



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: January 5, 2018
MAHS Docket No.: 17-015550
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Michael Crews

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 January 4, 2018, from Detroit, Michigan. The Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Family Independence Manager and Hearing Facilitator, and [REDACTED], Family Independence Manager.

ISSUE

Did the Department properly decrease the Petitioner's Food Assistance Program (FAP) benefits effective December 1, 2017?

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 recipient of FAP benefits for a household size of two, which included his minor child, Child A.
2. On October 26, 2017, the Muskegon County Circuit Court issued an Order pursuant to a motion to modify custody filed by Child A's mother, [REDACTED], on August 30, 2017 (Exhibit A, pp. 13-16).
3. Pursuant to the October 26, 2017 Order, Child A is currently residing with her mother.

4. Pursuant to the change of custody Order, the Department removed Child A from Petitioner's FAP group and, as such, Petitioner's benefits were recalculated and reduced based on a household size of one.
5. A Notice of Case Action dated November 8, 2017 was mailed to Petitioner and informed him of the decrease in FAP benefits effective December 1, 2017.
6. On November 20, 2017, the Petitioner submitted a hearing request to dispute the Department's action.

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 submitted a hearing request to dispute the removal of Child A from his FAP group and the subsequent decrease in his FAP benefits.

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 (January 2017), pg. 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 in the group. BEM 212, pg. 1. A person who is temporarily absent from the group is considered living with the group. A person's absence is temporary if all of the following are true: 1) The person's location is known; 2) The person lived with the group before an absence (newborns are considered to have lived with the group); 3) There is a definite plan for return; and 4) The absence has lasted or is expected to last 30 days or less. BEM 212, pg. 3.

When a child spends time with multiple caretakers who do not live together such as joint physical custody, parent/grandparent, etc., 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. BEM 212, p. 4. The primary caretaker must be reevaluated if a new or revised court order changing custody or visitation is provided. BEM 212, p. 5.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes that must be reported within 10 days after the client is aware of them include, but are not limited to, changes in persons in the home. BAM 105 (October 2017). pp. 10-11.

Here, the Department presented evidence of a revised court Order changing custody to Child A's mother on October 26, 2017. Petitioner further confirmed that Child A resides with her mother. As such, Child A's mother is considered to be the primary caretaker at this time. Petitioner did not have a new or revised order which granted him any custody arrangements at this time.

As the minor child does not reside with the Petitioner, Petitioner is no longer considered to be the primary caretaker. Further, Child A cannot be considered as temporarily absent from Petitioner's FAP group and, thereby living with the group, as Child A's absence has lasted longer than 30 days from the date of the Order. In addition, at this time, there is no definite plan to return Child A to Petitioner's home. Therefore, Child A could no longer be included in Petitioner's FAP group.

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 removed Child A from Petitioner's FAP group and decreased Petitioner's FAP benefits based on a current household size of one.

DECISION AND ORDER

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

MC/kl



Michael Crews
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

Via email

A large black rectangular redaction box covering the email address.

Petitioner via USPS

A large black rectangular redaction box covering the USPS address.