



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: November 2, 2017
MAHS Docket No.: 17-012847
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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; 42 CFR 438.400 to 438.424; 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 November 1, 2017, from Detroit, Michigan. Petitioner was present and represented himself. The Department of Health and Human Services (Department) was represented by Corlette Brown, Hearing Facilitator, and Johnnie Dankwa-Smith, Eligibility Specialist.

ISSUE

Did the Department properly determine Petitioner Food Assistance Program (FAP) group size?

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 was an ongoing FAP recipient.
2. Petitioner was previously a member of a group that consisted of himself, his three children and the mother of one of his children.
3. On September 15, 2017, the Department sent Petitioner a Notice of Case Action informing him that his benefits were being decreased, as his child and the mother of that child had been removed from his group.
4. On September 25, 2017, Petitioner submitted a request for hearing disputing the Department's decision to remove his child from his group.

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 this case, Petitioner disputed the Department's decision to remove his child from his FAP group. Petitioner was previously a member of a group that consisted of himself, his three children and the mother of one of his children. In August 2017, the mother of Petitioner's child informed the Department that she was no longer living with Petitioner and desired to have her own FAP group that consisted of herself and the child that she shared with Petitioner. The Department removed Petitioner's child and the child's mother from the FAP group effective October 1, 2017.

The Department must determine who is included in a FAP group. BEM 212 (January 2017), p. 1. Parents and their children under 22 years of age who live together must be in the same group. BEM 212, p. 1. When a child spends time with multiple caretakers who do not live together such as joint physical custody, parent/grandparent, etc., the Department must determine a primary caretaker. BEM 212, p. 3. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent caretaker(s). BEM 212, p. 3. The child is always in the FAP group of the primary caretaker. BEM 212, p. 3. 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, p. 2. The Department will re-evaluate primary caretaker status when any of the following occur: (i) a new or revised court order changing custody or visitation is provided; (ii) 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; (iii) a second caretaker disputes the first caretaker's claim that the child(ren) sleep in their home more than half the nights in a month, when averaged over the next 12 months; or (iv) a second caretaker applies for assistance for the same child. BEM 212, p. 5.

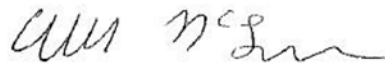
Petitioner argued that the child was previously a member of his FAP group and lived in his home more than 50% of the time in the previous year. Petitioner stated the child's mother had been "in and out" of the home. Petitioner conceded that the child and his mother moved out of his home as of August 15, 2017. Petitioner also acknowledged

there was a temporary custodial agreement that the child would live with Petitioner on the weekends and his mother Monday through Friday.

Although Petitioner stated he was the primary caretaker of the child over the course of the previous year, he listed the mother as a member of the household. Therefore, the child would have resided with both of his parents and there would be no previous determination as to which parent was the primary caretaker. As of August 15, 2017, when Petitioner and the child's mother were no longer sharing a residence, the child resided with his mother more than 50% of the time. The Department correctly determined that the child's mother was the primary caretaker. Therefore, the Department acted in accordance with policy when it removed Petitioner's child from the FAP group.

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 acted in accordance with Department policy when it determined Petitioner's FAP benefit group size. Accordingly, the Department's decision is **AFFIRMED**.



EM/jaf

Ellen McLemore

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.

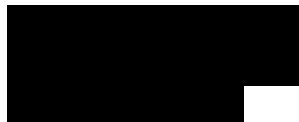
If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

MDHHS-Wayne-31-Hearings

Petitioner



BSC4
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