



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: February 22, 2017
MAHS Docket No.: 17-000993
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; 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 February 21, 2017, from Detroit, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by Sandra Chambers, Hearing Facilitator.

ISSUE

Did the Department properly deny the Petitioner's Food Assistance Program (FAP) benefits application?

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 on [REDACTED], 2016, for himself and his three children. Exhibit A.
2. The Department issued a Notice of Case Action on December 16, 2016, denying the Petitioner's FAP application because his children were active on another case.
3. The Petitioner advised the Department on his application: that his children, [REDACTED] and [REDACTED] were left by their mother with him; and he had not heard from her since. He filed a police report with the Inkster Police Department, and he also went to Circuit Court and was granted emergency custody of the kids by Judge Connie Kelley. The Petitioner also advised the Department that his child, [REDACTED] had been left with him two years prior; and he had never switched her FAP from

her mother's case. The documents were presented to the Department at his interview for benefits. Petitioner's Exhibit 1.

4. The Department office receiving Petitioner's FAP application emailed the mother's caseworker asking the case be closed.
5. The Petitioner contacted the mother's caseworker and was asked to fax the police report and the Court Order, which he did about two weeks after applying for FAP benefits. Petitioner's Exhibit 1.
6. The Petitioner never heard back from the mother's caseworker; and as of the date of the hearing, the children were still on the mother's case.
7. The Petitioner requested a timely hearing protesting the Department's denial of the FAP application.

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 Department did not properly process the FAP application of Petitioner once the Petitioner advised with the application that the mother had abandoned two of their children who previously resided with her leaving the Petitioner, their father, to care for them. At the time of the application, the Petitioner presented the Department a court order dated [REDACTED], 2016, wherein the court determined that the Petitioner would have extended exclusive parenting time until a Friend of the Court Hearing and the children were to be enrolled in school by the father, Petitioner. This order is clearly an order which should have been considered as it represented a change. In addition, the Petitioner presented a police report he filed when the children's mother never returned to pick them up despite repeated phone calls from Petitioner. Petitioner's Exhibit 1. Based upon the information provided, the Department contacted the children's mother's caseworker by email requesting her to consider closing the case. Thereafter, the Petitioner, after repeated attempts to contact the mother's caseworker, finally was advised by the mother's caseworker to fax her the documents, which he did approximately two weeks after filing the application.

In this case the Petitioner's testimony was very credible and is corroborated by the documents he provided to the Department. In addition, at the hearing, the Petitioner provided evidence that his children had been registered to attend school in ██████, Michigan, as Petitioner was ordered by the court order that he register the children for school. The mother of the children lived in ██████ Michigan; and the children had not been attending school. Based upon these facts and the documents provided by the Petitioner to the Department, the Department was required to re-evaluate primary caretaker status. As of the hearing, the mother's caseworker had not contacted Petitioner who faxed her information, and there was no evidence that the Department conducted a re-evaluation of the caretaker status and none had been undertaken as of the hearing as required by Department policy.

Changes in Primary Caretaker

Re-evaluate primary caretaker status when any of the following occur:

- A new or revised court order changing custody or visitation is provided.
- 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 twelve months.
- A second caretaker disputes the first caretaker's claim that the child(ren) sleeps in their home more than half the nights in a month, when averaged over the next 12 months.
- A second caretaker applies for assistance for the same child. BEM 212 (January 1, 2017), p. 5.

Verify group composition factors if the information given is questionable. Such factors might include boarder status, age or senior members, and inability to purchase and prepare meals separately. BEM 212, p. 10.

Primary Caretaker

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 p. 12-13.

Clearly the Department had evidence from the Petitioner that he was the primary caretaker, including the Court Order presented that clearly gave Petitioner exclusive extended parenting time and also ordered the father to enroll the children in school. Petitioner's Exhibit C. This, at a minimum, required the Department to seek evidence from the mother of the children, which the Department neglected to do. No evidence was presented as to whether the Department ever received or sought any information by verification from the children's mother. Under these circumstances, the Department did not act in accordance with Department policy and should not have denied Petitioner's application.

DECISION AND ORDER

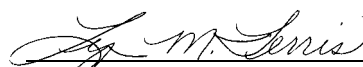
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it denied the Petitioner's FAP application without determining who the primary caretaker was and if the mother's primary caretaker status had changed.

Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Shall reinstate the Petitioner's [REDACTED] 2016, FAP application and process the application.
2. The Department shall, if it determines the Petitioner is otherwise eligible for FAP benefits, issue an FAP supplement to the Petitioner in accordance with Department policy.

LMF/jaf



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

Latasha McKinney-Newell
26355 Michigan Ave
Inkster MI 48141

Petitioner

[REDACTED]
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