

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No.: 2013-65119
Issue No.: 2018; 3000
Case No.: [REDACTED]
Hearing Date: October 10, 2013
County: Wayne (31)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on October 10, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department or DHS) included [REDACTED] Family Independence Specialist.

ISSUE

Did the Department properly close Claimant's Medical Assistance (MA) benefits effective October 1, 2013, ongoing?

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 is an ongoing recipient of FAP benefits.
2. Claimant was an ongoing recipient of MA benefits.
3. Claimant's household includes herself, Claimant's daughter (age 20), Claimant's sister, her sister's daughter (age 13), and her sister's son (age 3).
4. Claimant, though, has legal guardianship over her sister's 13-year-old daughter.
5. Claimant is the caretaker relative of her sister's 13-year-old daughter.

6. Even though Claimant and her sister live together, they have separate FAP groups.
7. Claimant's original FAP group consisted of herself and the niece.
8. Claimant's sister's FAP group consisted of herself and her son (age 3).
9. On an unspecified date, the Department discovered that the sister and her daughter lived together.
10. Due to this discovery, the Department removed Claimant's niece from her FAP group and placed the niece in the mother's group (Claimant's sister).
11. Due to this change, Claimant's MA benefits closed due to no longer having a need reason.
12. On August 12, 2013, Claimant filed a hearing request, protesting the Department's action. Exhibit 1.
13. On August 21, 2013, the Department sent Claimant a Notice of Case Action notifying her that her Group 2 Caretaker Relatives (G2C) MA coverage closed effective October 1, 2013, ongoing. Exhibit 2.
14. On September 19, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits were continued in the amount of \$367 for a group size of two (Claimant and her daughter) effective October 1, 2013, ongoing. Exhibit 2.

CONCLUSIONS OF LAW

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

☒ The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

☒ The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

MA benefits

In this case, Claimant was an ongoing recipient of MA benefits. Claimant's household includes herself, Claimant's daughter (age 20), Claimant's sister, her sister's daughter (age 13), and her sister's son (age 3). Claimant, though, has legal guardianship over her sister's 13-year-old daughter. Claimant is the caretaker relative of her sister's 13-year-old daughter. Even though Claimant and her sister live together, they have separate FAP groups. Claimant's original FAP group consisted of herself and the niece. Claimant's sister's FAP group consisted of herself and her son (age 3). On an unspecified date, the Department discovered that the sister and her daughter lived together. Due to this discovery, the Department removed Claimant's niece from her FAP group and placed the niece in the mother's group (Claimant's sister). Due to this change, Claimant's MA benefits closed due to no longer having a need reason. Thus, on August 21, 2013, the Department sent Claimant a Notice of Case Action notifying her that her Group 2 Caretaker Relatives (G2C) MA coverage closed effective October 1, 2013, ongoing. Exhibit 2.

G2C is a FIP-related Group 2 MA category. BEM 135 (January 2011), p. 1. MA is available to parents and other caretaker relatives who meet the eligibility factors in this item. BEM 135, p. 1. All eligibility factors must be met in the calendar month being tested. BEM 135, p. 1.

A caretaker relative is a person who is the parent of the dependent child; or the specified relative (other than a parent) who acts as parent for the dependent child. BEM 135, p.1. Specified relative includes an aunt. BEM 135, p. 2. Acts as parent means provides physical care and/or supervision. BEM 135, p. 2.

Occasionally, a specified relative (other than a parent) who claims to act as parent for the dependent child and the child's parent both live with the child. BEM 135, pp. 1-2. The client's statement regarding who acts as parent must be accepted. BEM 135, p. 2. If both the parent and other specified relative claim to act as parent, assume the parent is the caretaker relative. BEM 135, p. 2. When only the other specified relative claims to act as parent, both the other specified relative and the parent(s) may be caretaker relatives. BEM 135, p. 2.

Except, a child can have only one caretaker relative. BEM 135, p. 2. This means that if a person is an MA applicant or recipient based on being a caretaker relative, no other person can apply for or receive MA based on being a caretaker relative for the same dependent child. BEM 135, p. 2.

Applying the above standards, it has to be determined if Claimant is eligible for G2C coverage. A caretaker relative can be the specified relative (other than a parent) who acts as parent for the dependent child. BEM 135, p.1. Specified relative includes an aunt. BEM 135, p. 2. It is not disputed that Claimant is the aunt and, therefore, meets the definition of specified relative.

Moreover, a specified relative (other than a parent) who claims to act as parent for the dependent child and the child's parent both live with the child. BEM 135, pp. 1-2. This is present in this situation because the niece's mother also lives in the same household. The client's statement regarding who acts as parent must be accepted. BEM 135, p. 2. In the present case, it is not disputed that Claimant acts as the parent of her niece even though the niece's mother lives in the same household. Claimant has legal guardianship over her niece. Thus, it is determined that Claimant is the caretaker relative of the niece who is 13-years-old.

Based on the foregoing information and evidence, the Department improperly closed Claimant's Group 2 Caretaker Relatives (G2C) MA coverage effective October 1, 2013, ongoing. Claimant presented credible evidence and testimony that she is the caretaker relative of her niece even though the niece's parent lives with them. BEM 135 allows the aunt to be the caretaker relative even if the parent of the child is living in the same home. See BEM 135, pp. 1-3.

FAP benefits

In the present case, on August 12, 2013, Claimant also filed a hearing request, disputing her FAP group composition. See Exhibit 1. Claimant's household includes herself, Claimant's daughter (age 20), Claimant's sister, her sister's daughter (age 13), and her sister's son (age 3). Claimant, though, has legal guardianship over her sister's 13-year-old daughter. Claimant is the caretaker relative of her sister's 13-year-old daughter. Even though Claimant and her sister live together, they have separate FAP groups. Claimant's original FAP group consisted of herself and the niece. Claimant's sister's FAP group consisted of herself and her son (age 3). On an unspecified date, the Department discovered that the sister and her daughter lived together. Due to this discovery, the Department removed Claimant's niece from her FAP group and placed the niece in the mother's group (Claimant's sister).

At the hearing, it was discovered that at some point Claimant's daughter was added to her FAP group. However, Claimant testified that her FAP group should also include her niece, which would result in a total FAP group size of three. Claimant testified that because she has legal guardianship over her niece, the niece should be in the same FAP group as the Claimant. Claimant believed it was incorrect for the niece to be added to her mother's FAP group. Claimant testified that due to this FAP group composition change it affected her FAP benefits couple of weeks back. Thus, on September 19, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits were continued in the amount of \$367 for a group size of two (Claimant and her daughter) effective October 1, 2013, ongoing. Exhibit 2.

It should be noted that Claimant's hearing request is dated August 12, 2013. See Exhibit 1. However, the Notice of Case Action affecting Claimant's FAP benefits is dated September 19, 2013. See Exhibit 1. This hearing decision cannot address Claimant's FAP benefits because the Notice of Case Action is subsequent to her hearing request. However, Claimant can request another hearing to dispute the FAP

benefits as long as it is 90 calendar days from the date of the written notice of case action. BAM 600 (July 2013), pp. 3-4.

In summary, Claimant's FAP hearing request is dated before the Notice of Case Action and is, therefore, DISMISSED for lack of jurisdiction. BAM 600, p. 4.

DECISION AND ORDER

Accordingly, the Department's MA decision is REVERSED.

☒ THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reinstate Claimant's MA case as of October 1, 2013, ongoing;
2. Begin recalculating the MA budget for October 1, 2013, ongoing, in accordance with Department policy;
3. Issue supplements to Claimant for any MA benefits she was eligible to receive but did not from October 1, 2013; and
4. Notify Claimant in writing of its MA decision in accordance with Department policy.

It is ALSO ORDERED that Claimant's FAP hearing request is **DISMISSED** for lack of jurisdiction. BAM 600, p. 4.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: October 24, 2013

Date Mailed: October 24, 2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

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

EJF/cl

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]