

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201368714
Issue No.: [REDACTED]
Case No.: [REDACTED]
Hearing Date: October 17, 2013
County: Kent

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 17, 2013, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] and [REDACTED].

ISSUE

Whether the Department of Human Services (Department) properly determined that the Claimant is not a caretaker relative?

FINDINGS OF FACT

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

1. The Claimant was an ongoing Family Independence Program (FIP), Medical Assistance (M.A.), and Food Assistance Program (FAP) recipient.
2. On August 30, 2013, the Department determined that the Claimant is not a caretaker relative of a minor child.
3. On August 30, 2013, the Department notified the Claimant that it would close her Family Independence Program (FIP) and Medical Assistance (M.A.) benefits, and reduce her Food Assistance Program (FAP) benefits to a group of one.
4. The Department received the Claimant's request for a hearing on October 17, 2013, protesting the Department's determination of her benefits group composition.

CONCLUSIONS OF LAW

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 1999 AC, Rule 400.3101 through Rule 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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 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 1999 AC, Rule 400.3001 through Rule 400.3015.

The Claimant was an ongoing recipient of Family Independence Program (FIP), Medical Assistance (M.A.), and Food Assistance Program (FAP) benefits. The Claimant's participation in these programs was based on her status as the caretaker of a minor child.

For Medical Assistance (M.A.) under the Low Income Families (LIF) category, a child is considered to be living with only one parent in a joint custody arrangement. This parent is the Primary Caretaker. This 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. Department of Human Services Bridges Eligibility Manual (BEM) 110 (July 1, 2013), p 5.

For the Family Independence Program (FIP), the primary caretaker is the caretaker 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 month, when averaged over a twelve-month period. Department of Human Services Bridges Eligibility Manual (BEM) 210 (July 1, 2013), p 3.

Suggested verification sources to determine a primary caretaker for Medical Assistance (M.A.) benefits are:

- Court order that addresses custody or visitation.
- School records indicating who enrolled the child and who is called in an emergency situation.
- Medical records stating where the child lives, who is responsible for the child's medical care.

- Child care records showing where the child lives and who makes and pays for the child care arrangements. Department of Human Services Bridges Eligibility Manual (BEM) 211 (July 1, 2013), p 8.

For the Food Assistance Program (FAP), the Department will determine the primary caretaker by using a twelve-month period. The twelve-month period begins when a primary caretaker determination is made. To determine the primary caretaker the Department will ask the client how many days the child sleeps at his/her home in a calendar month. The Department will accept the client's statement unless questionable or disputed by another caretaker. Department of Human Services Bridges Eligibility Manual (BEM) 212 (October 1, 2013), pp 3-4.

Suggested verification sources to determine a primary caretaker for Food Assistance Program (FAP) benefits are:

- The most recent court order that addresses custody and/or visitation.
- School records indicating who enrolled the child in school, first person contacted in case of emergency, and/or who arranges for 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(ren).
- Medical providers' records showing where the child lives and who generally takes the child to medical appointments. Id.

In this case, the Department closed the Claimant's Family Independence Program (FIP) and Medical Assistance (M.A.) benefits after determining that the Claimant is not the primary caretaker of a minor child. The Claimant's eligibility for these programs was based on her status as a primary caretaker.

The Department reduced her Food Assistance Program (FAP) benefit group size to one after determining that there are no other eligible persons in her household.

The Department's representatives testified that they discovered a court order giving full custody of the Claimant's children to the father, and prohibiting the Claimant from being their caretaker. Based on this information, the Department determined that the Claimant's children are prohibited from sleeping in her home more than half of the nights each month.

The Claimant testified that despite the court order, her children do sleep in her home more than half of the nights on average each month. The Claimant testified that her children are sleeping in her home during the week, and returning their father's residence on weekends. The Claimant testified that she cares for her children during to week to facilitate their father's employment.

The Department relied on its investigation into the Claimant's circumstances and the court order giving full custody of the Claimant's children to their father. The most recent court order that addresses custody and/or visitation is an acceptable verification source for determining a primary caretaker.

However, no evidence was presented during the hearing that the children's father had applied for benefits as the primary caretaker of the children, and enforcement of the court order granting custody of the children is not within the jurisdiction of this Administrative Law Judge.

The court order would be satisfactory verification of the amount of supervision assuming the parties were in compliance with the court order. The Court order is not satisfactory verification of a lack of supervision where it is alleged that the parties are not in compliance with the court order.

Furthermore, this Administrative Law Judge is not aware of any Department policy that requires compliance with a court order granting custody and/or visitation in order to remain eligible for FIP, MA, and FAP benefits.

Department policy requires a primary caretaker to be determined from the household where the children sleep more than half of the nights on average each month, and it is directed to accept the applicant's statement where the primary caretaker is not disputed.

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 finds that the Claimant is not required to provide evidence that she is in violation of a court order in order to establish that she is eligible to receive FIP, MA, and FAP benefits. The Department is required to present evidence that it determined eligibility for these benefits in accordance with policy. Based on the evidence and testimony available during the hearing, this Administrative Law Judge finds that the Department presented insufficient evidence of where the Claimant's children sleep each month to establish that it properly determined her eligibility to receive benefits.

Department policy requires that before determining eligibility, it will give the client a reasonable opportunity to resolve any discrepancy between his statements and information from another source. Department of Human Services Bridges Administrative Manual (BAM) 130 (July 1, 2013), p 7.

This Administrative Law Judge finds that there was a discrepancy between Claimant's statements used to approve her for benefits, and the court order used to determine that the Claimant is not the primary caretaker. Therefore, this Administrative Law Judge finds that the Department failed to establish that it properly applied policy to determine that the Claimant is not the primary caretaker of her children.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that the Claimant is not the primary caretaker of her children.

Accordingly, the Department's 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. Provide the Claimant a ten-day period to clarify where her children have been sleeping.
2. Initiate a determination of the Claimant's eligibility for Family Independence Program (FIP), Medical Assistance (M.A.), and Food Assistance Program (FAP) as of October 1, 2013.
3. Provide the Claimant with a Notice of Case Action (DHS-1605) describing the Department's revised eligibility determination.
4. Issue the Claimant any retroactive benefits she may be eligible to receive, if any.

/s/
Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 10/23/2013

Date Mailed: 10/23/2013

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

KS/sw

cc:

