



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: April 8, 2019
MAHS Docket No.: 19-002388
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 7 CFR 273.15, and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on April 5, 2019, from Lansing, Michigan. Petitioner, [REDACTED] [REDACTED] appeared and represented herself. Hearing Facilitator, Natalie McLaurin, appeared for the Department of Health and Human Services (Department). Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 47-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUE

Did the Department properly determine Petitioner Food Assistance Program (FAP) benefit 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. On January 17, 2017, the Tenth Circuit Court of Saginaw County entered an order which granted Petitioner joint physical custody of her child and designated her as the primary custodial parent.
2. On February 6, 2019, Petitioner completed a Semi-Annual Contact Report and returned it to the Department. In the Report, Petitioner reported that her child lived in her household.

3. Petitioner is employed by [REDACTED] where Petitioner works an average of 30 hours per week at the rate of \$ [REDACTED] per hour.
4. Petitioner pays a housing expense of \$ [REDACTED], and Petitioner is responsible for heat and electricity in addition to her housing expense.
5. On February 12, 2019, the Department issued a Notice of Case Action which notified Petitioner that she was approved for a FAP benefit of \$15.00 per month effective March 1, 2019, for a household size of one. The Department stated in the notice that it budgeted Petitioner's monthly income at \$ [REDACTED]
6. On February 25, 2019, Petitioner filed a hearing request to dispute the Department's decision to find her eligible for a FAP benefit of only \$15.00 per month. Petitioner had been receiving a FAP benefit of \$114.00 per month.

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).

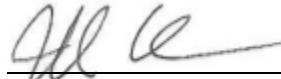
The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

The Department did not present sufficient evidence to establish that it determined Petitioner's FAP benefit eligibility in accordance with its policies and the applicable law. The Department asserted that it excluded Petitioner's child from Petitioner's group size, but the Department did not present sufficient evidence to establish that it was proper for the Department to exclude Petitioner's child from Petitioner's group size. Petitioner testified that she is the primary custodial parent of the child, and no evidence was presented to the contrary. When a child is subject to joint custody, the Department must determine the primary caretaker. BEM 212 (January 1, 2017), p. 3. The child is always in the FAP group of the child's primary caretaker. BEM 212, p. 3. Since Petitioner was her child's primary caretaker, the Department should have included Petitioner's child as a member of Petitioner's 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 did not act in accordance with its policies and the applicable law when it determined Petitioner's FAP benefit eligibility.

IT IS ORDERED the Department's decision is REVERSED. The Department shall begin to implement this order within 10 days.



JK/nr

Jeffrey Kemm
Administrative Law Judge
for Robert Gordon, 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

Kathleen Verdoni
411 East Genesee
PO Box 5070
Saginaw, MI
48607

Saginaw County DHHS- via electronic
mail

BSC2- via electronic mail

M. Holden- via electronic mail

D. Sweeney- via electronic mail

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI
[REDACTED]