

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 201425923  
Issue No.: 2007; 3007  
Case No.: [REDACTED]  
Hearing Date: March 3, 2014  
County: Wayne (35)

**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 March 3, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Assistance Payment Worker.

**ISSUE**

Did the Department properly exclude Claimant's son [REDACTED] from her Food Assistance Program (FAP) and Medical Assistance (MA) cases?

**FINDINGS OF FACT**

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

1. On January 10, 2014, Claimant applied for FAP and MA for herself and her two minor sons.
2. The Department approved Claimant's application for FAP and MA for her and one child but not for [REDACTED].
3. On February 4, 2014, Claimant filed a request for hearing disputing the Department's failure to include [REDACTED] in her FAP and MA groups.

**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.

Additionally, the Department testified that [REDACTED] was ineligible for FAP and MA benefits with Claimant because the child was an active recipient of such benefits under the FAP and MA cases of his father's living-together-partner (LTP).

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 FAP. BEM 212 (October 2013), 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 212, p. 2. The twelve-month period begins when a primary caretaker determination is made. BEM 212, p. 4. In FAP cases, 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 212, p. 4.

For FAP cases, the Department must reevaluate primary caretaker status (i) when a second caretaker disputes the first caretaker's claim that the child sleeps in his home for more than half the nights in a month when averaged over the next 12 months or (ii) where a second caretaker applies for assistance for the same child. BEM 212, p. 5. If the primary caretaker status is questionable or disputed, verification is needed and the Department must allow both caretakers to provide evidence supporting their respective claims. BEM 212, p. 5.

Suggested verifications include (i) the most recent court order addressing custody and/or visitation; (ii) 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; (iii) child care records showing who makes and pays for child care arrangements, and who drops off and picks up the child; and (iv) medical providers'

records showing where the child lives and who generally takes the child to medical appointments. BEM 212, p. 12.

In this case, Claimant credibly testified that when she applied for FAP, she was not aware that [REDACTED] was active on another case. She credibly testified that the child resided with her and slept more than half of the days in a calendar month, on average, in a twelve-month period, in her home. In support of her position, Claimant presented a letter from [REDACTED] school showing that [REDACTED] address of record was with Claimant.

Even though Claimant presented evidence to establish that she is [REDACTED] primary caretaker, there was no evidence that the Department allowed the father to present any evidence to support his status as the child's primary caretaker. In the absence of such evidence from the father, the Department must remove [REDACTED] from his father's FAP case and add him to Claimant's FAP case in accordance with Department policy. Under the facts presented in this case, the Department did not act in accordance with Department policy when it failed to verify the primary caretaker status at the time Claimant applied to have [REDACTED] placed in her FAP case.

If Claimant is determined to be the child's primary caretaker consistent with the evidence presented at the hearing, [REDACTED] must be added to Claimant's case from the date of application (if the child should never have been on the LTP's case) or consistent with Department policy for a member add (if the verifications establish a change in the child's primary caretaker). See BEM 212, p. 9; BEM 550 (July 2013), p. 4; BAM 115 (January 2014), pp. 25, 27.

### **MA Application**

Medicaid eligibility is available under Modified Adjusted Gross Income (MAGI)-related categories to children under age 19 and their parents or caretakers. BEM (January 2014), p. 1. Effective January 1, 2014, the determination of group composition for MAGI-related categories is in MAGI-related policy. BEM 211 (January 2014), p. 1.

In this case, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy in excluding [REDACTED] from his mother'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 did not act in accordance with Department policy when it failed to verify primary caretaker status at the time Claimant applied for FAP benefits and failed to satisfy its burden of showing that it acted in accordance with Department policy when it failed to remove the child from the father's MA case.

### **DECISION AND ORDER**

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. Reprocess Claimant's January 10, 2014, FAP and MA application to determine the primary caretaker of Claimant's son [REDACTED];
2. If Claimant is deemed [REDACTED] primary caretaker, recalculate Claimant's FAP budget to include [REDACTED] as a group member from the date of eligibility;
3. Issue supplements to Claimant for FAP benefits she was eligible to receive but did not from January 10, 2014, ongoing
4. Provide MA coverage to Claimant's son he is eligible to receive but did not from January 1, 2014 ongoing; and
5. Notify Claimant in writing of its decision.



**Alice C. Elkin**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: March 7, 2014

Date Mailed: March 7, 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.

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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/tlf

cc:

