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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED] MI [REDACTED]

Date Mailed: March 30, 2017
MAHS Docket No.: 17-002718
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 27, 2017, from Detroit, Michigan. The Petitioner was present for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Adam Slate, Hearings Facilitator; and Leah Bourdo, Eligibility Specialist.

ISSUES

Did the Department properly determine Petitioner's Food Assistance Program (FAP) group composition effective December 1, 2016?

Did the Department properly calculate Petitioner's FAP allotment effective December 1, 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.
2. Petitioner's FAP group composition is five and consists of the following household members:
 - a. Petitioner;

- b. Child A, date of birth [REDACTED] 2003;
 - c. Child B, date of birth [REDACTED] 2005;
 - d. Child C, date of birth [REDACTED] 2006; and
 - e. Child D, date of birth [REDACTED] 2008.
3. For November 2016, Petitioner's FAP group composition was five and she received \$717 in benefits.
 4. On November 29, 2016, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits would decrease to \$457 effective December 1, 2016, for a group size of three. Exhibit B, pp. 6-10.
 5. For December 2016, Petitioner's FAP group composition consisted of herself, Child B, and Child C. Exhibit B, pp. 6-7.
 6. On December 15, 2016, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits would decrease to \$303 effective January 1, 2017, for a group size of two. Exhibit B, pp. 1-5.
 7. On [REDACTED] 2016, Petitioner applied for benefits and reported her group composition was five, which included herself and all her children. Exhibit A, p. 2.
 8. For January 2017, Petitioner's FAP group composition consisted of herself and Child B. Exhibit B, pp. 6-7.
 9. For February 2017, Petitioner received \$475 in FAP benefits for a group composition of four, which consisted of herself, Child A, Child B, and Child D.
 10. On February 15, 2017, Petitioner filed a hearing request, protesting her FAP benefits. Exhibit A, pp. 11-12.
 11. For March 2017, Petitioner received \$606 in FAP benefits for a group composition of five, which consisted of herself and all her children. See Exhibit A, pp. 5-6.

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 matters

Based on Petitioner's hearing request and testimony, she disputed the following: (i) Petitioner's FAP group composition effective December 1, 2016; and (ii) the amount of her FAP allotment effective December 1, 2016. The undersigned Administrative Law Judge (ALJ) will address each of these issues below:

Group composition

The Department will help determine who must be included in the Food Assistance Program (FAP) group prior to evaluating the non financial and financial eligibility of everyone in the group. BEM 212 (October 2015 and January 2017), p. 1.

Food Assistance Program 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.
4. Whether the person(s) resides in an eligible living situation

BEM 212, p. 1.

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. BEM 212, p. 1. It should be noted that all of Petitioner's children are under 22 years of age.

Additionally, 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, p. 9. In determining the potential FAP benefit increase, the Department assumes the Family Independence Program (FIP)/State 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 the present case, Petitioner's FAP group composition fluctuated from December 2016 to February 2017. Petitioner argued that her group composition should have been five during the entire period. The undersigned Administrative Law Judge (ALJ) will first address the month of December 2016 below:

For December 2016, Petitioner's FAP group size decreased from five to three. Petitioner's FAP group composition consisted of herself, Child B, and Child C. Exhibit B, pp. 6-7. As for Child A and Child D, the Department testified that it received communication from the Children's Protective Services (CPS) to remove the children from the group. For Child A, the Department presented a Power of Attorney (POA) form signed by Petitioner on November 7, 2016, in which she gave POA of Child A to [REDACTED] Exhibit B, p. 11. For Child D, the Department presented an e-mail from a CPS caseworker dated November 17, 2016, in which the CPS caseworker reported that Petitioner gave POA of Child D to [REDACTED] (Petitioner's sister) effective November 9, 2016. Exhibit B, p. 12. Thus, the Department processed the reported changes that Child A and Child D were no longer in the FAP group in November 2016 based on the POA's. Policy states that removal of Child A and Child D takes effect the following month, which resulted in a decrease in the group composition to three for December 2016. See BEM 212, p. 9.

In response, Petitioner disagreed with the Department's argument. Petitioner testified that her children were never removed from her and that they all resided together from December 2016, ongoing. Petitioner indicated that she gave POA to her family members in order for her children to be able to attend the schools where her family resided.

Based on the above information, the undersigned finds that the Department properly determined Petitioner's FAP group composition of three for December 2016. The Department established by a preponderance of evidence that Petitioner gave POA of Child A and Child D to two other individuals in November 2016. Exhibit B, pp. 11-12. Policy states that 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. The Department learned of the changes in November 2016, thus the removal of Child A and Child D from Petitioner's FAP group would have been effective December 2016. As such, the Department properly processed the member delete of Child A and Child D from Petitioner's FAP group, which resulted in her group composition being three for December 2016. Exhibit B, pp. 6-7.

For January 2017, Petitioner's FAP group composition consisted of herself and Child B (group size of two). Exhibit B, pp. 6-7. For February 2017, Petitioner FAP group composition was four, which consisted of herself, Child A, Child B, and Child D. Again, Petitioner disputed the group composition for January 2017 and February 2017 and claimed her group composition should have been five. As part of the evidence record,

the Department included an online application dated [REDACTED] 2016, in which Petitioner reported her group composition was five. Exhibit A, p. 2. Furthermore, on January 19, 2017, Petitioner submitted verification to the Department that her and her 4 children resided in a shelter home from December 19, 2016 to January 4, 2017. Exhibit 1, p. 1.

Based on the above information, the undersigned finds that the Department improperly determined Petitioner's FAP group composition for January 2017 and February 2017. The undersigned finds that Petitioner's FAP group composition should have been increased back to five from January 1, 2017, ongoing. On [REDACTED] 2016, Petitioner technically reported a change in a group composition when she applied for benefits and reported that her group composition is five. Policy states that the Department verifies group composition factors if the information given is questionable. BEM 212, p. 10. There was no evidence presented by the Department if it sent Petitioner a Verification Checklist (VCL) verifying her group composition as the Department might have questioned her reported group composition being five. See BAM 130 (July 2016), p. 3 (Obtaining Verification). Nevertheless, Petitioner provided credible evidence showing that her group composition was five from December 19, 2016. See Exhibit 1, p. 1. 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, p. 9. In this case, Petitioner reported on December 22, 2016 that her group composition was five and also provided verification supporting this information. Exhibit A, p. 2 and Exhibit 1, p. 1. As such, per policy, the Department would have processed the member add and it would have taken effect the following month, which would be January 2017. See BEM 212, p. 7. Thus, the evidence established that Petitioner's FAP group composition was five effective January 1, 2017, ongoing.

Furthermore, because Petitioner's group composition should have been five effective January 1, 2017, ongoing, this will also require the Department to recalculate the FAP benefits. Therefore, the Department is also ordered to recalculate Petitioner's FAP benefits effective January 1, 2017, ongoing.

FAP benefits

Petitioner also disputed the calculation of her FAP benefits effective December 1, 2016. Specifically, Petitioner argued that Child A's Supplemental Security Income (SSI) and Retirement, Survivors, and Disability Insurance (RSDI) income (hereinafter referred to "Social Security income") should have not been budgeted. At some point, Petitioner was the payee for Child A's Social Security income, but the payee was then switched to Petitioner's mother in January 2017. Petitioner argued that she nor Child A received the Social Security income, yet, the Department kept budgeting Child A's Social Security income. In fact, Petitioner testified that no Social Security income was even issued for the month of February 2017. In order to answer Petitioner's question, it all

depends on where Child A was residing at the time to determine if whether Child A's Social Security income is budgetable or not.

Policy states that income paid to an individual acting as a representative for another individual is not the representative's income. BEM 500 (January 2016), p. 7. The income is the other individual's income. BEM 500, p. 1. Common representatives include:

- Legal guardians; see Bridges Policy Glossary (BPG).
- Court-appointed conservators.
- Minor children's parents.
- Representative payees.

BEM 500, pp. 7-8. Example, Diane's RSDI check is sent to her representative payee. It is Diane's income. BEM 500, p. 8.

Based on the above policy, the Social Security income will be counted against Child A, regardless of who is the payee.

For December 2016, Child A was not a member of Petitioner's FAP group. Exhibit B, pp. 6-7. The Department presented the December 2016 FAP budget from the Notice of Case Action dated November 29, 2016. Exhibit B, pp. 6-7. In the budget, the Department did not budget any unearned income. See Exhibit B, p. 7. Policy states that RSDI, SSI, and State SSI Payments (SSP) income will be treated as unearned income. See BEM 503 (July 2016 and January 2017), pp. 28-33. Based on this information, the Department properly did not budget Child A's Social Security or SSP income for the December 2016 budget. Child A was not a member of Petitioner's FAP group for December 2016 and the budget shows that it did not budget any of Child A's Social Security or SSP income for this month. Accordingly, the Department properly calculated Petitioner's FAP budget for December 2016.

For January 2017 and February 2017, the undersigned concluded above the Child A should have been a member of Petitioner's FAP group composition. The Department presented the January 2017, ongoing, FAP budget from the Notice of Case Action dated December 15, 2016. Exhibit B, pp. 1-2. In this budget, the Department also was not budgeting any unearned income. Exhibit B, p. 2. However, if Child A did receive Social Security income or SSP for these months, policy directs the Department to budget Child A's the income, regardless of who the payee is. See BEM 500, pp. 7-8. As such, the Department is ordered to recalculate Petitioner's FAP benefits effective January 1, 2017, ongoing, in accordance with Department policy. It should be noted that Petitioner claimed that Child A did not receive any Social Security income for February 2017; thus, when the Department is recalculating the FAP budget, it needs to determine if Child A received any unearned income.

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 (i) the Department acted in accordance with Department policy when it properly determined that Petitioner's FAP group composition is three for December 1, 2016 to December 31, 2016; (ii) the Department acted in accordance with Department policy when it properly calculated Petitioner's FAP allotment for December 1, 2016 to December 31, 2016; (iii) the Department did not act in accordance with Department policy when it improperly determined Petitioner's FAP group composition effective January 1, 2017; and (iv) the Department did not act in accordance with Department policy when it improperly calculated Petitioner's FAP benefits effective January 1, 2017.

Accordingly, the Department's FAP decision is **AFFIRMED IN PART** with respect to the group composition and calculation of benefits for December 2016 and **REVERSED IN PART** with respect to the group composition and calculation of benefits effective January 1, 2017.

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. Apply Petitioner's FAP group composition to be five (including Petitioner, Child A, Child B, Child C, and Child D) effective January 1, 2017, ongoing;
2. Recalculate Petitioner's FAP budget (including unearned income for Child A) effective January 1, 2017, ongoing;
3. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from January 1, 2017, ongoing; and
4. Notify Petitioner of its decision.

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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Petitioner

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cc: FAP: M. Holden; D. Sweeney
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