



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
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[REDACTED]

Date Mailed: December 16, 2019
MOAHR Docket No.: 19-012125
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 December 9, 2019, from Detroit, Michigan. Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by Yvonne Jasper, Family Independence Manager.

ISSUE

Did the Department properly remove Petitioner's daughter from his Food Assistance Program (FAP) and Medical Assistance (MA) group/household?

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 and his daughter (Child A) are ongoing recipients of FAP and MA benefits. Prior to October 2019, Petitioner's daughter was included as a FAP and MA household member on Petitioner's cases and receiving benefits under his cases, as she was previously living with Petitioner.
2. On or around [REDACTED], 2019, the Department received information that as of [REDACTED], 2019, Child A was no longer living with Petitioner, as she moved to her mother's home. The Department received a Verification of Student Information showing that Child A resides with her mother, has a school address registered to her mother's home, and has been regularly attending that school since September 3, 2019. (Exhibit A, pp. 9 – 11)
3. The Department processed the reported change and removed Child A from Petitioner's FAP and MA group.

4. On [REDACTED] 2019, the Department sent Petitioner a Notice of Case Action advising him that effective [REDACTED], 2019, his monthly FAP benefits would be decreased [REDACTED] based on a household size of one. The Notice of Case Action further advised Petitioner that the reason for the reduction in his FAP benefits is because Child A is no longer living with him and thus, her needs cannot be considered when determining his FAP eligibility. (Exhibit A, pp.6 – 8)
5. Child A was also removed from Petitioner's MA group and her MA coverage was activated on her mother's cases effective [REDACTED] 2019. There was no lapse in Child A's MA coverage.
6. On or around [REDACTED], 2019, Petitioner requested a hearing disputing the Department's actions with respect to the FAP case and MA eligibility for his daughter.

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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case, Petitioner requested a hearing regarding FAP and MA benefits for his daughter. The Department presented evidence that there was no lapse in MA coverage for Petitioner's daughter, as she was removed from Petitioner's case and added to her mother's case effective [REDACTED], 2019. Upon further discussion, it appeared as though Petitioner's main issue was the removal of his child from his FAP group and the decrease in his monthly FAP allotment, as the child's MA remained active with no lapse.

It was established that after receiving sufficient verification that Child A was no longer living in Petitioner's home, the Department processed the reported change in household group composition and removed the child from Petitioner's FAP and MA cases. Petitioner's FAP benefits were reduced to [REDACTED] monthly, which is the maximum amount of FAP benefits available for a household size of one. RFT 260 (October 2019), p. 1.

Additionally, food assistance group composition is established by determining, who lives together, the relationships of the people who live together, whether the people living together purchase and prepare food together or separately and whether the person resides in an eligible living situation. BEM 212 (July 2019), p. 1. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the children have their own spouse or child who lives with the group. BEM 212, pp. 1-2. 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.

When a child spends time with multiple caretakers who do not live together such as joint physical custody, the Department is to determine a primary caretaker. Only one person can be the primary caretaker and the other caretaker is considered the absent caretaker. The child is always in the FAP group of the primary caretaker. BEM 212, p. 3. The Department is to determine primary caretaker by using a twelve-month period and if questionable or disputed, the Department is to allow both caretakers to provide evidence supporting their claim and verification, as provided by policy. BEM 212, p. 4, 12-13. 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. The other caretaker is considered the absent caretaker. BEM 212, p. 4.

The Department will reevaluate primary caretaker status when: a new or revised court order changing custody or visitation is presented; a second caretaker applies for assistance for the same child; a second caretaker disputes the first caretaker's claim that the child sleeps in their home more than half the nights in a month, when averaged over the next 12 months; and when there is a change in the number of days the child sleeps in another caretaker's home and the change is expected to continue, on average, for the next 12 months. BEM 212, p. 5.

At the hearing, Petitioner testified that his daughter was placed in his care by Children's Protective Services (CPS) five years ago and she had been living with him since that time. The child was a member of Petitioner's FAP and MA groups. Petitioner testified that in [REDACTED] 2019, the child's mother removed her from his household without the legal authority to do so. Petitioner maintained that Child A's mother was not authorized to remove the child from his home and that he has filed complaints with law enforcement and CPS to no avail. Petitioner did not dispute that Child A has not been a member of his household and has not lived with him since [REDACTED] 2019. Petitioner confirmed that the

child has been living with her mother and attending school at the location identified on the Verification of Student Information form. He further did not present a court order verifying his custody or visitation status and did not otherwise establish that he was the child's primary caretaker for FAP purposes. Therefore, the Department properly removed Child A from Petitioner's FAP and MA cases, as the child was no longer living with Petitioner. Petitioner was informed that the Department will reevaluate the primary caretaker status should he submit verifiable information that he is again Child A's primary caretaker.

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 processed FAP and MA benefits for Petitioner's daughter and removed her from his FAP and MA household group.

DECISION AND ORDER

Accordingly, the Department's decisions are **AFFIRMED**.

ZB/tm


Zainab A. Baydoun

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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Tara Roland 82-17
8655 Greenfield
Detroit, MI 48228

Petitioner

[REDACTED]
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cc: FAP: M. Holden; D. Sweeney
ME—D. Smith; EQADHShearings
AP Specialist-Wayne County