

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

IN THE MATTER OF:

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████████████████████

Reg. No.: 14-008886
Issue No.: 1001; 3001
Case No.: ██████████
Hearing Date: September 10, 2014
County: WAYNE PATHWAYS TO
POTENTIAL

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 three-way telephone hearing was held on September 10, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, ██████████. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████, Success Coach.

ISSUES

Did the Department properly close Claimant's Family Independence Program (FIP) benefits effective August 1, 2014?

Did the Department properly decrease Claimant's Food Assistance Program (FAP) benefits/group size effective August 1, 2014?

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 was an ongoing recipient of FIP benefits.
2. Claimant is an ongoing recipient of FAP benefits.
3. On October 28, 2013, Claimant and her father's child entered into a Judgment of Filiation and Support order. See Exhibit 1, pp. 4-11.

4. On October 28, 2013, Claimant and the father agreed to have joint legal and physical custody of their minor child until further order of the Court. See Exhibit 1, p. 4.
5. On October 28, 2013, Claimant and the father agreed that the Claimant shall have parenting time with the minor child every weekend from Friday at 4:00 p.m. to Sunday at 8:00 p.m. or as the parties shall mutually agree until further order of the Court. See Exhibit 1, p. 5.
6. On an unspecified date, the father applied for cash assistance for the child. See Exhibit 1, p. 1.
7. On July 9, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FIP case closed effective August 1, 2014, ongoing, due to no group member is an eligible child. See Exhibit 2, pp. 1-5.
8. On July 11, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits decreased to \$632 (group size of five to four) because the child is no longer living with the Claimant. See Exhibit 1, pp. 7-12.
9. On August 1, 2014, Claimant filed a hearing request, protesting the FIP case closure and FAP allotment. See Exhibit 1, pp. 2-3.

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, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, 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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

FAP benefits

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 (July 2014), p. 2.

When a child spends time with multiple caretakers who do not live together such as joint physical custody, parent/grandparent, etc., the Department determines a primary caretaker. BEM 212, p. 3. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent caretaker(s). BEM 212, p. 3. The child is **always** in the FAP group of the primary caretaker. BEM 212, p. 3. If the child's parent(s) is living in the home, he/she must be included in the FAP group. BEM 212, p. 3.

The Department determines primary caretaker by using a twelve-month period. BEM 212, p. 4. The twelve-month period begins when a primary caretaker determination is made. BEM 212, p. 4. The Department determines primary caretaker based on several factors outlined in BEM 212. See BEM 212, p. 4.

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. BEM 212, p. 4. The other caretaker(s) is considered the absent caretaker(s). BEM 212, p. 4.

The Department re-evaluates primary caretaker when a second caretaker applies for assistance for the same child or a new or revised court order changing custody or visitation is provided or for other reasons listed in BEM 212. See BEM 212, p. 5.

In this case, Claimant is an ongoing recipient of FAP benefits. On October 28, 2013, Claimant and her father's child entered into a Judgment of Filiation and Support. See Exhibit 1, pp. 4-11. On October 28, 2013, Claimant and the father agreed to have joint legal and physical custody of their minor child until further order of the Court. See Exhibit 1, p. 4. On October 28, 2013, Claimant and the father agreed that the Claimant shall have parenting time with the minor child every weekend from Friday at 4:00 p.m. to Sunday at 8:00 p.m. or as the parties shall mutually agree until further order of the Court. See Exhibit 1, p. 5.

On an unspecified date, the father applied for cash assistance for the child. See Exhibit 1, p. 1. Upon receipt and review of the court order, the Department determined that the child spends the primary time with the father and the Claimant (mother) is considered the absent caretaker. Thus, on July 11, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits decreased to \$632 (group size of five to four) because the child is no longer living with the Claimant. See Exhibit 1, pp. 7-12.

At the hearing, Claimant testified that she is the primary caretaker of the child and the custodial parent. Claimant testified that the father is responsible for child support

through the State of Michigan. Moreover, Claimant testified the father volunteers his parenting time to take the child to and from school. Claimant testified that there is no subsequent and/or amendment to the court order dated October 28, 2013. Ultimately, Claimant argued that the father is not the primary caretaker of the child and that she is responsible for the child's day-to-day care and supervision in the home.

When primary caretaker status is questionable or disputed, the Department bases the determination on the evidence provided by the caretakers. BEM 212, p. 12. The Department gives each caretaker the opportunity to provide evidence supporting his/her claim. BEM 212, p. 12. Suggested verifications include:

- 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.

BEM 212, pp. 12-13.

Based on the foregoing information and evidence, the Department properly decreased Claimant's FAP benefits to \$632 (group size of five to four) because the Claimant is not the primary caretaker of the child.

In this case, the primary caretaker status is clearly disputed by the Claimant. As such, the Department presented the most recent court order that addresses custody and/or visitation of the child. BEM 212, pp. 12-13. The evidence presented that the father is the primary caretaker of the child based on the parenting time as outlined in the court order. See Exhibit 1, p. 5. Claimant disputed the parenting time and testified that she is the primary caretaker. However, Claimant failed to provide any documentary evidence to dispute the primary caretaker status. Moreover, Claimant acknowledged there is no updated court order to show that she has a majority of the parenting time. Therefore, the Department acted in accordance with Department policy when it determined Claimant is not the primary caretaker of the child, which resulted in a decrease of the FAP group composition from five to four. BEM 212, pp. 1-13.

FIP benefits

To be eligible for FIP the group must include a dependent child who lives with a legal parent, stepparent or other qualifying caretaker. BEM 210 (July 2013), p. 1. Joint

physical custody occurs when parents or other caretakers alternate taking responsibility for the child's day-to-day care and supervision in separate homes. BEM 210, p. 3. It may be included in a court order or may be an informal arrangement between parents or other care-takers. BEM 210, p. 3 and see also primary caretaker definition (same as BEM 212, p. 2), BEM 210, p. 3. Once a caretaker is determined to be the primary caretaker, the child's other caretakers are considered absent caretakers. BEM 210, p. 3.

When a child spends time in the home of multiple caretakers who do not live together (such as joint physical custody or parent/grandparent), the Department determines the primary caretaker based on the number of days per month a child sleeps in the home. BEM 210, p. 10. The Department accepts the client's statement regarding number of days the child sleeps in the caretaker's home unless questionable or disputed by another caretaker. BEM 210, p. 10.

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, such as every other week, the caretaker who applies and is certified eligible first is the primary caretaker for that program. BEM 210, p. 10. It is possible to have a different primary caretaker for different programs. BEM 210, p. 11.

When the number of days per month a child sleeps in the home of multiple caretakers is questionable or disputed, give each caretaker the opportunity to provide evidence of their claim. BEM 210, p. 11. Base primary caretaker determination upon best available information and evidence supplied by the caretakers. BEM 210, p. 11. The Department re-evaluates primary caretaker status when a second caretaker applies for assistance for the same child or for other reasons as outlined in BEM 210. BEM 210, pp. 11-12.


When caretaking time of a dependent child is disputed or questionable, examples of proof to consider include, but are not limited to the most recent order that addresses custody and/or visitation or other verifications as listed in BEM 210. See BEM 210, pp. 14-15.

Based on the above FAP analysis, the Department acted in accordance with Department policy when it determined Claimant is not the primary caretaker of the child, which resulted in a decrease of the FAP group composition from five to four. BEM 212, pp. 1-13. A review of the FIP primary caretaker policy found it to be similar to the FAP policy (BEM 210). As stated previously, the evidence presented that the father is the primary caretaker of the child based on the parenting time as outlined in the court order. See Exhibit 1, p. 5. Claimant did not dispute that she received FIP benefits on behalf of her child. Because the father is the primary caretaker of the child, Claimant has no eligible child to continue receiving ongoing FIP assistance. As such, the Department acted in accordance with Department policy when it closed Claimant's FIP benefits effective August 1, 2014. See BEM 210, pp. 1-15 and Exhibit 1, pp. 4-11.

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 acted in accordance with Department policy when it (i) properly closed Claimant's FIP benefits effective August 1, 2014, due to no group member is an eligible child; and (ii) properly decreased Claimant's FAP benefits to \$632 (group size of five to four).

Accordingly, the Department's FAP and FIP decision is AFFIRMED.


Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **9/16/2014**

Date Mailed: **9/16/2014**

EJF / cl

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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.

