



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: October 3, 2016
MAHS Docket No.: 16-012427
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 28, 2016, from Lansing, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by [REDACTED] Eligibility Specialist.

ISSUE

Did the Department properly reduce Petitioner's FAP benefits and close MA benefits for her daughter [REDACTED]?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On June 29, 2016, Petitioner submitted redetermination forms and stated that her daughter resided with her 14 days per month.
2. A Health Care Coverage Determination Notice was sent to Petitioner on July 29, 2016, informing her that her daughter [REDACTED] was not eligible for MA effective September 1, 2016.
3. Notice of Case Action was sent to Petitioner on July 29, 2016, informing her that her FAP benefits would be reduced to \$ [REDACTED] per month after her daughter [REDACTED] was removed from the FAP group because "applicant is not the primary caretaker of the child."

4. On August 30, 2016, Petitioner requested hearing contesting the reduction of FAP benefits and closure of MA benefits for her daughter.
5. Petitioner credibly testified that she claims her daughter [REDACTED] as a tax dependent consistent with her divorce judgment.

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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Primary Caretaker

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

The household for an individual who is a tax dependent of someone else, consists of:

- The household of the tax filer claiming the individual as a tax dependent, except that the individual's group must be considered as non-filer/non-dependent if:
- The individual is not the spouse or a biological, adopted, or step child of the taxpayer claiming them; or
- The individual is under the age of 19 (or under 21 if a full time student) and expects to be claimed by one parent as a tax dependent and are living with both parents but the parents do not expect to file a joint tax return; or
- The individual is under the age of 19 (or under 21 if a full time student) and expects to be claimed as a tax dependent by a non-custodial parent,
- The individual's group consists of the parent who has a court order or binding separation, divorce, or custody agreement establishing physical custody controls, or

□ If there is no such order or agreement or in the event of a shared custody agreement, the custodial parent is the parent with whom the child spends most nights. BEM 211

In this case, Petitioner explained at hearing that she has shared physical custody with her ex-husband of her 2 children on an alternating week basis. Since Petitioner has her children every other week she extrapolated that to 14 days per month. The Department relied on Petitioner's statement that her daughter was in her care 14 out of 30 days which is less than half of the days in a calendar month. Pursuant to the rules for FAP Household Composition in BEM 212 the Department was correct to exclude Kelsea Gear from the FAP group.

With regard to Medicaid, Petitioner credibly testified that she claims her daughter [REDACTED] for tax purposes pursuant to her divorce judgment. BEM 211 explains that a child is included in the parent's household for MA purposes when they are claimed by the parent for tax purposes and/or there is a divorce judgment that establishes physical custody. [REDACTED] satisfies both those requirements therefore the Department's determination to remove her from the MA group was improper and incorrect. BEM 211

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 removed [REDACTED] from the MA group and that it acted in accordance with Department policy when it removed [REDACTED] from the FAP group.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to FAP reduction and **REVERSED IN PART** with respect to removal of [REDACTED] from the MA group.

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. Reinstatement [REDACTED] to the MA group going back to the date she was removed.
2. Reinstatement MA coverage for [REDACTED] going back to the date she no longer had coverage.

AM/las



Aaron McClintic
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]