

**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.: 15-024403
Issue No.: 3003; 3004; 3008
Agency Case No.: [REDACTED]
Hearing Date: February 10, 2016
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 February 10, 2016, from Detroit, Michigan. The Petitioner was represented by [REDACTED] (Petitioner). The Department was represented by [REDACTED], Eligibility Specialist; and [REDACTED], Hearings Facilitator.

ISSUES

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

Did the Department properly calculate Petitioner's FAP allotment for October 2015?

Did the Department properly close Petitioner's FAP benefits from November 1, 2015 to November 16, 2015?

Did the Department properly deny Petitioner's FAP application dated November 17, 2015?

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 B, p. 10.
2. Even though Petitioner was an ongoing recipient of FAP benefits, he submitted an application on September 10, 2015 in which he reported his group size was two (Petitioner and daughter). See Exhibit B, p. 1.

3. On September 10, 2015, Petitioner submitted proof that he obtained temporary guardianship of his daughter. See Exhibit B, p. 1 and Exhibit 1, p. 1.
4. The daughter had been a member of her mother's FAP group for September 2015 and November 2015 to January 2016.
5. The daughter had been a member of the Petitioner's FAP group for only October 2015.
6. On September 15, 2015, the Department sent Petitioner a Redetermination Telephone Interview (DHS-574), which informed of an interview scheduled on October 1, 2015. See Exhibit B, p. 12.
7. For October 2015, Petitioner received a FAP allotment of [REDACTED] for a group size of two. See Exhibit B, p. 10.
8. On September 15, 2015, the Department sent Petitioner a Redetermination (review FAP eligibility), which was due back by October 1, 2015. See Exhibit B, pp. 13-20.
9. The Department indicated that it never received Petitioner's redetermination before the benefit period had ended (October 31, 2015).
10. Effective November 1, 2015, Petitioner's FAP benefit closed due to the failure to submit the redetermination. See Exhibit B, p.10.
11. On November 17, 2015, Petitioner reapplied for FAP benefits.
12. On November 24, 2015, the Department sent Petitioner a Notice of Case Action notifying him that his FAP application was denied effective November 17, 2015, ongoing, due to the net income exceeding the limits and the additional group is not eligible due to being on another case. See Exhibit A, pp. 8-10.
13. The Department acknowledged that the application was denied in error. See Exhibit A, p. 1 (Hearing Summary).
14. On December 1, 2015, Petitioner obtained full guardianship of daughter. See Exhibit 1, pp. 2-5.
15. On December 4, 2015, Petitioner filed a hearing request, protesting the Department's action. See Exhibit A, p. 2.

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 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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Preliminary matter

During the hearing, Petitioner indicated that he also disputed the Medical Assistance (MA) benefits. However, a review of Petitioner's hearing request finds that he only disputes the FAP benefits. See Exhibit A, p. 2. Therefore, the undersigned lacks the jurisdiction to address Petitioner's dispute with the MA benefits. See BAM 600 (October 2015), pp. 1-6. Petitioner can attempt to file another hearing request if he wishes to dispute the MA benefits.

Group composition

In the present case, both parties discussed on or around August 2015 that Petitioner's daughter had been residing with the Petitioner. Petitioner indicated that the daughter had been residing with him since on or around July 2015. In response, the Department indicated that it informed Petitioner that he must obtain verification showing that the daughter now resides with the Petitioner.

As such, on September 10, 2015, Petitioner applied for FAP benefits (even though he was an ongoing recipient at the time) in which he reported his group size was two (Petitioner and daughter). See Exhibit B, p. 1. In fact, on September 10, 2015, Petitioner submitted proof that he obtained temporary guardianship of his daughter. See Exhibit B, p. 1 and Exhibit 1, p. 1. During September 2015, the daughter had been on the mother's FAP case.

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 (July 2014 and October 2015), p. 2. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent care-taker(s). BEM 212, p. 3. The child is always in the FAP group of the primary care-taker. 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 re-evaluates primary caretaker status when, for example, a new or revised court order changing custody or visitation is provided. BEM 212, p. 5.

Based on the foregoing information, the evidence established that there had been a change in the daughter's primary caretaker status and that the Petitioner is now the primary caretaker of the daughter based on the court order. See Exhibit 1, pp. 1-5.

Next, it now must be determined when the daughter should have been added to the Petitioner's FAP group and removed from her mother's FAP group (commonly referred to as in policy as "member add/delete.") The evidence established that Petitioner obtained temporary guardianship of the daughter on September 10, 2015. On the same day, Petitioner applied for FAP benefits for himself and his daughter and provided verification as well that he had temporary guardianship. See Exhibit B, p. 1 and Exhibit 1, p. 1.

The Department processed the member add/delete and Petitioner's FAP group size increased to two for October 2015 (Petitioner and daughter) and the mother's FAP group size decreased to one for October 2015.

A member add that increases benefits is effective the month after it is reported **or**, if the new member left another group, the month after the member delete. BEM 212, p. 9. In determining the potential FAP benefit increase, the Department assumes the FIP/SDA supplement and new grant amount have been authorized. BEM 212, p. 9.

When a member leaves a group to apply on his own or to join another group, a member delete should be completed in the month the local office learns of the application/member add. BEM 212, p. 9. Initiate recoupment if necessary. BEM 212, p. 9. If the member delete decreases benefits, adequate notice is allowed. BEM 212, p. 9.

Based on the foregoing information and evidence, the Department acted in accordance with Department policy when it determined that Petitioner's FAP group composition was two (Petitioner and daughter) for October 2015. The Department properly added the daughter to Petitioner's case in October 2015, which was the month after the member delete (September 2015). BEM 212, p. 9. Moreover, the Department properly removed the daughter from the mother's case for October 2015.

Redetermination

A complete redetermination is required at least every 12 months. BAM 210 (October 2015), p. 1. Local offices must assist clients who need and request help to complete applications, forms and obtain verifications. BAM 210, p. 1.

For FAP cases, benefits stop at the end of the benefit period unless a redetermination is completed and a new benefit period is certified. BAM 210, p. 2. If the client does not

begin the redetermination process, the Department allows the benefit period to expire. BAM 210, p. 2.

Moreover, an interview is required before denying a redetermination even if it is clear from the DHS-1010/1171 or other sources that the group is ineligible. BAM 210, p. 3. For FAP telephone interviews, the individual interviewed may be the client, the client's spouse, any other responsible member of the group or the client's authorized representative. BAM 210, p. 4. If the client misses the interview, the Department sends a DHS-254, Notice of Missed Interview. BAM 210, p. 4. The Department conducts a telephone interview at redetermination before determining ongoing eligibility. BAM 210, p. 4, and also policy relating to in-person interviews. To conduct the interview, the Department obtains a complete redetermination/review packet from the client. BAM 210, p. 12 (see additional steps the Department completes when conducting the interview).

A redetermination/review packet is considered complete when all of the sections of the redetermination form including the signature section are completed. BAM 210, p. 10. Exception: For FIP, SDA and FAP only, if any section of the redetermination/review packet has not been completed but there is a signature, consider the redetermination/review complete. BAM 210, p. 10. Complete any missing sections during the interview. BAM 210, p. 10. When a complete packet is received, the Department records the receipt in its system as soon as administratively possible. BAM 210, p. 10. If the redetermination is submitted through MI Bridges, the receipt of the packet will be automatically recorded. BAM 210, p. 10.

For FAP cases, if the redetermination packet is not logged in by the last working day of the redetermination month, the Department automatically closes the Eligibility Determination Group (EDG). BAM 210, p. 11. A DHS-1605, Notice of Case Action, is not generated. BAM 210, p. 11.

In the present case, Petitioner indicated that he believed he submitted the redetermination to the Department, but provided no such evidence. Petitioner testified, though, that he did receive a call from the Department later in the afternoon on the date of his telephone interview. Based on this testimony, the undersigned would think that the Department did receive his redetermination because the Department will conduct an interview when it obtains a complete redetermination/review packet from the client. BAM 210, p. 12. However, the Department caseworker testified that she believed that she was returning Petitioner's phone call. The Department caseworker testified that she believed Petitioner had left a voicemail on the date of the interview inquiring on why the Department did not call for his telephone interview and therefore, the caseworker was just returning his phone call. Petitioner indicated that this might have been possible.

Nonetheless, the Department indicated that it never received Petitioner's redetermination before the benefit period had ended (October 31, 2015). As part of the evidence record, the Department presented Petitioner's Electronic Case File (ECF) that shows a history of the documents Petitioner submitted to the Department. See Exhibit

B, p. 1. A review of this document shows that the Department did not receive any redetermination for October 2015. See Exhibit B, p. 5.

Based on the foregoing information and evidence, the Department properly closed Petitioner's FAP benefits effective November 1, 2015, in accordance with Department policy. It is evident that Petitioner and the Department might have possibly spoken and/or conducted a telephone interview on the date it was scheduled. Nonetheless, policy states that the Petitioner must complete the necessary forms in order to determine his ongoing FAP eligibility. BAM 105 (July 2015) p. 8. The evidence established that Petitioner failed to submit the redetermination before the end of the benefit period (October 31, 2015). Because Petitioner failed to submit the redetermination before the end of the benefit period (October 31, 2015), the Department acted in accordance with Department policy when it closed Petitioner's FAP benefits effective November 1, 2015. See BAM 105, p. 8 and BAM 210, pp. 1-11.

FAP application

On November 17, 2015, Petitioner reapplied for FAP benefits. See Exhibit A, p. 1.

On November 24, 2015, the Department sent Petitioner a Notice of Case Action notifying him that his FAP application was denied effective November 17, 2015, ongoing, due to the net income exceeding the limits and the additional group is not eligible due to being on another case. See Exhibit A, pp. 8-10.

During the hearing, the Department acknowledged that the application was denied in error. See Exhibit A, p. 1 (Hearing Summary). The Department indicated in the hearing summary that the application is being re-registered. See Exhibit A, p. 1. Even though the Department indicated that it might have already re-registered the application during the hearing, the undersigned lacks the jurisdiction to address subsequent actions. See BAM 600, pp. 1-6. As stated in the previous analysis, the Department had obvious issues in attempting to add his daughter onto his case and therefore, it is unclear if the November 2015 application was processed properly. Nonetheless, the Department acknowledged that the application was denied in error and thus, the undersigned orders the Department to re-register and reprocess Petitioner's FAP application dated November 17, 2015. See BAM 110 (July 2015), pp. 1-23 (Application filing and registration) and BAM 115 October 2015, pp. 1-35 (Application processing).

Additionally, as stated in the group composition analysis, the evidence established that Petitioner's group size is two (Petitioner and daughter). Thus, when the Department is re-registering the application, the Department must ensure that the application reflects a group size of two when processing the eligibility. Now, the Department testified that the daughter was back on the mother's FAP group from November 2015 to January 2016 even though she resided with the father. Policy states when a member leaves a group to apply on his own or to join another group, a member delete should be completed in the month the local office learns of the application/member add. BEM 212, p. 9. Initiate recoupment if necessary. BEM 212, p. 9. Thus, the Department can attempt to initiate

recoupment, if necessary, of the mother's case as the daughter was a member of the Petitioner's household. BEM 212, p. 9.

October 2015 FAP benefits

Petitioner also disputed the calculation of his FAP allotment. See Exhibit A, p. 2. Because Petitioner's hearing request was submitted in December 2015, the undersigned will go back 90 days to determine if whether the Department properly calculated Petitioner's benefits. Therefore, the undersigned will review Petitioner's FAP allotment beginning October 2015 (90 days back includes October 2015, November 2015, and December 2015 (month in which hearing request was submitted)). See BAM 600, pp. 1-6. However, as stated in the previous analysis, the undersigned determined that the Department properly closed Petitioner's FAP benefits for the period of November 1, 2015 to November 16, 2015. Moreover, the undersigned has already determined that the Department will recalculate Petitioner's FAP allotment from November 17, 2015, ongoing. As such, the undersigned will only review in this section of the analysis if whether the Department properly calculated Petitioner's FAP allotment for October 2015.

For October 2015, Petitioner received a FAP allotment of [REDACTED] for a group size of two. See Exhibit B, p. 10. However, the Department failed to present any FAP budget for October 2015 showing how the Department calculated his allotment.

The local office and client or Authorized Hearing Representative (AHR) will each present their position to the Administrative Law Judge (ALJ), who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600, p. 35. The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHHS policy was appropriately applied. BAM 600, pp. 37-38.

Based on the foregoing information and evidence, the Department did not satisfy its burden of showing that it properly calculated Petitioner's FAP allotment for October 2015. See BAM 600, pp. 35-37. The Department needs to establish how it calculated the FAP allotment. However, the Department failed to present evidence of how it calculated his FAP allotment. Thus, the Department is ordered to recalculate Petitioner's FAP allotment for October 2015.

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 determined that Petitioner's FAP group composition was two (Petitioner and daughter) for October 2015; (ii) the Department acted in accordance with Department policy when it closed Petitioner's FAP benefits from November 1, 2015 to November 16, 2015; (iii) the Department did not act in accordance with Department policy when it improperly denied his FAP application effective November 17, 2015; and (iv) the Department failed to satisfy its burden of

showing that it properly calculated Petitioner's FAP allotment for October 2015, in accordance with Department policy.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to group composition for October 2015 and closure of FAP benefits from November 1, 2015 to November 16, 2015, and **REVERSED IN PART** with respect to the calculation of FAP benefits for October 2015 and denial of the FAP application dated November 17, 2015.

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. Recalculate Petitioner's FAP budget for October 1, 2015 to October 31, 2015, subject to the finding that Petitioner group size is two (Petitioner and his daughter);
2. Issue supplements to Petitioner for any FAP benefits he was eligible to receive, but did not from October 1, 2015 to October 31, 2015;
3. Initiate re-registration and reprocessing of Petitioner's application dated November 17, 2015, subject to the finding that Petitioner's FAP group size is two (Petitioner and daughter);
4. Issue supplements to Petitioner for any FAP benefits he was eligible to receive, but did not from November 17, 2015; and
5. Notify Petitioner of its decision.



Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **2/18/2016**

Date Mailed: **2/18/2016**

EF/tm

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:

