



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 22, 2016
MAHS Docket No.: 16-011432
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 September 12, 2016, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED] hearing Facilitator.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) case and reduce her 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 ongoing recipient of FAP benefits.
2. Effective July 1, 2016, there were two members of Petitioner's FAP group: Petitioner and her [REDACTED]-year-old son D.
3. On June 24, 2016 Petitioner applied for FIP benefits.
4. Petitioner was referred to the PATH program and began participation in her FIP application eligibility period.

5. On July 18, 2016, the Department received a complaint that Petitioner's three children did not reside in the home with her and had resided in [REDACTED] for the past couple of years.
6. On August 1, 2016, an investigator from the Department's Office of Inspector General (OIG) interviewed Petitioner. The report from the investigation indicated that Petitioner informed the agent that she had moved from [REDACTED] to [REDACTED] in January 2016, her two [REDACTED]-year-old sons had remained in [REDACTED] and her [REDACTED]-year-old son had been living in [REDACTED] since the end of June. (Exhibit A.)
7. On August 1, 2016, the Department sent Petitioner a Notice of Case Action notifying her that her FIP application was denied because she was not a dependent child, a caretaker/relative of a child, pregnant, aged or disabled, or a refugee and her FAP benefits were decreasing to [REDACTED] monthly for a household size of one because her son D was no longer living with her (Exhibit C).
8. On August 8, 2016, the Department received Petitioner's request for hearing disputing its actions concerning her cash assistance and FAP case.

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.

Petitioner requested a hearing to dispute the Department's denial of her FIP application and the reduction of her FAP benefits. At the hearing, the Department explained that, based on the OIG investigation, the Department concluded that Petitioner's minor child D was not living with Petitioner. As a result, Petitioner's FIP application was denied because she was found not to be the caretaker of a minor child living in the home with

her and her FAP benefits were reduced effective September 1, 2016 because she was the only member of her FAP group. (Exhibit C).

As a condition of FIP eligibility, a client must establish that a dependent child is living with her. BEM 210 (January 2016), pp. 1, 5. A child under age 22 is in the same FAP group as the parent with whom he lives. BEM 212 (October 2015), p. 1. When a child spends time with multiple caretakers who do not live together (such as a joint physical custody arrangement), only the primary caretaker can include the child in his or her FAP and FIP groups. BEM 212, p 3; BEM 210, p. 10. 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; BEM 210, p. 9. The primary caretaker continues to be eligible for benefits for the child during periods the child is temporarily absent from the primary caretaker's home; a temporary absence is one that has lasted or is expected to last 30 days or less. BEM 212, pp. 3-4; BEM 210, pp. 4, 10.

In this case, the OIG's investigation concluded that, based on Petitioner's statements, her minor child D had been in [REDACTED] since late June 2016 and was not expected to return to Petitioner until school started in September 2016. Petitioner argues that, contrary to the OIG's report, her [REDACTED]-year-old son D continued to with her. She contends that she reported to the OIG that D was visiting his father in [REDACTED] on the weekends during the summer, but she was his primary caretaker and he continued to live with her during the week. At the hearing, Petitioner pointed out that D's father had never sought State assistance for D, which the Department confirmed. She also contended that she had a bedroom for D in her home. The OIG agent was not present at the hearing to dispute Petitioner's testimony.

Based on the evidence presented, the Department failed to establish that Petitioner's son D's absence from Petitioner's home was other than temporary. As such, Petitioner continued to be the primary caretaker for the child. Therefore, the Department did not act in accordance with Department policy when it denied Petitioner's FIP application and removed D from Petitioner's FAP group.

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 did not act in accordance with Department policy when it denied Petitioner's FIP application and reduced her FAP benefits.

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. Recalculate Petitioner's FAP benefits from September 1, 2016 ongoing to include Petitioner's son D as an eligible FAP group member;
2. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from September 1, 2016 ongoing;
3. Reregister and reprocess Petitioner's June 24, 2016 FIP application;
4. Issue supplements to Petitioner for any FIP benefits she was eligible to receive but did not from the date of application ongoing; and
5. Notify Petitioner in writing of its FIP decision.

ACE/tlf



Alice C. Elkin
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]
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Petitioner

[REDACTED]
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Via Email:

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