



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: April 11, 2016
MAHS Docket No.: 16-002667
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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, a telephone hearing was held on April 6, 2016, from Detroit, Michigan. The Petitioner was represented by [REDACTED] (Petitioner). The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator.

ISSUE

Did the Department properly remove Petitioner's daughter from the Food Assistance Program (FAP) and Family Independence Program (FIP) group compositions, resulting in a decrease in 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 is an ongoing recipient of FAP and FIP benefits. See Exhibit A, pp. 9-12.
2. Effective [REDACTED], Petitioner's daughter was placed in a residential juvenile facility by the Wayne County Courts. See Exhibit A, p. 5.
3. As of today's hearing, Petitioner's daughter still resides in the residential juvenile facility.

4. On [REDACTED], the Department received a Verification of Student Information, which confirmed the daughter is attending school full time at the residential juvenile facility. See Exhibit A, pp. 3-4.
5. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying Petitioner that her FAP and FIP group compositions reduced from three to two effective [REDACTED] because her daughter was placed in a residential juvenile facility and no longer resided in the home, which resulted in a decrease in benefits. See Exhibit A, pp. 5-8.
6. On [REDACTED], 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 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.

In the present case, Petitioner does not dispute that her daughter resides in a residential juvenile facility from [REDACTED] to this hearing date. Moreover, Petitioner testified that her daughter does attend school at the facility (via the computer). Petitioner testified that she is still responsible for her daughter's needs and goes to her for visitation and family therapy. See Exhibit A, p. 2 (Hearing Request). Furthermore, Petitioner testified it is a two-hour drive to see her daughter, which results in a higher cost for gas and that she does not work and her husband does not support her. See Exhibit A, p. 2 (Hearing Request).

FAP benefits

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 (October 2015), p. 1. Food Assistance Program group composition is established by determining all of the following:

1. Who lives together.
2. The relationship(s) of the people who live together.
3. Whether the people living together purchase and prepare food together or separately.
4. Whether the person(s) resides in an eligible living situation

BEM 212, p. 1.

The relationship(s) of the people who live together affects whether they must be included or excluded from the group. BEM 212, p. 1. First, determine if they must be included in the group. BEM 212, p. 1. If they are not mandatory group members, then determine if they purchase and prepare food together or separately. BEM 212, p. 1.

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.

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, p. 2. The Department re-evaluates primary caretaker status when any of the following occur, which includes a new or revised court order changing custody or visitation is provided. BEM 212, p. 5.

A person who is temporarily absent from the group is considered living with the group. BEM 212, p. 3. A person's absence is temporary if all of the following are true:

- The person's location is known.
- The person lived with the group before an absence (newborns are considered to have lived with the group).
- There is a definite plan for return.
- The absence has lasted or is expected to last 30 days or less.
Exception: The absence may last longer than 30 days if the absent person is in a hospital and there is a plan for him to return to the home.

BEM 212, p. 3.

Based on the foregoing information and evidence, the Department properly removed Petitioner's daughter from the FAP group composition as she no longer resides with the household. As stated previously, a person who is temporarily absent from the group is considered living with the group. BEM 212, p. 3. However, Petitioner's daughter has not been temporarily absent because her absence has lasted more than 30 days and she does not meet any of the exceptions in which her absence may last longer than 30

days. See BEM 212, p. 3. Moreover, there has been an obvious change in the primary caretaker status as the Wayne County Courts placed the daughter in the residential juvenile facility. Petitioner does not dispute any of the facts that her daughter has been residing in the facility since [REDACTED]. Because the evidence established that the daughter is no longer residing in the home and the Petitioner is currently not the primary caretaker of the daughter, the Department acted in accordance with Department policy when it removed the daughter from the FAP group composition effective [REDACTED]. See BEM 212, pp. 1-8.

FIP benefits

Group composition is the determination of which individuals living together are included in the FIP eligibility determination group (EDG)/program group and the FIP certified group. BEM 210 (January 2016), p. 1. To be eligible for FIP both of the following must be true:

- The group must include a dependent child who lives with a legal parent, stepparent or other qualifying caretaker.
- The group cannot include an adult who has accumulated more than 60 TANF funded months, beginning October 1, 1996 or any other time limits in the Family Independence Program.

BEM 210, p. 1.

A dependent child is an unemancipated child who lives with a care-taker and is one of the following:

- Under age 18.
- Age 18 and a full-time high school student. See BEM 245, for definition of high school.

BEM 210, p. 2.

A child is emancipated if any of the following:

- Ever validly married.
- Emancipated by court order.
- On active duty with the armed forces of the United States.

BEM 210, p. 2.

The primary caretaker is the caretaker 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 month, when averaged over a twelve-month period. BEM 210, p. 3. The twelve-month period begins at the time the determination is being made. BEM 210, p.

3. The Department re-evaluates primary caretaker status when any of the following occur:

- There is a change in the number of days per month the child sleeps in a caretaker's home.
- A second caretaker disputes the first caretaker's claim of the number of days the child sleeps in his/her home.
- Second caretaker applies for assistance for the same child.

BEM 210, pp. 11-12.

A temporarily absent person is considered to be living in the home when **all** of the following are true:

- Individual's location is known.
- There is a definite plan to return.
- The individual lived with the FIP EDG before the absence (newborns are considered to have lived with the FIP EDG).
- The absence has lasted or is expected to last 30 days or less.
Exception: An individual is still considered to be living in the home, even after 30 days if the absence reason is any of the following:
 - In the hospital (including a psychiatric hospital).
 - In a residential substance abuse treatment center.
 - Absent for school or training.
 - Absent due solely to active duty in the uniformed services of the U.S.
 - A child who is living apart from a parent due solely to the parent residing in a domestic violence shelter.

Note: A dependent child who is temporarily absent, can be considered living with only one caretaker. When a child sleeps in the home of multiple caretakers who do not live together, Bridges makes a primary caretaker determination; see Determining Primary Caretaker in this item.

Exception: A court ward is under the care and supervision of the court. Even if they meet the temporary absence requirements above, the child is NOT considered to be living in the parent's home.

BEM 210, pp. 3-4.

Based on the foregoing information and evidence, the Department properly removed Petitioner's daughter from the FIP group composition as she no longer resides with the household. As stated previously, a person who is temporarily absent from the group is considered living in the home. BEM 210, p. 3. However, Petitioner's daughter has not been temporarily absent because her absence has lasted more than 30 days and she does not meet any of the exceptions in which her absence may last longer than 30 days. See BEM 210, pp. 3-4. It should be noted that one of the exceptions in which your absence can last longer than 30 days is attending school. See BEM 210, p. 3.

Petitioner's daughter does attend school full-time (Exhibit A, pp. 3-4); however, her absence is based on juvenile delinquency. It so happens that she also attends school at the facility. Therefore, Petitioner's daughter does not meet any of the temporary absence exceptions. Moreover, there has been an obvious change in the primary caretaker status as the [REDACTED]. Courts placed the daughter in the residential juvenile facility. Petitioner does not dispute any of the facts that her daughter has been residing in the facility since [REDACTED]. Because the evidence established that the daughter is no longer residing in the home and the Petitioner is currently not the primary caretaker of the daughter, the Department acted in accordance with Department policy when it removed the daughter from the FIP group composition effective [REDACTED]. See BEM 210, pp. 1-12.

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 removed Petitioner's daughter from FAP and FIP group compositions effective [REDACTED], which resulted in a decrease in benefits.

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

EF/hw



Eric Feldman

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]

[REDACTED]

Petitioner

[REDACTED]