



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 21, 2017
MAHS Docket No.: 17-007611
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 July 12, 2017, from Lansing, Michigan. Petitioner appeared and represented himself. [REDACTED] Hearing Facilitator (HF) appeared on behalf of the Department of Health and Human Services (Department). [REDACTED] Eligibility Specialist (ES), testified as a witness for the Department.

ISSUE

Did the Department properly determine Petitioner's eligibility for 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 is a veteran who was actively receiving FAP benefits in the amount of \$ [REDACTED] per month for the benefit period of January 1, 2017, through May 31, 2017. [Department's Exhibit 1, p. 16].
2. During the benefit period of January 1, 2017, through May 31, 2017, Petitioner had received a total monthly income in the amount of \$ [REDACTED] and had a FAP group size of 4 which included: Petitioner and his three children [Child A (14 years-old, DOB: [REDACTED], Child B (7 years-old, DOB: 1 [REDACTED] 9) and Child C (12 years-old, DOB: 0 [REDACTED])]. [Dept. Exh. 1, p. 5, 12 & Dept. Exh. 2, p. 31].

3. Petitioner and his former spouse ("██████████.") are Child A's, Child B's, and Child C's biological parents. Petitioner and ██████████ have joint legal and physical custody of Child A, Child B, and Child C. [Dept. Exh. 2].
4. Child A, Child B, and Child C live with Petitioner 15 days per month and live with their mother (Q.M.W.) 16 days per month. [Petitioner's Hearing Testimony].
5. Child A, Child B, and Child C, are active group members on ██████████'s Medical Assistance (MA) or "Medicaid" case. [Dept. Hrg. Test.].
6. The Department discovered that on June 1, 2017, Child A would begin receiving Supplemental Security Income (SSI) benefits in the amount of \$██████████ and then \$██████████ beginning on July 1, 2017. [Dept. Exh. 1, pp. 8-10 & Dept. Exh. 4].
7. Petitioner does not receive Child A's monthly SSI payments as the disbursements are sent to ██████████. (Child A's mother). [Pet. Hrg. Test.].
8. The Department included Child A's SSI payment of \$██████████ to Petitioner's unearned income FAP budget which resulted in a total monthly income of \$██████████ [Dept. Exh. 1, p. 13].
9. On May 20, 2017, the Department mailed Petitioner a Notice of Case Action (DHS-1605), which closed Petitioner's FAP case effective June 1, 2017, due to excess income. [Dept. Exh. 1, pp. 4-7].
10. On May 31, 2017, Petitioner requested a hearing to dispute the Department's action. [Dept. Exh. 1, 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.

In the instant matter, Petitioner requested a hearing because the Department closed his FAP case. The Department contends that Petitioner's FAP case was properly closed because he was no longer eligible because he exceeded the income limit. According to the Department, Petitioner's son (Child A) began receiving SSI payments, which

brought Petitioner's group over the income limit. Petitioner, on the other hand, did not challenge the calculations except for the unearned income calculation. Specifically, Petitioner disputes the inclusion of Child A's SSI payments, which go to Child A's mother (Q.M.W.). Petitioner believes that it is unfair that Child A's SSI payments are counted as his income because he does not physically receive the payments. The Department's FAP policy unit indicates that the SSI payments must be budgeted on Petitioner's FAP case.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

The Department's computer system known as "Bridges" will help determine who must be included in the FAP group prior to evaluating the non-financial and financial eligibility of everyone in the group. FAP group composition is established by determining all of the following: (1) who lives together; (2) the relationship(s) of the people who live together; (3) whether the people living together purchase and prepare food together or separately; and (4) whether the person(s) resides in an eligible living situation. BEM 212, p. 1 (1-1-2017).

The relationship(s) of the people who live together affects whether they must be included or excluded from the group. First, the Department must determine if they must be included in the group. If they are not mandatory group members, then the Department must determine if they purchase and prepare food together or separately. Spouses who are legally married and live together must be in the same group. Children include natural, step and adopted children. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. But for ongoing and intake applications where the child is not yet 22, they are potentially eligible for their own case, the month after turning 22. BEM 212, p. 1.

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. A caretaker is a related or unrelated person who provides care or supervision to a child(ren) **under** 18 who lives with the caretaker but who is **not** a natural, step or adopted child. This policy does **not** apply to foster children (see below). A person acting as a parent and the child(ren) for whom he acts as a parent who live with him **must** be in the same group. BEM 212, p. 2.

“Living with” means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. BEM 212. Persons who share only an access area such as an entrance or hallway or non-living area such as a laundry room are not considered living together. BEM 212, p. 3.

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 caretaker. If the child’s parent(s) is living in the home, he/she must be included in the FAP group.

Exception: If otherwise eligible, the absent caretaker may receive FAP benefits for the child when the child is visiting the absent caretaker for more than 30 days (not temporarily absent from the primary caretaker’s home.) BEM 212, pp. 3-4.

The Department determines the primary caretaker by using a twelve-month period. The twelve-month period begins when a primary caretaker determination is made. This can be done by simply asking the client how many days the child sleeps at his/her home in a calendar month. Policy provides that the Department should accept the client’s statement unless questionable or disputed by another caretaker. BEM 212, p. 4.

The Department uses countable income to determine eligibility and benefit levels. BEM 500, (1-1-2016), p. 3. Income remaining after applying the policy in the income related items is called **countable**. BEM 500, p. 3. [Emphasis in original]. For FAP purposes, all earned and unearned income available¹ to an applicant or recipient is countable. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. Unearned income means all income that is not earned. BEM 500, p. 4.

Supplemental Security Income (SSI) is a cash benefit to the needy aged, blind and disabled persons. In Michigan, SSI benefits include a basic federal benefit and an additional amount paid with state funds. The Social Security Administration (SSA) issues the basic federal benefit to all SSI recipients. The Department issues the state-funded benefit (state SSI payment) to SSI recipients in independent living and household of another. Bridges Program Glossary (BPG) (10-1-2015), pp. 63-64.

Retirement, Survivors, and Disability Insurance (RSDI) is a federal benefit administered by the Social Security Administration that is available to retired and disabled individuals, their dependents, and survivors of deceased workers. Bridges counts the gross benefit amount of RSDI as unearned income. BEM 503 (1-1-2017), p. 28. [Emphasis added].

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Based on the above policy, Petitioner listed Child A as a FAP group member although he testified that Child A stays with him 15 days a month and stays with his mother 16 days a month. As a result, it is questionable whether

¹ Available income is income that is actually received or that can be reasonable anticipated. BPG, p. 7.

Petitioner is the primary caretaker and whether Child A may properly be listed as a member of Petitioner's FAP group. However, there is no evidence in this case that Child A's mother wishes to add Child A to a FAP group or has even applied for FAP benefits. The Department has allowed Child A to be a member of Petitioner's FAP group and Petitioner did not argue that Child A should not be added.

The most salient issue in this matter concerns whether the Department should count Child A's monthly SSI or RSDI benefits as Petitioner's unearned income when Child A's mother (██████████) applied for SSI on Child A's behalf and the SSA distributes the funds to her, not Petitioner. This income is available income because it is income that Child A actually receives from the SSA. See BPG, p. 7. Here, because Petitioner listed Child A as a FAP group member, the Department must consider Child A's SSI income toward his case based on the above policy. BEM 503, p. 28. Child A is a member of Petitioner's FAP group and Child A is the beneficiary of SSI payments. The undersigned ALJ is unaware of any policy that would exclude Child A's SSI payments from Petitioner's FAP case as unearned income. However, the current policy considers Child A's benefits towards Petitioner's unearned income because he is Child A's caretaker. The alternative is that ██████████, may, if possible, arrange with the SSA to have Child A's SSI checks forwarded to Petitioner, or Petitioner may consider removing Child A from his FAP group to allow ██████████ to apply for FAP and then add Child A to her FAP case.

"In the absence of an express legislative conferral of authority, an administrative agency generally lacks the powers of a court of equity. *Delke v Scheuren*, 185 Mich App 326, 332; 460 NW2d 324 (1990). Because the Legislature has not conferred equitable authority to MAHS with respect to hearings relating to Department actions, the undersigned is precluded from addressing Petitioner's equitable arguments of lack of notice. Furthermore, Administrative law judges presiding over Department hearings "have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or overrule or make exceptions to Department policy." See Delegation of Hearing Authority executed by ██████████ ██████████ former Department Director, July 13, 2011, and adopted by present Department Director ██████████. Accordingly, this Administrative Law Judge is without any authority to change the policy in this matter.

Based upon the above Findings of Fact, Petitioner's group received a total monthly income of \$██████████ (which includes Petitioner's earned income from employment (\$██████████ veteran's benefits, child support and Child A's monthly SSI benefits), which is reduced by a 20% earned income deduction of \$██████████ leaves a post earned income deduction income of \$██████████. This amount less a standard deduction of \$██████████ and a child support deduction of \$██████████ leaves adjusted gross income of \$██████████. See BEM 550. [Dept. Exh. 1, p. 13].

All FAP groups (which includes S/D/V members) with a group size of 4 has a maximum monthly gross income limit of \$██████████ RFT 250 (10-1-2016). Because Petitioner's monthly net income of \$██████████ exceeded the allowable 130% monthly net income

limit of \$ [REDACTED] Petitioner is not entitled to FAP benefits during the time period in question.

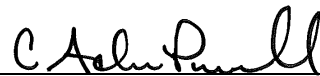
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it determined Petitioner's FAP benefits.

DECISION AND ORDER

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

IT IS SO ORDERED.

CAP/md



C. Adam Purnell

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]

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner

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