



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: October 5, 2017
MAHS Docket No.: 17-011343
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 October 3, 2017, from Detroit, Michigan. Petitioner was present and represented himself. Petitioner was also present with his significant other, [REDACTED]. The Department of Health and Human Services (Department) was represented by Todd Barrus, Assistance Payments Supervisor, and Debra Atkins, Eligibility Specialist.

ISSUE

Did the Department properly determine Petitioner's 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. Petitioner is an ongoing FAP recipient.
2. Petitioner was previously the only member of his FAP group.
3. On August 16, 2017, the Department sent Petitioner's significant other, [REDACTED], a Notice of Case Action informing her that her FAP benefit case was being closed effective September 1, 2017, ongoing.
4. On August 16, 2017, the Department sent Petitioner a Notice of Case Action informing him that his FAP benefit amount had increased as a result of [REDACTED] being added to his group.

5. On August 25, 2017, both Petitioner and [REDACTED] submitted a request for hearing to dispute 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.

Based on the stipulation of all parties, Petitioner and [REDACTED] hearing requests were consolidated and both cases were heard concurrently.

In this case, Petitioner was previously the only member in his FAP group. The Department received a third-party referral that Petitioner was potentially married to [REDACTED]. The Department initiated a Front End Eligibility (FEE) investigation into the possible unreported marriage. The Department retrieved posts from Petitioner's Facebook account which indicated he had been married to [REDACTED] (Exhibit C). On July 6, 2017, a Department Representative visited Petitioner's residence located at [REDACTED] and [REDACTED] residence located at [REDACTED]. The Department Representative did not enter either home. The Department discovered signs on the outside of the homes that read, "[REDACTED]" and "[REDACTED]" (Exhibit D).

On [REDACTED], 2017, an interview was conducted with Petitioner and [REDACTED]. Both individuals were wearing wedding rings at the interview. However, both Petitioner and [REDACTED] indicated they were not married. Petitioner informed the Department that he was engaged to [REDACTED], but maintained his own residence. Petitioner notified the Department that [REDACTED] would prepare one of his meals per day. The Department was unable to locate a recorded Marriage Certificate to show the couple was legally married.

Despite Petitioner's denial that he was not married and lived separately from [REDACTED], the Department believed Petitioner and [REDACTED] met the criteria to be in the same FAP group. [REDACTED] FAP benefit case was closed and she was added to Petitioner's FAP group effective September 1, 2017, ongoing.

FAP budget calculations require the consideration of the group size. The FAP group composition is established by determining all of the following: who lives together, the

relationship(s) of the people who live together whether the people living together purchase and prepare food together or separately, and whether the person(s) resides in an eligible living situation. BEM 212 (January 2017), p.1. Spouses who are legally married and live together must be in the same group. BEM 212, 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. BEM 212, p. 3. The phrase "purchase and prepare together" is meant to describe persons who usually share food in common. BEM 212, p. 5. Persons usually share food in common if any of the following conditions exist: they each contribute to the purchase of food, they share the preparation of food, regardless of who paid for it, or they eat from the same food supply, regardless of who paid for it. BEM 212, p. 6. In general, persons who live together and purchase and prepare food together are members of the same FAP group. BEM 212, p. 6.

Petitioner testified that he was romantically involved with [REDACTED], but was not married to her. Petitioner explained that the Facebook post indicating that he was married was in reference to an engagement party, not an actual wedding. Petitioner's home is next door to [REDACTED] home and both residences share a common driveway. Petitioner testified that he purchases food separately from [REDACTED] and keeps his food in his own home. Petitioner stated he spends a few hours per day with [REDACTED], but they sleep at their own residences. Petitioner testified [REDACTED] often prepares his meals for him, but she does not always consume the food.

The Department was unable to locate any recorded Marriage Certificate establishing Petitioner was legally married. The Department also did not inspect either Petitioner's or [REDACTED] home to show any indication that the couple was living together and sharing food. The signs located on the outside of the home were insufficient to establish that Petitioner was living with [REDACTED]. Therefore, the Department failed to satisfy its burden of showing that it acted in accordance with policy when it added [REDACTED] to Petitioner's FAP group.

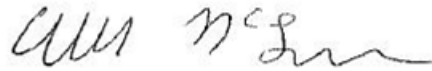
DECISION AND ORDER

The Department failed to satisfy its burden of showing that it acted in accordance with policy when it added [REDACTED] to Petitioner's FAP group. 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. Remove [REDACTED] from Petitioner's FAP group and redetermine Petitioner's FAP eligibility as of September 1, 2017, ongoing, based on a group size of one.

2. If Petitioner is eligible for FAP benefits, issue supplements to Petitioner for any FAP benefits he was eligible to receive but did not from September 1, 2017, ongoing; and
3. Notify Petitioner of its FAP decision in writing.



EM/jaf

Ellen McLemore
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

MDHHS-Hillsdale-Hearings

Petitioner



BSC4
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