



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: September 11, 2018
MAHS Docket No.: 18-007847
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 September 6, 2018, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Valarie Foley, hearing facilitator.

ISSUE

The issue is whether MDHHS properly determined Petitioner's Food Assistance Program (FAP) group composition.

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 an ongoing recipient of FAP benefits based on a FAP group size of one person.
2. At all relevant times, Petitioner was the father to four children (hereinafter, "Children").
3. At all relevant times, Petitioner was separated from his wife (hereinafter, "Wife") and was in the midst of divorce proceedings from Wife.
4. As of an unspecified date, MDHHS approved Wife for FAP benefits based on a FAP group that also included Children.

5. On March 28, 2018, following Petitioner requesting an administrative hearing, the Michigan Administrative Hearing System (MAHS) issued an administrative hearing decision affirming MDHHS actions which excluded Children as group members from Petitioner's FAP group. (Exhibit A, pp. 3-6)
6. On April 5, 2018, Petitioner submitted a court document (Exhibit A, p. 1) to MDHHS. The document recommended that Petitioner had parenting time of Children on Thursday evening and every other weekend.
7. On July 30, 2018, Petitioner requested a hearing to dispute the exclusion of Children from FAP eligibility beginning August 2018. Petitioner also checked disputes concerning Child Development and Care (CDC) and Family Independence Program (FIP) eligibility.

CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

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's hearing request checked disputes concerning CDC and FIP benefits. Petitioner's hearing statements alleged that Wife received FIP and CDC benefits based on a fraudulent claim that she has primary custody of Children. MAHS cannot grant a hearing to a client based on an alleged fraud by another.¹ Petitioner testimony acknowledged that he had no CDC or FIP dispute concerning his own eligibility. Given the circumstances, Petitioner's hearing request is appropriately dismissed concerning CDC and FIP.

¹ See BAM 600 (April 2018) p. 4 for a list of MDHHS actions that are reviewable by administrative hearing.

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 also requested a hearing to dispute FAP eligibility. Petitioner stated that he disputed FAP eligibility from August 2018. During the hearing, Petitioner acknowledged his only dispute concerned the exclusion of Children from his ongoing FAP benefit case. Petitioner contended that he had primary custody of Children and that MDHHS should include Children in his FAP group composition; instead, MDHHS issued ongoing FAP benefits to Petitioner based on a group size of one.

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.*

As it happened, Petitioner already lost an administrative hearing decision concerning the same issue. On March 28, 2018, an administrative law judge affirmed a determination by MDHHS to exclude Children from Petitioner's FAP eligibility (see Exhibit A, pp. 3-6). Petitioner is entitled to an updated administrative hearing decision based on documentation he gave to MDHHS since the last hearing.

On April 5, 2018, MDHHS received a court document concerning Petitioner's divorce proceedings with Wife. The document appeared to be one page of a court order that awarded Petitioner overnight parenting time with Children one day per week and every other weekend. The document was supportive evidence that Wife has primary custody of Children and that MDHHS properly excluded Children from Petitioner's case.

Petitioner testified that the court document does not accurately reflect his actual parenting time of 50%+ due to Wife's work schedule. Petitioner's testimony does not address whether he would have primary custody over a 12-month period as required by MDHHS policy. Petitioner's testimony was also uncorroborated and substantially outweighed by the documentation from Petitioner's divorce proceeding.

Given the evidence, Petitioner does not have primary custody of Children. Thus, MDHHS properly excluded Children from Petitioner's ongoing FAP eligibility.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Wife's eligibility for CDC and FIP benefits is not a basis for Petitioner to request an administrative hearing. Concerning FIP and CDC benefits, Petitioner's hearing request is **DISMISSED**.

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

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) 763-0155; 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

Susan Noel
MDHHS-Wayne-19-Hearings

Petitioner

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