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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: April 19, 2017
MAHS Docket No.: 17-003623
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 April 13, 2017, from Detroit, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearing Facilitator.

ISSUE

1. Did the Department properly process a member add/change to add Petitioner's children to his Food Assistance Program (FAP) benefits case?
2. Did the Department properly determine eligibility of Petitioner's minor child, Michael Quick, for Medical Assistance (MA) benefits?

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 is the father of five children: [REDACTED], [REDACTED], [REDACTED] and [REDACTED] and Michael who live with him and go to school from his home five days per week.
2. The children's mother, [REDACTED], applied for FAP benefits in November 2015 and was approved and received FAP benefits ongoing for Case Number [REDACTED]. The children's mother continues to receive FAP benefits for some of the children.

3. The mother of Petitioner's children left the Petitioner's home and separated from him on August 30, 2015. The Department's case notes confirm that the mother left the home.
4. At the hearing, the Department indicated that [REDACTED]'s MA case was inactive. The Petitioner's children [REDACTED] and [REDACTED] are active for MA on their mother's case. [Exhibit D.]
5. The Petitioner's current FAP group consists of four members: Petitioner; his live-in partner, Ms. [REDACTED]; and his children, [REDACTED] and [REDACTED]. The group of four began in December 2016.
6. Department records indicate that Petitioner requested that [REDACTED], [REDACTED], [REDACTED] and [REDACTED] be added to Petitioner's FAP group on November 3, 2016. [Exhibit G.]
7. Petitioner's children [REDACTED], [REDACTED] and [REDACTED] were not included in Petitioner's FAP group because they were deemed active in another case. [Exhibit F.]
8. The Department's electronic case file received three separate notices of a Referee Recommendation in the Divorce proceedings, which were entered by the Referee November 5, 2015. The first Department date stamp is for January 15, 2016; the second is stamped January 20, 2016; and a third was stamped September 20, 2016.
9. The school student profiles for Petitioner's children were received by the Department on December 14, 2016, for [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. The profiles list the Petitioner's address as the children's' residence and indicate they live with the father. [Exhibit I.]
10. The Petitioner's caseworker determined that the Petitioner was the primary caretaker on December 8, 2016; and no action was concluded to remove the children from their mother's case.
11. The Petitioner's caseworker was sent two emails requesting that the children be removed from the mother's, [REDACTED]'s, FAP case on December 8, 2016, and January 12, 2017. The children, as of the hearing, had not been removed from [REDACTED]'s case. [Exhibits A, B, and C and Hearing Summary.]
12. The Petitioner requested a timely hearing on March 16, 2017, protesting the Department's actions.

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 Petitioner is seeking to have his children, who live with him, included in his FAP group. The Department, as of the hearing date, had not added the children Brandon, Krystal and Eric to Petitioner's group even though Petitioner's caseworker sent two emails (internal) to the caseworker for the children's mother requesting that the children be removed from her group. The requests were made on December 8, 2016, and January 12, 2017. [Exhibit C and D.] In the emails, the Petitioner's caseworker determined that the Petitioner was the primary caretaker of [REDACTED], [REDACTED] and [REDACTED]. [Exhibit C and B.] The determination was made due to a November 3, 2016, request to have the children added to Petitioner's group. [Exhibit G.]

In support of Petitioner's request to add the children to his FAP group, Petitioner provided a Referee Recommendation and Order (Interim Order) dated November 5, 2015, to the Department on September 20, 2016. The Referee's Order gave the children's Mother, [REDACTED], parenting time as follows: "Every Thursday overnight with the children to be returned to Father on Friday morning prior to school and every weekend from Friday after school to Sunday evening at 6 p.m." [Exhibit J.] At the hearing, the Department indicated that as of the hearing the children had not been added to Petitioner's FAP group. The Referee's Order was signed by a Family Court judge and affirmed on December 2, 2015. [Exhibit J.] The Petitioner also provided the Department school records (student profiles) for [REDACTED], [REDACTED], [REDACTED] and [REDACTED], which were received by the Department on December 14, 2016. The school profiles list the Petitioner's address as the children's residence and indicate that the children live with Petitioner. [Exhibit I.]

Department policy requires that the Department take action on member adds as follows:

FAP Only

For non-income changes, complete the FAP eligibility determination and required case actions in time to affect the benefit month that occurs 10 days after the change is reported. See BEM 212, Food Assistance Program Group Composition, and BEM 550, FAP Income Budgeting, for policy regarding effective dates for member adds. The benefit month **cannot** be earlier than the month of the change. BAM 220, (April 1, 2017), p. 10

Bridges will help determine who must be included in the Food Assistance Program (FAP) group prior to evaluating the non financial and financial eligibility of everyone in the group.

Food Assistance Program group composition is established by determining all of the following:

1. Who lives together?
2. The relationship(s) of the people who live together.
3. Whether the people living together purchase and prepare food together or separately. BEM 212 (January 1, 2017), p. 1.

Living with means sharing a home where family members usually sleep and share **any** common living quarters such as a kitchen, bathroom, bedroom or living room. Persons who share **only** an access area such as an entrance or hallway or non-living area such as a laundry room are **not** considered living together. BEM 212, p. 3.

The Department is charged with determining the primary caretaker of children when determining FAP group composition. Department policy provides:

When a child spends time with multiple caretakers who do not live together such as joint physical custody, parent/grandparent, etc., determine a primary caretaker. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent caretaker(s).

Parents and their children **under** 22 years of age who live together **must** be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group.

The child is **always** in the FAP group of the primary caretaker. If the child's parent(s) is living in the home, he/she must be included in the FAP group.

Exception: If otherwise eligible, the absent caretaker may receive FAP benefits for the child when the child is visiting the absent caretaker for more than 30 days (not temporarily absent from the primary caretaker's home.)

Determine primary caretaker by using a twelve-month period. The twelve-month period begins when a primary caretaker determination is made. To determine the primary caretaker:

- Ask the client how many days the child sleeps at his/her home in a calendar month.
- Accept the client's statement unless questionable or disputed by another caretaker. If primary caretaker status is questionable or disputed, verification is needed.
- Allow both caretakers to provide evidence supporting his/her claim.
- Base your determination on the evidence provided by the caretakers; see **VERIFICATION SOURCES**.

Document who the primary caretaker is in the case. BEM 212, pp. 3-4

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, pp. 1-2.

The Department must 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, p. 6

The Department also **must accept the Client's statement regarding the number of days per month (on Average) a child sleeps in their home**, when determining primary caretaker. **Verify only if questionable or disputed by the other parent.** BEM 212, p. 11.

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, p. 14

In this case, the Department failed to comply with the policy found in BEM 212 even when presented with school records and divorce proceedings Referee Order affirmed by a Family Court judge regarding parenting time for the mother and where the children were residing during the week. In addition, the Department had at least two caseworkers in the same office involved; one caseworker who was assigned the mother's case who had left home where the children were living. The other caseworker was assigned to the Petitioner's case. The Department failed to resolve the issue. However, the Petitioner's caseworker concluded he was the primary caretaker based upon the information provided to the Department by the Petitioner.

Based upon the above-referenced policy, it is determined that the Department failed to process the request for member add to Petitioner's FAP group when it received the Court approved Referee Order on September 20, 2016, and the Children's School records provided to the Department on December 14, 2016. No request for verification by the Department regarding the children's school records or living situation were presented at the hearing; and thus, it is concluded the Department failed to take action to add the three remaining children when requested on November 3, 2016. [Exhibit G.]

Based upon the information and testimony provided by the Petitioner and the evidence presented at the hearing by the Department, it is determined that the Petitioner has demonstrated that he is the primary caretaker as previously determined by the Department caseworker but not acted upon. The information clearly establishes the Petitioner as primary caretaker, and Petitioner is acknowledged as such in his caseworker's email to the mother's caseworker requesting the children be removed from the mother's case and the case notes. Therefore, it is concluded that the Department must process a member add of Petitioner's children: [REDACTED], [REDACTED], [REDACTED] and [REDACTED] as of December 2016 based upon the November 3, 2016, request date which was not acted upon. [Exhibit G.] The member adds are effective to affect the benefit month that occurs 10 days after the change is reported. BEM 220, p. 10.

BAM 406 provides Supplemental Food Assistance benefit issuances (supplements) **must** be issued:

When the regular FAP issuance for the current or prior month(s) is less than the group is eligible for, BAM 406, (July 1, 2013), p. 1.

FAP Supplements are limited to underissuances in the twelve months before the month in which the earliest of the following occurred:

- When the regular FAP issuance for the current or prior month(s) is less than the group is eligible for, or BAM 406, p. 3.

In addition, the Department must determine why the Petitioner's son, Michael's, MA is inactive. The Department presented no evidence on this issue other than the conclusion that the case was inactive. Thus, it is determined that the Department did not meet its burden of proof.

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 failed to process a FAP group change for member add in accordance with Department policy.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it presented no evidence why the Petitioner's son, [REDACTED]s, Medical Assistance was inactive.

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. The Department shall process an FAP group Member Add for [REDACTED], [REDACTED], [REDACTED] and [REDACTED] for December 2016 adding the minor children to Petitioner's FAP group.
2. The Department shall issue an FAP supplement to Petitioner for FAP benefits the Petitioner was otherwise eligible to receive in accordance with Department policy.
3. The Department shall review the Petitioner's son, Michael Quick's, eligibility for MA and activate MA for Michael as of the hearing request date, March 16, 2017, and determine ongoing eligibility.

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.

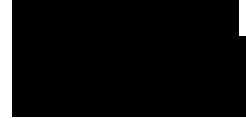
If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
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DHHS

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Petitioner



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