

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201341835
Issue No.: 1022; 3014
Case No.: [REDACTED]
Hearing Date: May 16, 2013
County: Wayne (17)

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 May 16, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and [REDACTED], Claimant's aunt and translator. Participants on behalf of Department of Human Services (Department) included [REDACTED], Family Independence Specialist.

ISSUE

Did the Department properly remove Claimant's child, Nadiah, from her Food Assistance Program (FAP) and Family Independence Program (FIP) 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. Claimant is an ongoing recipient of FIP and FAP benefits.
2. Claimant's FIP and FAP group size was four, consisting of herself and her three minor children, [REDACTED], [REDACTED].
3. On April 3, 2013, the Department learned that Claimant signed a consent order on November 23, 2011, granting legal and physical custody of [REDACTED] to her father, Claimant's ex-husband.

4. On April 5, 2013, the Department sent Claimant a Notice of Case Action reducing her FIP and FAP group size to three on the basis that [REDACTED] was not an eligible group member because she did not live with Claimant and was not considered part of the household group.
5. On April 12, 2013, 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.

Additionally, Claimant requested a hearing because she contended that the Department improperly removed [REDACTED] from her FIP and FAP groups.

Parents and children who live together must be in the same FAP and FIP group. BEM 210 (January 2013), pp 1-2, 4; BEM 212 (November 2012), p 1. 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 group of the primary caretaker. BEM 210, p 3; BEM 212, 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 210, pp 2, 7; BEM 212, p 1. The twelve-month period begins when a primary caretaker determination is made. BEM 210, pp 2, 7; BEM 212, p 3. The Department accepts the client's statement regarding the number of days the child sleeps in the caretaker's home unless questionable or disputed by another caretaker. BEM 210, p 8; BEM 212, pp 3, 8.

In this case, the Department removed [REDACTED] from Claimant's FAP and FIP groups after it discovered that Claimant had signed a consent order, which was recorded with the Friend of the Court, granting physical and legal custody of [REDACTED] to her ex-husband as

of November 2011. At the hearing, Claimant credibly testified that since her 2003 divorce all three of her children, including [REDACTED], lived with her and she cared for them. She further testified that the children slept in her home and only visited with their father a few hours each Saturday. Claimant conceded that she had signed the November 2011 consent order, granting her ex-husband legal and legal custody of [REDACTED] but alleged that she signed it because at the time she had intended to leave the country to visit her family and her husband requested that she sign it. She testified that she did not read English and did not read the consent order.

Department policy 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 210, pp 8, 9, 11; BEM 212, pp 3, 8. 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 210, pp 11-12; BEM 212, pp 9-10. 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 and the other caretaker is considered the absent caretaker. BEM 210, p 8; BEM 212, p 3.

In this case, where Claimant disputes the Department's designation of the father as the primary caretaker, the Department is required to reevaluate the primary caretaker status of the child and, if the father contests Claimant's claim, allow both caretakers to provide evidence supporting their claims. Because the Department failed to follow this procedure, the Department did not act in accordance with Department policy when it removed [REDACTED] from Claimant's FIP and FAP cases.

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 act in accordance with Department policy when it removed [REDACTED] from Claimant's FIP and FAP group without verifying the child's primary caretaker.

Accordingly, the Department's decision is REVERSED.

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

1. Begin evaluating the primary caretaker of [REDACTED] in accordance with Department policy and consistent with this Hearing Decision;

2. If Claimant is determined to be [REDACTED] primary caretaker, begin recalculating Claimant's FAP and FIP budget to include the child in her FAP and FIP groups, respectively, as of May 1, 2013;
3. Issue supplements for any FIP and/or FAP benefits Claimant was eligible to receive but did not from May 1, 2013, 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: 5/24/2013

Date Mailed: 5/24/2013

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:

