



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: March 18, 2016
MAHS Docket No.: 15-025144
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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, a telephone hearing was held on March 17, 2016, from Lansing, Michigan. The Petitioner represented herself. The Department of Health and Human Services (Department) was represented by Hearings Facilitator [REDACTED] and Assistance Payments Supervisor [REDACTED]

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefits?

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 was an on-going FAP recipient for herself and her two minor children.
2. On September 14, 2015, Petitioner reported a change in her job and on September 30, 2015, the Department updated her FAP budget, but used an incorrect amount of income, causing the FAP to be closed incorrectly. (Exhibit 1 Pages 14-16.)
3. While Petitioner's FAP was closed, her ex-husband applied for FAP and claimed that the children live with him.

4. Petitioner and her ex-husband share physical and legal custody of the children. In 2015 she had the children for 184 or 185 days, and the ex-husband had them for 180 or 181 days.
5. On October 27, 2015, Petitioner reapplied for FAP.
6. Because the children were included in the father's group, the Department concluded they could not be in Petitioner's group.
7. Because of the loss of the children from her group, Petitioner's FAP award was reduced from \$ [REDACTED] per month to \$ [REDACTED] per month.
8. The father is unwilling to agree to removal of the children from his group to Petitioner's group.
9. On December 15, 2015, Petitioner requested a 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 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.

In this case, the Department applied policy as found in BEM 212 (10/1/15) which explains the policy regarding FAP group composition. As explained at page 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. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent caretaker(s). The child is **always** in the FAP group of the primary caretaker. If the child's parent(s) is living in the home, he/she must be included in the FAP group.

The primary caretaker is determined using a 12-month period. "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.

The other caretaker(s) is considered the absent caretaker(s)." *Id* at 4. Primary caretaker status is to be re-evaluated if certain events occur. One of those events is if a second caretaker disputes the first caretaker's claim that the children sleep in their home more than half the nights in a month. Another event is when a second caretaker applies for assistance for the same child. *Id* at 5.

In this case, although the children were included in the father's group when he applied, the mother (Petitioner) has since applied for assistance for the same children. She is also disputing the father's claim that the children spend more than half of their nights with him. The Department should have re-evaluated the parents' respective group compositions.

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 did not re-evaluate Petitioner's group composition.

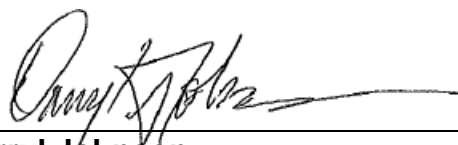
DECISION AND ORDER

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. The Department shall initiate a redetermination of Claimant's eligibility for FAP benefits beginning October 1, 2015, considering the evidence regarding group size.
2. Issue a supplement to Claimant for any benefits improperly not issued.

DJ/mc



Darryl Johnson
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

DHHS

[REDACTED]

Petitioner

[REDACTED]