



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: July 29, 2016
MAHS Docket No.: 16-008671
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 three-way telephone hearing was held on July 27, 2016, from Lansing, Michigan. The Petitioner appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Hearings Facilitator [REDACTED].

ISSUE

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

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 child.
2. On April 11, 2016, the Department mailed to Petitioner a Redetermination (Exhibit 1 Pages A-1 to A-6) which Petitioner completed and returned.
3. Petitioner reported that she lives with her son (age 11) and her mother (age 57). Petitioner is 34.

4. In response to the question whether she usually buys and fixes food with the other residents in her home, Petitioner said she buys and prepares food for herself and her son, and sometimes – “rare” – buys and prepares food with her mother.
5. A note appears on the last page of the Redetermination (Page A-6) stating, “When asked how often the client p&p [purchase and prepare food] with her mother, she said everyday.”
6. Petitioner denies making that statement to anyone with the Department. Instead, she said she and her mother will go to the grocery store together, but they each buy their own food, and they prepare their own food at home, with rare exceptions.
7. On June 17, 2016, the Department mailed a Notice of Case Action (Pages H1 – H2) in which the Department informed Petitioner that her FAP was being reduced effective July 1, 2016, because her mother was added to her group, as was her mother’s income.
8. Petitioner’s only income is child support of \$ [REDACTED] per month and her mother’s income is \$ [REDACTED] for Retirement, Survivors, and Disability Insurance.
9. On June 22, 2016, the Department received Petitioner’s hearing request, protesting the reduction in her FAP.

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, Petitioner testified that she and her mother, on rare occasions, purchase and prepare food together. FAP is based upon group size and income, among other factors. The applicable policy for determining the FAP group size is found in BEM 212 (10/1/15). At BEM 212 pp. 5-6, the policy says, “The phrase, purchase and prepare together, is meant to describe persons who usually share food in common.” The Department’s witness testified that there is no “gray area” when it comes to “purchase and prepare.” That assertion does not find support in the policy. The issue is whether they “usually” share food in common. That issue is explored further in BEM 212:

Persons usually share food in common if any of the following conditions exist:

- They each contribute to the purchase of food.
- They share the preparation of food, regardless of who paid for it.
- They eat from the same food supply, regardless of who paid for it.

In general, persons who live together and purchase and prepare food together are members of the FAP group.

As explained even further, “Persons who normally purchase and prepare separately maintain that distinction even when they are temporarily sharing food with others.” (Emphasis added.)

The Petitioner testified convincingly that she and her mother do not “usually share food in common.” She and her son should have remained in a separate FAP group from her mother, even if they live in the same home and go to the grocery store together, as long as they “usually” buy their own groceries and fix their own meals.

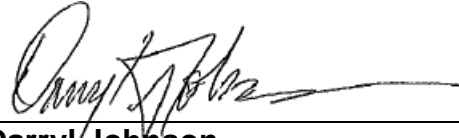
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it added her mother to her FAP group and reduced her FAP benefits.

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. Redetermine Petitioner's FAP eligibility based upon a group size of two (Petitioner and her son) beginning July 1, 2016.
2. Issue a supplement to Petitioner 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]