



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: [REDACTED]
MAHS Docket No.: 16-006912
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 [REDACTED] [REDACTED] from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Gwen Steward, hearing facilitator.

ISSUE

The issue is whether MDHHS properly excluded Petitioner's children from the FAP benefit group in determining Petitioner's Food Assistance Program (FAP) eligibility.

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 ongoing FAP benefit recipient.
2. Petitioner shares 50% custody of his children with his children's mother.
3. On an unspecified date, MDHHS improperly terminated Petitioner's FAP eligibility, effective [REDACTED].
4. On an unspecified date, while Petitioner's FAP eligibility was closed, Petitioner's children's mother applied for FAP benefits.

5. On [REDACTED] MDHHS issued a Notice of Case Action (Exhibit 1, pp. 1-2) approving Petitioner for FAP benefits, effective [REDACTED], in part, based on a 1-person FAP benefit group.
6. On [REDACTED], Petitioner requested a hearing to dispute FAP group composition from [REDACTED] and an unspecified issue concerning State Emergency Relief (SER).
7. Petitioner withdrew his dispute concerning SER.

CONCLUSIONS OF LAW

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by MDHHS (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001 through R 400.7049. MDHHS policies are contained in the Services Emergency Relief Manual (ERM).

Petitioner requested a hearing, in part, to dispute an unspecified SER decision. Petitioner did not identify what SER determination was disputed, however, Petitioner testified the SER issue was resolved and no hearing was necessary concerning the dispute. Petitioner's hearing request will be dismissed concerning SER.

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. MDHHS (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner also requested a hearing concerning FAP eligibility from March 2016. Petitioner testimony indicated his dispute was limited to MDHHS excluding his children from the determination. Some procedural history is necessary to understanding Petitioner's specific dispute.

Petitioner was an ongoing FAP recipient. Through [REDACTED], Petitioner received FAP benefits as a member of a 3-person FAP group which also included his two children. During a transfer of Petitioner's case between MDHHS offices, Petitioner's case closed beginning [REDACTED]. MDHHS testimony conceded the closure was improper. It was not disputed that MDHHS reopened Petitioner's FAP eligibility, but Petitioner's FAP eligibility, beginning in [REDACTED], did not factor his two children. MDHHS explained why the children were excluded.

While Petitioner's case was temporarily closed, his children's mother happened to apply for FAP benefits. Petitioner's children's mother's application was approved and included Petitioner's two children as group members since [REDACTED]

A person must not participate as a member of more than one FAP group in any given month... BEM 212 ([REDACTED]), p. 10. Thus, it can safely found that Petitioner and his children's mother should not both receive FAP benefits for their children-in-common. Which caretaker should receive FAP benefits hinges on who is the primary caretaker.

When a child spends time with multiple caretakers who do not live together such as joint physical custody, parent/grandparent, etc., [MDHHS is to] determine a primary caretaker. BEM 212 ([REDACTED]), p. 3. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent caretaker(s). *Id.* The child is always in the FAP group of the primary caretaker. *Id.*

[MDHHS is to] determine primary caretaker by using a twelve-month period. *Id.*, p. 4. The twelve-month period begins when a primary caretaker determination is made. *Id.*

Petitioner testimony conceded he submitted a custody order to MDHHS which verified that he and his children's mother evenly split custody. Petitioner alleged he has more custody than indicated by the custody order, however, he never submitted proof of his allegation to MDHHS. Based on the evidence submitted by Petitioner to MDHHS, Petitioner only established having 50% custody of his two children.

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. *Id.* The other caretaker(s) is considered the absent caretaker(s). *Id.*

MDHHS testimony conceded Petitioner applied first and was found eligible for FAP benefits before his children's mother. MDHHS testimony conceded that only agency error prevented Petitioner from continuing to receive FAP benefits for his children. This consideration strongly supports a finding that improperly excluded Petitioner's children from FAP eligibility since [REDACTED].

Such a finding is that it would also impact his children's mother's eligibility. It is concerning that a client's case would be impacted by an administrative order from another case. It is concerning because Petitioner's children's mother was not a party in the present matter. Thus, Petitioner's children's mother had no opportunity to present evidence to support maintaining the status quo.

Though this procedural flaw is concerning, it is expected that MDHHS accurately presented facts thereby rendering other evidence to be unnecessary. Also, Petitioner's mother's children is not completely without recourse. Petitioner's children's mother maintains the right to request a hearing to dispute an ordered removal of her children

form her FAP eligibility. It is found Petitioner is entitled to a FAP eligibility group which includes his two children.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner withdrew his dispute concerning SER. Petitioner's hearing request is **PARTIALLY DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's FAP eligibility. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Redetermine Petitioner's FAP eligibility, effective [REDACTED], subject to the finding that Petitioner's two children were FAP group members; and
- (2) Initiate a supplement of any benefits improperly not issued.

The actions taken by MDHHS are **REVERSED**.

CG/hw



Christian Gardocki

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 [REDACTED]; 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]