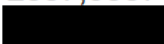


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**



IN THE MATTER OF:



Reg. No.: 201417733
Issue No(s) : 2007;3007
Case No.: 
Hearing Date: January 15, 2014
County: Wayne (49)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 January 15, 2014, from Detroit, Michigan. Participants on behalf of Claimant included . Participants on behalf of the Department of Human Services (Department) included , ES.

ISSUE

Due to a failure to meet income requirements, student status requirements, and a lack of primary caretaker status, did the Department properly deny Claimant's application close Claimant's case reduce Claimant's benefits for:

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP)? | <input type="checkbox"/> Adult Medical Program (AMP)? |
| <input checked="" type="checkbox"/> Food Assistance Program (FAP)? | <input type="checkbox"/> State Disability Assistance (SDA)? |
| <input checked="" type="checkbox"/> Medical Assistance (MA)? | <input type="checkbox"/> Child Development and Care (CDC)? |

FINDINGS OF FACT

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

1. Claimant applied for received:
 FIP FAP MA AMP SDA CDC
benefits.
2. The father of claimant's child requested primary caretaker status and provided evidence of caretaker status.

3. Claimant alleged that the father was not the primary caretaker.
4. On [REDACTED] 2013, the Department
 - denied Claimant's application.
 - closed Claimant's case.
 - reduced Claimant's benefits.
4. On [REDACTED] 2013, the Department sent Claimant/Claimant's Authorized Representative (AR) notice of its action.
5. On [REDACTED] 2013, Claimant/Claimant's Authorized Hearing Representative (AHR) filed a hearing request, protesting the Department's action.

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), and Department of Human Services Reference Tables Manual (RFT).

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.

The Adult Medical Program (AMP) is established by 42 USC 1315 and is administered by the Department pursuant to MCL 400.10.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858g; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

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 211.

Only one person can be the primary caretaker and the other caretaker is considered the absent caretaker, even if the absent caretaker cares for the child an equal amount of time. A child must always be in the MA group of the primary caretaker. BEM 211.

The primary caretaker is determined by using a twelve month period. The twelve month period begins when a primary caretaker determination is made. The case worker should ask the client how many days the child sleeps at his/her home in a calendar month. BEM 211. This statement should be accepted without verification unless questionable or disputed by another caretaker.

Primary caretaker status is re-evaluated when a new or revised court order changing custody or visitation is provided, there is a change in the number of days the child sleeps in another caretaker's home and the change is expected to continue, on average, for the next twelve months, or a second caretaker disputes the first caretaker's claim that the child sleeps in his/her home more than half the nights in a month, when averaged over the next 12 months. Primary caretaker status is also re-evaluated when a second caretaker applies for assistance for the same child. BEM 211.

When primary caretaker status is re-evaluated, and becomes questionable or disputed, the final determination is based on the evidence provided by the caretakers. BEM 211.

In the current case, claimant alleged guardianship of a minor child in the home. The father of this child claimed primary caretaker status at another DHS district, and provided supporting evidence to buttress his claim. Claimant was not notified that evidence had been provided, and was not given an opportunity to provide rebuttal evidence.

Per policy in BEM 211, when a dispute arises with regard to which party is the primary caretaker, the Department must allow evidence submission to make a determination. The Department did not notify claimant of the alleged change, or allow or give claimant a chance to provide rebuttal evidence once the change was alleged by the other party. As such, claimant was not allowed to provide evidence as required by BEM 211. By failing to do so, the Department erred when it moved the child in question to another

party's benefit case. Per policy, claimant should have been given a chance to submit rebuttal evidence before any change was processed.

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 .
- did not act in accordance with Department policy when it failed to allow claimant to dispute a requested change in caretaker status.
- failed to satisfy its burden of showing that it acted in accordance with Department policy when it .

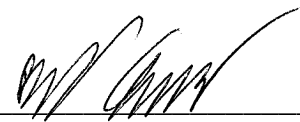
DECISION AND ORDER

Accordingly, the Department's decision is

- AFFIRMED.
- REVERSED.
- AFFIRMED IN PART with respect to and REVERSED IN PART with respect to .

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. Restore claimant's original group composition and FAP and MA benefits retroactive to the date of negative action.
2. Allow claimant to submit rebuttal evidence with regard to primary caretaker status.
3. Once all evidence is submitted by both parties, make a decision as to primary caretaker status for the minor child in question.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 1/24/2014

Date Mailed: 1/24/2014

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

RJC/hw

cc:

A large black rectangular redaction box covers the names and contact information of the recipients listed in the 'cc:' field.

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