

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-61342
Issue No.: 1022, 2015, 3014
Case No.: [REDACTED]
Hearing Date: October 21, 2013
County: Pathways to Potential

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 21, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED]

[REDACTED] Also appearing and testifying was [REDACTED]

ISSUE

Did the Department properly close Claimant's Medical Assistance (MA) and Family Independence Program (FIP) cases and reduce her 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. Claimant and Father have three minor children.
2. On [REDACTED], a Consent Judgment of Divorce was entered concerning Claimant's and the Father's divorce.
3. On January 7, 2010, the Father applied for FAP and MA for himself and the three children and was approved for benefits.

4. On April 21, 2010, Claimant began receiving FAP benefits for a group size of one.
5. In July 2011, Claimant applied for MA and FIP benefits.
6. On July 1, 2011, Claimant began receiving MA coverage for herself under the low-income family (LIF) program.
7. On August 1, 2011, Claimant began receiving FIP benefits for a group composed of her and the three minor children.
8. In December 2012, the Father applied for FIP for him and the three minor children.
9. After a front-end eligibility (FEE) investigation, the Department determined that Claimant had primary custody of the children and denied the Father's FIP application, closed the Father's MA case, and reduced his FAP benefits by removing the children from his FAP group.
10. On January 1, 2013, Claimant began receiving FAP benefits for a group composed of her and the three minor children.
11. The Father requested a hearing and, in a Hearing Decision signed on June 27, 2013, the Administrative Law Judge (ALJ) reversed the Department's decision, and ordered the Department to (i) reinstate the Father's MA case, (ii) place the children back in the Father's FAP group, and (iii) request verification of primary caretaker status in writing from each caretaker to determine the children's primary caretaker under the various programs.
12. On July 22, 2013, the Department sent Claimant a Notice of Case Action removing the children from her group and notifying her that effective September 1, 2013, her FIP case would close, the MA cases for her and the children would close, and her FAP benefits would decrease to \$200 monthly based on a household size of one.
13. On July 23, 2013, Claimant filed a request for hearing disputing the Department's actions.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

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.

Additionally, the Department testified that, based on the ALJ Hearing Decision signed June 27, 2013, Claimant's three minor children were removed from her FIP, FAP and MA cases. A July 22, 2013, Notice of Case Action notified Claimant that her FIP and MA cases would close and her FAP benefits would be reduced because the children were no longer living with her and their needs were not considered in determining her eligibility. At the hearing, Claimant contended that the children had been improperly removed from her FAP, FIP, and MA groups and placed in the Father's FAP and MA groups.

In this case, Claimant and the Father share physical and legal custody of the three children. When a child spends time with multiple caretakers who do not live together (such as a joint physical custody arrangement), only the primary caretaker can include the child in his or her FIP, MA and FAP groups. BEM 210 (January 2013), pp. 2-3, 7; BEM 211 (November 2012), p. 2; BEM 212 (November 2012), p. 3; BEM 110 (June 2013), p. 4. A child's 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 beginning when a primary caretaker determination is made. BEM 210, p. 7; BEM 211; p. 2; BEM 212, p. 3; BEM 110, p. 4. It is possible to have a different primary caretaker for different programs. BEM 201, p. 8.

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, p. 8; BEM 211, p. 6; BEM 212, p. 3. 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 212, pp. 9-10; BEM 210, pp. 11-12; BEM 211, p. 7.

In this case, Claimant and the Father were requested to provide verification of caretaker status. The Consent Judgement of Divorce dated October 23, 2009, provides that Claimant and the the Father both share equal legal and physical custody of the children and specifies a visitation schedule that splits the time the children spend with each parent exactly in half. Claimant's and the Father's testimony established that, although the parties did not strictly comply with the terms of the Consent Judgment of Divorce, they maintained shared custody of the children, with each parent caring for the children 50% of the time. Because the parties did not dispute that they both equally share in the physical care of the three children, additional verification is not necessary to establish 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, averaged over a twelve-month period.

For FIP and FAP benefits, if the child sleeps in the home of multiple caretakers an equal number of days in a month when averaged over a twelve-month period, the caretaker who applies and is certified eligible first is the primary caretaker for that program. BEM 210, p. 8; BEM 212, p. 3. In this case, Claimant applied for FIP benefits and was approved beginning August 1, 2011. Although the Father applied for FIP in December 2012, the Department denied the application. Because the evidence established that Claimant applied for FIP benefits first, was approved, and received ongoing FIP benefits, the Department did not act in accordance with Department policy when it closed Claimant's FIP case.

The evidence also established that the Father had applied and been found eligible for FAP benefits for himself and the three children beginning January 7, 2010. Claimant was approved for FAP benefits for a group size of one from April 21, 2010, to December 31, 2012. Effective January 1, 2013, her FAP group size was increased to four to include the children, and her FAP benefits were increased, after the Department's FEE investigation resulted in the Department's conclusion that the children were in her custody. However, because both parties equally share in the physical care of the children and the Father applied for FAP benefits for the children first, the Department acted in accordance with Department policy when it removed the children from Claimant's FAP case effective September 1, 2013, and reduced her benefit amount to that for a group size of one.

With respect to a client's MA eligibility, Department policy provides that, in a joint physical custody arrangement, the child is considered to be living with only one parent, and that parent is the primary caretaker for MA purposes. BEM 211, p. 2; BEM 110, p. 4. While the MA policy does not specify the outcome when both parents equally care for the children, based on Department policy concerning the FIP and FAP programs, it follows that the resolution of the primary custody issue is based on the parent who initially applied for MA on the children's behalf. In this case, the Father applied for MA for himself and the children on January 7, 2010, and his MA application was approved. While Claimant received MA coverage under the LIF program beginning in July 1, 2011, it is noted that the children did not receive MA coverage under her case. Under the

facts in this case, the Department acted in accordance with Department policy when it closed Claimant's MA case.

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 acted in accordance with Department policy when it closed Claimant's MA case and reduced her FAP benefits but did not act in accordance with Department policy when it closed her FIP case.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED IN PART with respect to closure of Claimant's MA case and reduction of her FAP benefits and REVERSED IN PART with respect to closure of her FIP benefits.

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 FIP case as of September 1, 2013;
2. Issue supplements to Claimant for any FIP benefits she was eligible to receive but did not from September 1, 2013, ongoing.



Alice C. Elkin
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

ACE/pf

cc:

