



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 26, 2018
MAHS Docket No.: 18-002430
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 April 16, 2018, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], hearing facilitator.

ISSUES

1. The first issue is whether MDHHS properly factored Petitioner's group size in determining Petitioner's eligibility for Food Assistance Program (FAP) benefits.
2. The second issue is whether MDHHS properly denied Petitioner's Child Development and Care (CDC) eligibility.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. At all relevant times, Petitioner was the father to a minor child (hereinafter "Child").
2. At all relevant times, Child lived with Petitioner half of the year and with Child's biological mother the other half of the year.
3. On an unspecified date before January 8, 2018, Child's biological mother had an ongoing FAP case based on a group that included Child.

4. On January 8, 2018, Petitioner applied for FAP and CDC benefits (see Exhibit A, p. 1) for himself and Child.
5. On February 5, 2017, MDHHS processed Petitioner's FAP eligibility, in part, based on excluding child as a member of Petitioner's FAP group.
6. On February 26, 2018, MDHHS denied Petitioner's CDC application for the reason that Child was not considered a member of Petitioner's household group.
7. On March 2, 2018, Petitioner requested a hearing to dispute the denial of FAP benefits to Child and denial of CDC benefits.

CONCLUSIONS OF LAW

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a denial of FAP benefits for Child. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 8-9) dated February 5, 2018, informing Petitioner that his January 2018 eligibility was based on a group size of one person (just Petitioner). The stated reason for excluding Child was that Petitioner was not the primary caretaker for Child. Petitioner contended that he was entitled to receive FAP benefits for child because he had shared custody of Child.

When a child spends time with multiple caretakers who do not live together such as joint physical custody, parent/grandparent, etc., [MDHHS is to] determine a primary caretaker. BEM 212 (January 2017), p. 3. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent caretaker(s). *Id.* The child is **always** in the FAP group of the primary caretaker. *Id.*

[MDHHS is to] determine primary caretaker by using a twelve-month period. *Id.*, p. 4. The twelve-month period begins when a primary caretaker determination is made. *Id.* If the child spends virtually half of the days in each month, averaged over a twelve-month period with each caretaker, the caretaker who applies and is found eligible first, is the primary caretaker. *Id.* The other caretaker(s) is considered the absent caretaker(s). *Id.*

Petitioner's testimony acknowledged he had no more than half custody of Child. MDHHS provided credible testimony that Child received ongoing FAP benefits on her mother's case as of Petitioner's FAP application date. As the person who received FAP benefits for Child first, for purposes of FAP eligibility, Child's mother is Child's primary

caretaker and Petitioner is Child's absent caretaker. Thus, MDHHS properly excluded Child from Petitioner's FAP group in determining Petitioner's FAP eligibility.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a denial of CDC benefits. A Notice of Case Action (Exhibit A, pp. 10-11)) dated February 26, 2018, stated that Petitioner's CDC eligibility was denied for Child because she does not live with Petitioner. Petitioner contended that his joint custody of Child entitled him to CDC eligibility.

If a child's parents do not live together but have shared/joint custody of the child, authorize care only for the time periods when the parent who is applying has physical custody of the child. BEM 205 (October 2017) p. 3. The parent's statement of shared/joint custody is acceptable. *Id.*

MDHHS policy allows for CDC eligibility when there is joint custody of a Child. There is no known CDC policy precluding Petitioner from receipt of CDC benefits simply because Child is on her mother's FAP case. Thus, it is found that MDHHS improperly denied Petitioner's CDC application. This finding does not guarantee Petitioner's CDC eligibility as Petitioner must still meet other CDC program requirements.

Petitioner also testified that he wanted a hearing concerning Medical Assistance (MA) eligibility. Petitioner's dispute of MA was not referenced in his hearing request. Petitioner's MA eligibility will not be evaluated due to Petitioner not referencing the program in his hearing request.

DECISION AND ORDER


The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly excluded Child from Petitioner's FAP group beginning January 2018. The actions taken by MDHHS concerning Petitioner's FAP eligibility are **AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly denied Petitioner's CDC application dated January 8, 2018. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Reregister Petitioner's CDC application dated January 8, 2018; and
- (2) Initiate processing of Petitioner's application subject to the finding that Petitioner can potentially receive CDC benefits for the times when he has physical custody of Child.

The actions taken by MDHHS are **REVERSED**.

CG/



Christian Gardocki

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]

Petitioner

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