



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: March 6, 2017
MAHS Docket No.: 17-000072
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 March 1, 2017, from Detroit, Michigan. The Petitioner was present for the hearing and was represented by her Counsel/Authorized Hearing Representative (AHR), ██████████. The Department of Health and Human Services (Department) was represented by ██████████ Hearings Facilitator.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) group composition for the period of September 1, 2016 to December 31, 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. Petitioner is an ongoing recipient of FAP benefits. Exhibit B, p. 8.
2. On July 26, 2016, Petitioner submitted her online redetermination in which she reported that Child A (date of birth (DOB) of ██████████), Child B (DOB of ██████████), and Child C (██████████) left her home on June 25, 2016 and were temporarily living at their father's home, but were estimated to return to her home on August 10, 2016. Exhibit B, pp. 1-4.
3. In mid-August of 2016, Petitioner attempted to contact her caseworker and supervisor to inform the Department that Child A, Child B, and Child C were residing with her again, but received no response.

4. On September 13, 2016, Petitioner submitted an online change report reporting that Child A, Child B, and Child C were residing with Petitioner as of August 23, 2016. Exhibit A, pp. 4-6.
5. For September 2016, Petitioner's FAP group composition was two (Child D and Child E), but Petitioner was disqualified from the group due to a non-cooperation with the Office of Child Support (OCS). Exhibit B, p. 8.
6. For October 2016, Petitioner's FAP group composition was three (Petitioner, Child D, and Child E). Exhibit A, p. 7 and Exhibit B, p. 8.
7. On October 14, 2016, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits would continue for a group size of three. Exhibit A, pp. 11-12.
8. For November 2016 to December 2016, Petitioner's FAP group composition was four (Petitioner, Child D, Child E, and Petitioner's boyfriend). Exhibit B, p. 8.
9. On December 3, 2016, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits decreased effective January 1, 2017 for a group size of seven. Exhibit A, pp. 13-15.
10. Child A, Child B, and Child C were on a separate FAP case with their father from on or about September 2016 to December 2016.
11. The Department failed to act on the reported change that Child A, Child B, and Child C were once again residing with Petitioner in mid-August of 2016.
12. On January 4, 2017, Petitioner filed a hearing request, protesting the Department's action. Exhibit A, pp. 2-3.

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.

Preliminary matter

At the commencement of the hearing, the undersigned Administrative Law Judge (ALJ) addressed the AHR's Request for Subpoena dated February 23, 2017, in which he requested any and all communication between Petitioner's caseworker and the father's caseworker from September 2016 to January 2017. However, the undersigned ALJ denied the AHR's subpoena request. Policy states that request a subpoena if the specialist, the client or AHR requires either of the following: a person outside MDHHS to come to a hearing to testify or a document from outside MDHHS to be offered as evidence at a hearing. BAM 600 (October 2016), p. 31. The AHR's request did not fall within any of the above criteria; therefore, the undersigned ALJ lacks the authority to issue a subpoena request. See BAM 600, p. 31. Accordingly, the AHR's subpoena request is DENIED.

FAP group composition

In the present case, the AHR argued that the Department failed to act on the reported change that Child A, Child B, and Child C were residing with Petitioner as of mid-August 2016. The Department did not dispute the AHR's argument. The undersigned ALJ has the jurisdiction to address Petitioner's FAP benefits dating back to September 2016 because the AHR is arguing a failure to process argument. See BAM 600, p. 4 (the Michigan Administrative Hearing System may grant a hearing about a delay of any action beyond standards of promptness).

Policy states that a member add that increases benefits is effective the month after it is reported or, if the new member left another group, the month after the member delete. BEM 212 (October 2015), p. 9. In determining the potential FAP benefit increase, the Department assumes the Family Independence Program (FIP)/Stated Disability Assistance (SDA) supplement and new grant amount have been authorized. BEM 212, p. 9. When a member leaves a group to apply on his own or to join another group, a member delete should be completed in the month the local office learns of the application/member add. BEM 212, p. 9. Initiate recoupment if necessary. BEM 212, p. 9. If the member delete decreases benefits, adequate notice is allowed. BEM 212, p. 9.

In this case, the evidence established that Petitioner reported in an online redetermination on July 26, 2016 that Child A, Child B, and Child C would return to her home in mid-August of 2016. Exhibit B, pp. 1-4. However, the Department failed to act on this reported change and the children remained on their father's FAP case until December 2016. It wasn't until January 2017 that Child A, Child B, and Child C were added back to Petitioner's FAP group. Exhibit A, pp. 13-15. There was no dispute with the Department that the member add of Child A, Child B, and Child C should have been effective September 2016 and the children should have been removed from the father's FAP group effective September 2016. See BEM 212, p. 9. But, the Department failed to abide by policy.

Accordingly, the undersigned ALJ finds that Department failed to act on Petitioner's reported change in group composition and therefore, the Department is ordered to add Child A, Child B, and Child C to Petitioner's FAP group composition for the time period of September 1, 2016 to December 31, 2016. BEM 212, pp. 1 and 9.

It should be noted that Petitioner was not a member of her FAP group for September 2016 due to a non-compliance with OCS. However, the undersigned ALJ lacks the jurisdiction to address the non-compliance as Petitioner's hearing request is solely based on the Department's failure to add the three children to her group composition. Exhibit A, p. 3.

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 improperly determined Petitioner's FAP group composition for the period of September 1, 2016 to December 31, 2016.


Accordingly, the Department's FAP 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. Process Petitioner's reported change in group composition and add Child A, Child B, and Child C to Petitioner's FAP group for the period of September 1, 2016 to December 31, 2016;
2. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from September 1, 2016 to December 31, 2016; and
3. Notify Petitioner of its decision.

IT IS ALSO ORDERED that Petitioner's Request for Subpoena is **DENIED**.

EF/tm



Eric J. Feldman
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

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CC: [REDACTED]
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