

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

IN THE MATTER OF:



Reg. No.: 201413990
Issue No.: 2001
Case No.:
Hearing Date: December 18, 2013
County:

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 December 18, 2013, from Detroit, Michigan. Participants on behalf of Claimant included . Participants on behalf of the Department of Human Services (Department) included .

ISSUE

Did the Department properly deny Claimant's application close Claimant's case for:

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

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 applied for received:
 FIP FAP MA AMP SDA CDC DSS SSP benefits.
2. On 2013, the Department denied Claimant's application closed Claimant's case due to failing to have an eligible child in the house.

3. On [REDACTED] 2013, the Department sent Claimant/Claimant's Authorized Representative (AR) its decision.
4. On [REDACTED] 2013, Claimant/Claimant's Authorized Hearing Representative (AHR) filed a hearing request, protesting 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), 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.

Direct Support Services (DSS) is established by the Social Welfare Act, MCL 400.1-.119b. The program is administered by the Department pursuant to MCL 400.10 and 400.57a and Mich Admin Code R 400.3603.

The State SSI Payments (SSP) program is established by 20 CFR 416.2001-.2099 and the Social Security Act, 42 USC 1382e. The Department administers the program pursuant to MCL 400.10.

Claimant made two arguments; first, that claimant's daughter was improperly removed from the household, and; two, that claimant had made allegations of disability and should not have had her MA terminated.

With regard to the first argument, claimant was originally a recipient of G2C MA, which requires her to be the primary caretaker of a minor child. BEM 135.

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.

Claimant told the Department, and testified under oath, that her daughter slept at her house three nights out of the week. Per policy, even though claimant has full joint custody of the child, and contributes equally to the child's upbringing, claimant cannot be considered the primary caretaker, as the child does not sleep more than half the days in a calendar month, on average, in the home of the claimant. As such, the Department was correct to remove the claimant's daughter as a group member, and remove claimant from the G2C MA program.

However, before closing MA for any program, the Department must first conduct a full ex parte review and consider eligibility under all other MA-only categories before terminating benefits under a specific category. BEM 105.

According to Department Exhibit 3, claimant had alleged disability in her current application, and appeared to have been granted a deferral from the PATH program for disability based reasons. As disability is a reason for MA eligibility, and as there was evidence of disability in claimant's file, it does not appear that a full ex parte review was conducted; claimant must be evaluated for disability based MA before terminating the

G2C MA. Furthermore, the Department was unable to determine at hearing whether a full ex parte review had been conducted.

The Administrative Law Judge, based upon 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 removed claimant's daughter from the benefit group.
- did not act in accordance with Department policy when it failed to conduct a full ex parte review.
- 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 claimant's group composition and REVERSED IN PART with respect to closing claimant's MA benefits without a full ex parte review.
- 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 MA benefits retroactive to the date of negative action and conduct a full ex parte review with regard to claimant's MA benefits and claimant's allegations of disability.



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

Date Signed: 12/27/2013

Date Mailed: 12/27/2013

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

RJC/hw

cc:

