

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-013459
Issue No.: 1000; 3008; 4000; 5001
Agency Case No.: [REDACTED]
Hearing Date: November 4, 2015
County: WAYNE-DISTRICT 76

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION

Following Petitioner'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; and Mich Admin Code, R 792.11002. After due notice, an in-person hearing was held on November 4, 2015, from Detroit, Michigan. The Petitioner was represented by [REDACTED] (Petitioner). The Department was represented by [REDACTED], Family Independence Manager; and [REDACTED], Eligibility Specialist.

ISSUES

Did the Department properly deny Petitioner's State Emergency Relief (SER) application dated February 12, 2015?

Did the Department properly determine Petitioner's Food Assistance Program (FAP) group composition effective March 1, 2015, ongoing?

Did the Department properly calculate Petitioner's FAP benefits effective March 1, 2015, ongoing?

FINDINGS OF FACT

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

1. Petitioner is an ongoing recipient of FAP benefits. See Exhibit A, pp. 11-17.
2. On [REDACTED], Petitioner applied for SER benefits, seeking assistance with payment of a \$700 security deposit. See Exhibit A, pp. 9-10.

3. In the application, Petitioner listed herself and her younger child (hereinafter referred to as "Child A") as members who lived in the household. See Exhibit A, p. 9. Petitioner also reported no household income. See Exhibit A, pp. 9-10.
4. On [REDACTED], the Department sent Petitioner a SER Decision Notice notifying her that her SER application was denied based on her rent being unaffordable. See Exhibit A, pp. 18-20.
5. Effective [REDACTED], the Department determined Petitioner's FAP group composition was one. See Exhibit A, pp. 11-12.
6. On [REDACTED], Petitioner requested a hearing to dispute the SER denial. See Exhibit A, pp. 22-23.
7. Effective [REDACTED] ongoing, the Department determined Petitioner's FAP group composition was two, herself and her older son (hereinafter referred to as "Child B"). See Exhibit A, pp. 11-12.
8. On June 3, 2015, an administrative hearing was held in which the Administrative Law Judge (ALJ) sent a Decision and Order (D&O) on June 9, 2015 and ordered the Department to: (i) reregister Petitioner's SER application dated [REDACTED] and initiate reprocessing of Petitioner's SER application subject to the findings that Petitioner's prospective rent is \$0/month and that reprocessing shall be based on Petitioner's household circumstances as of [REDACTED] (Reg. No. 15-006594).
9. On [REDACTED], the Department sent Petitioner an SER Verification Checklist requesting verification of the need for SER relocation and it was due back by [REDACTED]. See Exhibit A, p. 28.
10. On [REDACTED], the Department conducted a collateral contact with Child B, who informed the Department that he moved in with the Petitioner as of April 2015. See Case Comments Exhibit A, p. 7.
11. On [REDACTED], Petitioner submitted verification from the [REDACTED] – Family Composition form signed by Petitioner on [REDACTED], in which she reported her family composition to be three: (i) herself; (ii) Child A; and (iii) Child B. See Exhibit A, pp. 29-30.
12. On [REDACTED], Petitioner also submitted a [REDACTED] – House Lease document, which indicated Petitioner's base rent is \$800 and her security deposit is \$900 for a lease signing date of [REDACTED]. See Exhibit A, p. 31.
13. On [REDACTED], the Department sent Petitioner a SER Decision Notice notifying her that her SER application was again denied based on shelter not being affordable. See Exhibit A, pp. 41-42.

14. On [REDACTED], the Department sent Petitioner a Notice of Case Action informing her that she was approved for FAP benefits effective [REDACTED], ongoing, with a household size of two (Petitioner plus Child B). See Exhibit A, pp. 44-45. The Notice of Case Action also indicated that Child A was removed from the group composition effective June 1, 2015, ongoing. See Exhibit A, p. 45. The Notice of Case Action also indicated that Petitioner is owed a FAP supplement of \$454 for the period of [REDACTED]. See Exhibit A, p. 46.
15. On [REDACTED], Petitioner filed a hearing request, protesting the Department's action. See Exhibit A, pp. 2-3.
16. On [REDACTED] the Michigan Administrative Hearing System (MAHS) sent both parties a Notice of Hearing scheduling an in-person hearing for September 17, 2015.
17. On [REDACTED], the Administrative Law Judge sent both parties an Adjournment Order.
18. On [REDACTED], MAHS sent both parties a Notice of Hearing rescheduling the in-person hearing for November 4, 2015.
19. On November 4, 2015, both parties attended the in-person hearing.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and 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 Department of Human Services) 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-.3131.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Health and Human Services (formerly known as

the Department of Human Services) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

Preliminary matters

First, Petitioner's hearing request also disputes her Cash Assistance. See Exhibit A, p. 3. However, during the hearing, Petitioner only disputed her SER and FAP benefits. As such, Petitioner's Cash Assistance hearing request is DISMISSED. See BAM 600 (April 2015 and October 2015), pp. 1-6.

Second, Petitioner also disputed her FAP benefits when it decreased effective [REDACTED] ongoing. The evidence presented that Petitioner's FAP benefits decreased significantly effective [REDACTED], ongoing. See Exhibit A, p. 11. Moreover, Petitioner's hearing request was submitted in June of 2015. Based on the above information, the undersigned will address Petitioner's FAP benefits effective [REDACTED], ongoing. See BAM 600, pp. 1-6.

SER group composition and application

The first issue presented in this case was to determine Petitioner's SER group composition as of the application date of [REDACTED].

Petitioner argued that the group composition was three, herself and Child A and B. The Department argued that Petitioner's group composition was just one.

As to Child A, the Department testified that Child A was removed from the home by Child Protective Services (CPS) as of [REDACTED], based on report from a CPS specialist. See Exhibit A, p. 1 (Hearing Summary). The Department provided an e-mail dated [REDACTED] which documented the conversation the caseworker had with the CPS specialist. See Exhibit A, p. 38. However, the e-mail fails to indicate the date Child A was removed from the home. The e-mail does state that Child A was placed with his father until the father's incarceration and then was transferred to another relative who obtained temporary custody. See Exhibit A, p. 38. Finally, the e-mail stated that Petitioner's parental rights have not been terminated. See Exhibit A, p. 38.

In response, Petitioner testified that Child A was illegally removed from her home by CPS from on or around [REDACTED] Effective [REDACTED] ongoing, Petitioner testified that Child A has been residing with her.

As to Child B, the Department testified that it conducted a collateral contact with Child B on [REDACTED], who informed the Department that he moved in with the Petitioner as of April 2015. See Case Comments Exhibit A, p. 7.

In response, Petitioner disputed the Department's testimony and stated that Child B resides at his sister's residence and her residence. However, Petitioner testified that Child B resides with Petitioner a majority of the time (more than half of the month).

The Department determines an SER eligibility for the group as a whole. ERM 201 (March 2013), p. 1. SER groups are the basic unit of SER eligibility. ERM 201, p. 1. The Department verifies income, assets and potential resources of all group members. ERM 201, p. 1.

A single SER group consists of persons who occupy the same home. ERM 201, p. 1. Home means the place where the members of the SER group keep their personal belongings and sleep. ERM 201, p. 1. A home may be an apartment, a house, a mobile home, or a rented room. ERM 201, p. 1. Consider a homeless family or group of individuals as a single SER group if they previously lived together in the same home and plan to do so again when they find permanent housing. ERM 201, p. 1.

Adults and dependent children who normally live together are in the same SER group. ERM 201, p. 1. The SER Glossary (ERG) defines a child that is dependent if they: are under the age of 21; and live with one of the following: a parent, an adult relative, or an unrelated adult acting as a parent. See ERG 2013-002 (March 2013), p. 4. Persons temporarily absent due to illness or employment are also in the same group. ERM 201, p. 1. Note, group members who are absent from the home for 90 consecutive days or more are not in the SER group. ERM 201, p. 1. The Department also has a list of outcomes in which the Department excludes group members. See ERM 201, pp. 1-2.

Based on the foregoing information and evidence, the undersigned finds Petitioner's SER group composition to be one as of the application date [REDACTED]. In the application, Petitioner listed herself and Child A as members who lived in the household. See Exhibit A, p. 9. However, Petitioner did not list Child B as a member of the household. See Exhibit A, p. 9. Thus, the undersigned finds it reasonable to conclude that the Department did not include Child B as a member of the household. As to Child A, Petitioner acknowledged that the Child A was not in the home at the time of application. Thus, the evidence indicated that the SER group composition was only the Petitioner at the time of application. See ERM 201, pp. 1-2.

Nevertheless, even if Child A was included in the SER group composition, this would have not effected the application denial.

State Emergency Relief (SER) assists individuals and families to resolve or prevent homelessness by providing money for rent, security deposits, and moving expenses. ERM 303 (October 2013), p. 1. The Department will determine whether the SER

group's rental housing is affordable. ERM 303, p. 4. The Department approves SER for relocation services only if the group's rental obligation meets the criteria for housing affordability. ERM 303, p. 4.

Housing affordability is a condition of eligibility for SER and applies only to Relocation Services (ERM 303) and Home Ownership Services and Home Repairs (ERM 304). ERM 207 (March 2013), p. 1. Total housing obligation means the total amount the SER group must pay for rent, house payment, mobile home lot rent, property taxes and required insurance premiums. ERM 207, p. 1. The Department will deny SER if the group does not have sufficient income to meet their total housing obligation. ERM 207, p. 1. The total housing obligation cannot exceed 75 percent of the group's total net countable income. ERM 207, p. 1.

The Department determines whether a SER group meets the Housing Affordability requirement by multiplying the group's total net countable income by 75 percent. ERM 207, p. 2. The result is the maximum total housing obligation the group can have based on their income, and be eligible for SER housing services, and the Department will refer to a table in ERM 207 for any increases in the basic 75 percent test if the group is renting and heat, electric or water/cooking gas is included in the rent. ERM 207, pp. 2-3.

Based on the above information, Petitioner and Child A does not have sufficient income to meet their total housing obligation because they have no form of income. Thus, the Department properly denied the SER application because the housing is unaffordable. See Exhibit C (SER - Affordability Test budget). If Child B was a member of the household, then the outcome might have been different because Child B has income. See Exhibit B, pp. 1-4. However, the undersigned concluded that Child B was not a member of the household at the time of the SER application. Therefore, the Department acted in accordance with Department policy when it denied Petitioner's SER application for security deposit as the SER group does not have sufficient income to meet their total housing obligation. ERM 207, pp. 1-3.

FAP group composition

First, the evidence established that Child B was a mandatory group member and the Department properly added Child B to the FAP group composition effective [REDACTED]. As stated previously, the Department testified that it conducted a collateral contact with Child B on [REDACTED], who informed the Department that he moved in with the Petitioner as of April of 2015. See Case Comments Exhibit A, p. 7. Petitioner argued that Child B resided with her the entire time; however, the evidence suggests otherwise. In fact, the evidence record supports the Department's assertion that Child B did not reside with the Petitioner until April 2015. For example, on [REDACTED], Child B applied for Medical Assistance (MA) and reported a different address. See Exhibit A, pp. 32-33. Moreover, on [REDACTED], Petitioner provided a Detroit Housing Commission document signed by Petitioner on [REDACTED], which reported Child B in

the household. See Exhibit A, p. 30. Finally, Petitioner did not report Child B in the household in the SER application dated [REDACTED]. See Exhibit A, p. 9.

Based on the above information, the evidence is persuasive to conclude that Child B did not reside with Petitioner until April of 2015. However, clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2015), p. 11. Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 11. These include, but are not limited to, changes in persons in the home. BAM 105, p. 11 and see also BEM 212 (July 2014), p. 9 (member add/deletes). The evidence established that the Department did not become aware that Child B was in the home until the collateral contact on June 4, 2015. See Exhibit A, p. 7. Thus, Child B is not part of the FAP group composition for the period of [REDACTED] because the member add did not occur until June of 2015. See Exhibit A, pp. 11-13 (Eligibility Summary indicates group size increased from one to two effective June 1, 2015). From [REDACTED] ongoing, Child B became a mandatory group member because parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212, p. 1.

Second, the Department argued that Petitioner's FAP group composition was one for the period of [REDACTED]. As stated previously, the Department argued that Child A was removed from the home by CPS effective [REDACTED], ongoing.

In response, Petitioner again argued that Child A was in the home the entire time after he was returned to her home on [REDACTED]. It should be noted that Petitioner also indicated that the father was also in the home; however, the Department provided the father's case profile, which reported a different residence. See Exhibit D, p. 3. Thus, the undersigned will not further address the father's determination of whether he was a member of the Petitioner's FAP group composition.

The Department will help determine who must be included in the Food Assistance Program (FAP) group prior to evaluating the non financial and financial eligibility of everyone in the group. BEM 212, p. 1.

"Living with" means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. BEM 212, p. 3.

When a child spends time with multiple caretakers who do not live together, such as joint physical custody, parent/grandparent, etc., determine 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. To determine the primary caretaker:

- Ask the client how many days the child sleeps at his/her home in a calendar month.
- Accept the client's statement unless questionable or disputed by another caretaker.
 - Note: When a caretaker works during a child's normal sleep hours, include the nights the child sleeps away from home when due solely to the caretaker's employment as nights slept in the home of the caretaker.
- If primary caretaker status is questionable or disputed, verification is needed.
- Allow both caretakers to provide evidence supporting his/her claim.
- Base your determination on the evidence provided by the caretakers.
- Document who the primary caretaker is in the case.

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 verifies group composition factors if the information given is questionable. BEM 212, p. 10. Such factors might include boarder status, age or senior members, and inability to purchase and prepare meals separately. BEM 212, p. 10.

When primary caretaker status is questionable or disputed, base the determination on the evidence provided by the caretakers. BEM 212, p. 12. Give 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.

Per the conversation with the CPS specialist on [REDACTED], the Department argued that Child A was no longer a member of Petitioner's group composition effective [REDACTED], ongoing. See Exhibit A, p. 1 and Exhibit A, p. 38 (e-mail documenting conversation with CPS specialist).

In response, Petitioner provided several documents that consisted mainly of Child A's school records. See Exhibit 1, pp. 1-22. In fact, the undersigned did not consider a majority of the documentation Petitioner presented because they were dated subsequent to the time period in review. See Exhibit 1, pp. 1-22. For example, the undersigned is attempting to determine the FAP group composition effective [REDACTED] ongoing; however Petitioner presented school records from October of 2015. This document would not assist the undersigned to determine Child A's living situation in March of 2015. See Exhibit 1, p. 8.

However, Petitioner did present one document of interest to the undersigned, referred to as a "Boutique Referral" from the [REDACTED]. See Exhibit 1, p. 7. This document was signed and dated [REDACTED], from the same CPS specialist the Department spoke to on [REDACTED], who informed them that Child A was no longer in the home. See Exhibit 1, p. 7. In the document, there is a question that asked the number of adults/children in the home and the form indicated a total of 2, Petitioner and Child A. See Exhibit 1, p. 7. Thus, this document contradicts the Department's assertion that Child A was no longer in the home effective [REDACTED], ongoing.

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. BAM 130 (October 2014), p. 1. The Department obtains verification when information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. BAM 130, p. 1. The questionable information might be from the client or a third party. BAM 130, p. 1. The Department uses documents, collateral contacts or home calls to verify information. BAM 130, p. 1.

The Department tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. The Department uses the DHS-3503, Verification Checklist (VCL), to request verification. BAM 130, p. 3. The Department allows the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. BAM 130, p. 6.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that Child A was not a member of Petitioner's FAP group composition. Policy states that the Department verifies group composition factors if the information given is questionable. BEM 212, p. 10. Furthermore, when primary caretaker status is questionable or disputed, base 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. A review of the evidence record finds that the Department did not provide Petitioner an opportunity to provide evidence supporting her claim that Child A is part of the household (i.e.,

sending Petitioner a verification checklist to determine FAP group composition). See BAM 130, pp. 3 and 6 and BEM 212, pp. 1-12. Petitioner presented evidence that contradicted the Department's assertion that Child A was no longer in the home. See Exhibit 1, p. 7. As such, the Department will redetermine Petitioner's FAP group composition effective [REDACTED], ongoing (excluding Child B from this determination).

FAP calculation

For the period of [REDACTED], the Department failed to present any FAP budgets in order for the undersigned to determine whether the Department properly calculated Petitioner's benefits. Moreover, for the period of [REDACTED], ongoing, the Department did present a FAP budget summary from the Notice of Case Action dated [REDACTED]. See Exhibit A, pp. 44-45. However, this budget is only a summary of its calculation and the Department failed to provide the actual budget from its system showing that it properly calculated Petitioner's allotment. In fact, Petitioner argued that the budget summary failed to take into account her housing costs in the amount of \$52. Because the Department failed to satisfy its burden of showing that it properly calculated Petitioner's FAP allotment, the Department is ordered to recalculate Petitioner's FAP benefits effective [REDACTED], ongoing. It should be noted that if in fact Child A is supposed to be a mandatory group member effective [REDACTED], ongoing, this would also result in the Department recalculating the FAP allotment.

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 (i) the Department acted in accordance with Department policy when it denied Petitioner's SER application dated [REDACTED] (SER Decision Notice dated [REDACTED]); (ii) the Department properly determined that Child B was not a member of the FAP group composition from [REDACTED]; (iii) the Department properly determined that Child B was a member of the FAP group composition from [REDACTED], ongoing; (iv) the Department failed to satisfy its burden of showing that Child A was not a member of Petitioner's FAP group composition effective [REDACTED], ongoing; and (v) the Department failed to satisfy its burden of showing that it properly calculated Petitioner's FAP allotment effective [REDACTED], ongoing.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to SER denial, Child B's FAP group composition and **REVERSED IN PART** with respect to Child A's group composition and FAP calculation.

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. Redetermine Petitioner's FAP group composition effective [REDACTED], ongoing, in accordance with Department policy and exclude Child B from this determination;
2. Begin recalculating the FAP budget for [REDACTED], ongoing, in accordance with Department policy;
3. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from [REDACTED], ongoing; and
4. Notify Petitioner of its decision.

IT IS ALSO ORDERED that Petitioner's **Cash Assistance** hearing request (dated [REDACTED] [REDACTED]) is **DISMISSED**.



Eric Feldman

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

Date Signed: **11/9/2015**

Date Mailed: **11/9/2015**

EF / hw

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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.

The party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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 48909-8139

cc:

