9. On January 16, 2013, the Department sent a second Notice of Case Action informing Claimant that his MA case with the children would close effective February 1, 2013; and the FAP was approved for \$200 based on a group size of one only (the children were removed from the group). (Exhibit 3)
10. On January 28, 2013 the Department received Claimant's written hearing request concerning the Department action. (Exhibit 4)

CONCLUSIONS OF LAW

As a preliminary matter, the Claimant testified that he withdrew his request for FIP benefits and has no issue concerning the cash assistance action. As such it is unnecessary for the undersigned to render a decision concerning that issue.

The Department of Human Services (DHS) policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

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.

For FAP and MA purposes, when a child lives with both parents who do not live with each other only one parent, the primary caretaker, is in the fiscal group. The Department is required to determine a primary caretaker. The primary caretaker is the parent 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 in a month, when averaged over a twelve month period. A child is considered to be living with only one parent in a joint custody arrangement. This parent is the primary caretaker. BEM 211 (November 2012), p. 2. The other caretaker is considered the absent caretaker. FOR FAP benefits the child is always in the FAP group of the primary caretaker. BEM 212 (November 2012), p. 2. The absent caretaker may receive FAP benefits for the child when the child is visiting the absent caretaker for more than 30 days and is not merely considered temporarily absent from the primary caretaker's home. 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.

The Department will re-evaluate a primary caretaker status when there is a new or revised court order changing custody of visitation, there is a change in the number of days a child sleeps at the home of the another caretaker, a second caretaker disputes the first caretaker's claim, or a second caretaker applies for assistance for the same child. BEM 212, p. 4. When primary caretaker status is questionable or disputed, The Department is required to give each caretaker the opportunity to provide evidence supporting his/her claim in accordance with the verification procedures.

In this case, the Claimant has joint physical custody of his three children. He was receiving ongoing MA and FAP benefits for the children as primary caretaker. When he applied for FIP benefits in December 2012, the Department discovered the mother had an active case in Wayne County for the same children which prompted a re-evaluation of the primary caretaker status. The Office of Inspector General (OIG) became involved and sent an agent to speak to the Claimant. According to the OIG investigative finding report, a business card was left on December 20, 2012, for Claimant to contact the agent. The agent did not hear from Claimant as of January 7, 2012; therefore the Department made the determination that the children did not reside in Claimant's home. The children were removed from his case.

Claimant testified credibly that he did not receive the business card to contact the OIG agent or that the Department had concerns regarding his primary caretaker status prior to case closure. His testimony was not refuted. Policy provides that when primary caretaker status is questionable or disputed the Department is to provide each caretaker with an opportunity to provide verification to support his/her claim. Here, this was not done. Therefore, the Department did not establish it acted in accordance with policy when it closed the MA benefits and reduced his FAP due to the removal of his children from the groups.

Accordingly, the Department's action is not UPHELD.

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 not establish it acted properly in regards to the MA and FAP action effective February 1, 2013.

Accordingly, the Department's FAP MA decision is hereby, **REVERSED**.

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

1. The Department shall reinstate Claimant's MA benefits to the effective date of closure.
2. The Department shall reinstate the FAP benefits to the amount in affect prior to the removal of the group members as of February 1, 2013; and issue a supplement for lost benefits (if any) the Claimant was otherwise eligible and qualified to receive in accordance with policy.
3. The Department shall request verification of primary caretaker status in writing from each caretaker to determine the primary caretaker of the children for the various programs in accordance with policy.
4. The Department shall notify Claimant in writing regarding the MA and FAP determination.

M. Howie

Michelle Howie
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 6/27/2013

Date Mailed: 6/27/2013

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

MH/hw

cc:

