



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 29, 2018
MAHS Docket No.: 18-001695
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 March 22, 2018, from Detroit, Michigan. The Petitioner was represented by herself. [REDACTED] also was present as a witness. The Department of Health and Human Services (Department) was represented by [REDACTED]

ISSUE

Did the Department properly exclude the Petitioner's child [REDACTED] from her FAP group because he was active on another FAP case?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Petitioner applied for FAP benefits on December 11, 2017 for herself and her children. Exhibit A.
2. The Petitioner requested FAP benefits for her minor child, [REDACTED], DOB [REDACTED]). Exhibit A.
3. The Department issued a Notice of Case Action on December 13, 2017 approving the Petitioner's FAP application effective December 11, 2017. The Department did not approve the application for minor child, [REDACTED], because the child was active and eligible for FAP on another case. Exhibit B.

4. At the time of Petitioner's FAP application, [REDACTED] was active on his father's case [REDACTED], since November 17, 2017.
5. A Verification of Student Information form was provided to Petitioner and was due back February 16, 2016, and was not returned by Petitioner. Exhibit C.
6. The Petitioner requested a timely hearing on February 5, 2018 protesting 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, the Petitioner has requested a hearing because she disputes that her child [REDACTED] lives with his father and seeks to establish that the child resides with her and should be included in her FAP group. The Petitioner at the time of the hearing had not returned a Verification of Student Information for [REDACTED] to be completed by his school. The Petitioner returned a report card after her hearing request which was not sufficient to establish his address and was not turned in until March 20, 2018. In addition, at the hearing the Petitioner presented a Court Order dated February 10, 2010 regarding her divorce proceeding, which at the time ordered that Petitioner shall have [REDACTED] until further order of the Court. Ordered child support to be paid to Petitioner by the father who was to have reasonable parenting time. Neither parent appeared at the hearing when the Order was entered. Petitioner Exhibit 1. In addition, the Petitioner testified that she had previously provided a report card to the Department, however, no such document was received prior to March 20, 2018.

In this case, the Department must determine who is the primary caretaker of [REDACTED]. Based upon the information provided at the time the Department made its decision and the failure of the Petitioner to return the Verification of Student information, the Department has not been presented with sufficient information to determine where the child resides.

Department policy in BEM 212 lists the steps which must be taken by the Department when one parent disputes who is the primary caretaker of the child.

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;

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, January 2017) 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. 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. 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.

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 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. 3

If a primary caretaker status is questionable or disputed, verification is needed.

- Allow both caretakers to provide evidence supporting his/her claim.**
- Base your determination on the evidence provided by the caretakers; see VERIFICATION SOURCES.**

**Document who the primary caretaker is in the case.
(Emphasis supplied)**

A person must not participate as a member of more than one FAP group in any given month; see BEM 222.

If the person is a mandatory group member, action must be taken as soon as possible to remove him from his former group and add him to the new group. BEM 212, p. 10

Accept the client's statement regarding the number of days per month (on average) a child sleeps in their home. Verify only if questionable or disputed by the other parent. BEM 212, p.11

When primary caretaker status is questionable or disputed, base the determination on the evidence provided by the caretakers. Give each caretaker the opportunity to provide evidence supporting his/her claim. Suggested verifications include:

- The most recent court order that addresses custody and/or visitation.
- School records indicating who enrolled the child in school, first person contacted in case of emergency, and/or who arranges for child's transportation to and from school.

Child care records showing who makes and pays for child care arrangements, and who drops off and picks up the child(ren).

- Medical providers' records showing where the child lives and who generally takes the child to medical appointments. BEM 212, pps. 12-13.

Based upon the evidence presented at the hearing the Department must review the documents presented to date and seek further verification of both parents in coordination with the other DHS office where the father is located and determine who is the primary caretaker. The Court Order presented at the hearing is from 2010 and it is unknown if this is the most current court order; however, the Department must consider the Court Order as part of the Petitioner's proofs that she was granted sole legal and physical custody subject to parenting time by the father. Clearly school records are the best and most easily accessible records to establish where the child resides and were not provided because the Petitioner as of the hearing had not returned the requested Verification of Student Information. The Petitioner did testify at the hearing that she is disabled and does not have transportation and the child in question's school is not near where she lives. However, the Petitioner made no other effort to mail, fax or call the school for assistance.

Until such time as verification is provided by Petitioner, the Department has correctly not included the child [REDACTED] in Petitioner's FAP group. Petitioner may request assistance be provided to her by the Department with obtaining the verification however, Petitioner had not requested such assistance at the time of the hearing. BAM 130, (January 2017).

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 excluded the Petitioner's son from her FAP group.

DECISION AND ORDER

Accordingly, the Department's decision is

AFFIRMED.

LF/tm



Lynn M. Ferris
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]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]