



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: December 27, 2016
MAHS Docket No.: [REDACTED]
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 December 22, 2016, from Lansing, Michigan. Petitioner was represented by herself. The Department was represented by Eligibility Specialist [REDACTED], Family Independence Manager [REDACTED] and Hearing Facilitator [REDACTED]. Department's Exhibit A, pages 1-17 was admitted into evidence.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) eligibility on October 28, 2016?

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 September 3, 2014, [REDACTED] was removed from Petitioner's Food Assistance Program (FAP).
2. On October 18, 2016, Petitioner requested that [REDACTED] be moved back to her Food Assistance Program (FAP). Petitioner submitted a temporary order regarding parenting time after a hearing on August 29, 2016. The order stated that Petitioner would continue to have sole legal and physical custody of [REDACTED] and that the parents were awarded parenting time on alternating weeks. Department's Exhibit A pages 13 & 14.

3. On October 28, 2016, Petitioner was sent a Notice of Case Action (DHHS-1605) which stated that [REDACTED] was not being added back on Petitioner's Food Assistance Program (FAP). Petitioner's Food Assistance Program (FAP) eligibility continued at the previous amount for a group of two, Petitioner and her daughter [REDACTED].
4. On November 4, 2016, Petitioner submitted a hearing request.

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.

Petitioner does not dispute that [REDACTED] was in another Food Assistance Program (FAP) group between September 3, 2014 and October 18, 2016. The only issue Petitioner raised in this case, was that the Department did not move [REDACTED] back into her Food Assistance Program (FAP) benefit group.

Bridges Eligibility Manual 212 Food Assistance Program Group Composition 10-1-2015 provides:

DETERMINING PRIMARY CARETAKER

When a child spends time with multiple caretakers who do not live together such as joint physical custody, parent/grandparent, etc., determine a primary caretaker. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent care-taker(s). The child is **always** in the FAP group of the primary care-taker. If the child's parent(s) is living in the home, he/she must be included in the FAP group.

Determine primary caretaker by using a twelve-month period. The twelve-month period begins when a primary caretaker determination is made. To determine the primary caretaker:

Ask the client how many days the child sleeps at his/her home in a calendar month.

Accept the client's statement unless questionable or disputed by another caretaker.

If primary caretaker status is questionable or disputed, verification is needed.

Allow both caretakers to provide evidence supporting his/her claim.

Base your determination on the evidence provided by the caretakers.

Document who the primary caretaker is in the case.

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

Changes in Primary Caretaker

Re-evaluate primary caretaker status when any of the following occur:

A new or revised court order changing custody or visitation is provided.

There is a change in the number of days the child sleeps in another caretaker's home and the change is expected to continue, on average, for the next twelve months.

A second caretaker disputes the first caretaker's claim that the child(ren) sleeps in their home more than half the nights in a month, when averaged over the next 12 months.

A second caretaker applies for assistance for the same child.

██████████ has been in his father's, ██████████, Food Assistance Program (FAP) benefit group since September 3, 2014. ██████████ was determined to be ██████████'s primary caretaker at that time. Submission of the recent parenting time order and Petitioner's request that ██████████ be moved back to her Food Assistance Program (FAP) benefit group required a re-evaluation of ██████████'s primary caretaker. Petitioner asserts that her designation as having primary legal and physical custody mean that she should be the primary caretaker.

The recent parenting time order does not identify a specific number of days per month that ██████████ will be in either of his parent's homes. It does divide parenting time by alternate weeks. That designation equates to equal time with each parent. Department policy cited above uses the phrase "virtually half of the days in each month". That designation equates to equal time with each parent. The policy says that in those circumstances, the caretaker who applies and is found eligible first, is the primary caretaker. ██████████ has been in ██████████'s Food Assistance Program (FAP) benefit

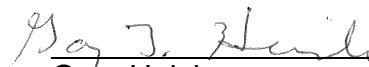
group since September 3, 2014. [REDACTED] was and should continue to be [REDACTED]'s primary caretaker.

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 determined Petitioner's Food Assistance Program (FAP) eligibility on October 28, 2016.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

GH/nr



Gary Heisler
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]