



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 3, 2019
MOAHR Docket No.: 19-002520
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 April 11, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Aundrea Jones, Hearings Facilitator.

ISSUE

Did the Department properly process Petitioner's [REDACTED], 2019, application for Family Independence Program (FIP) cash assistance for the two children living with her and Food Assistance Program (FAP) 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. In early January 2019, two minor foster children were placed in Petitioner's care. Apparently, at that time, the children were on open benefits cases under their mother.
2. On [REDACTED] 2019, Petitioner submitted to the Department an application for FIP cash-assistance and FAP benefits. The FIP cash assistance portion of the application indicated that Petitioner was asking for cash assistance only on behalf of the two foster children.

3. On [REDACTED], 2019, the Department received from Petitioner a power of attorney form indicating that the two foster children were in Petitioner's custody and that Petitioner had power of attorney over the two children.
4. On February 4, 2019, the Department issued to Petitioner a Notice of Case Action denying Petitioner's application for FIP cash assistance because Petitioner allegedly failed to provide requested verifications and because the group allegedly did not include any eligible children.
5. On March 5, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her FAP application was approved, effective April 1, 2019, ongoing.
6. On [REDACTED], 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's failure to properly process her application for FIP cash assistance and FAP benefits. Specifically, Petitioner objects to the Department's denial of her FIP cash assistance application and the failure to add the two children to her FAP case until April 2019.

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).

In this case, two minor children were placed in Petitioner's care in January 2019. At the time, at least one of the children was included on an active benefits case with the Department under the children's mother's name. On [REDACTED] 2019, Petitioner submitted to the Department an application for FIP cash assistance benefits for just the two children and FAP benefits for the group that included herself and the two children. Petitioner's FIP cash assistance application was initially denied because the Department determined that Petitioner failed to provide requested verifications and that the group did not include an eligible child. Petitioner's FAP application was initially approved for a group of one. Effective April 1, 2019, the two children were added to Petitioner's FAP case. Petitioner filed a hearing request objecting to the denial of the FIP cash assistance application and the Department's failure to include the children on her FAP case from the time of application.

FIP DENIAL

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

The Department initially denied Petitioner's FIP cash assistance application based on the Department's conclusion that Petitioner failed to provide requested verifications and that Petitioner's group did not include any eligible children. During the hearing, the Department witness explained that the application was ultimately denied because Petitioner's income exceeded the limit for program eligibility.

FIP cash assistance is a program designed to help individuals and families become self-sufficient. BEM 209 (July 2017), p. 1. Cash assistance is available to an eligibility determination group (EDG) that meets all of the non-financial and financial requirements. BEM 209, p. 1. An EDG consists of those individuals living together whose information is needed to determine FIP eligibility. BEM 210 (April 2017), p. 2. When an individual applies for cash assistance, a determination is made regarding the makeup of the EDG for the program. BEM 209, p. 1. To be eligible for FIP cash assistance, the EDG must include a dependent child who lives with a legal parent, stepparent, or other qualifying caretaker while not including an adult who has been time-limited out of program eligibility. BEM 210, p. 1. Mandatory EDG members include all dependent children and their legal parents who are living together. BEM 210, p. 5. However, due to Petitioner's relationship to the two children, Petitioner would not be included in the FIP group. BEM 210, pp. 4-7.

Only a primary caretaker can receive FIP cash assistance for a child. BEM 210, p. 10. A primary caretaker is defined as 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 the days in a month. BEM 210, p. 9. If the child sleeps in the home of multiple caretakers an equal number of days in a month, the caretaker who applies and is eligible first is the primary caretaker for that program. BEM 210, p. 10. Notably, it is possible to have a different primary caretaker for different programs. BEM 210, p. 11. A dependent child is defined as an unemancipated child who lives with a caretaker and is under the age of 18 or age 18 and a full-time high school student. BEM 210, p. 2.

Based on the evidence presented, the initial denial was certainly erroneous. Within one week after Petitioner submitted the application, the Department had in its possession a power of attorney granting Petitioner authority over the two children. Thus, the children were eligible children at the time of application. Additionally, no evidence was presented regarding a verification request that was not timely responded to. Accordingly, the Department's initial decision to deny the application is reversed.

Additionally, the Department determined eventually that Petitioner was ineligible for FIP cash assistance because her income exceeded the limit for program eligibility. However, the Department based that decision on the premise that Petitioner was applying for FIP cash assistance for herself along with the two children. The Department witness conceded during the hearing that this action was incorrect as Petitioner was only applying for assistance for the children, which is allowed as Petitioner is not a mandatory group FIP group member. BEM 210, pp. 4-7. Accordingly, the Department has failed to show that it followed law and Department

policy in denying Petitioner's [REDACTED] 2019, application for FIP cash assistance for the two children placed in her care in January 2019.

FAP BENEFITS FROM APPLICATION THROUGH MARCH 31, 2019

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.

After applying for FAP benefits for the group of three on [REDACTED] 2019, the Department determined that Petitioner was eligible for FAP benefits based on a group size of one. Benefits were issued on that basis through the end of March 2019. Finally, effective April 1, 2019, the children were added to Petitioner's FAP case. Petitioner objects to the lower amount of benefits she received during the time period between her application and the addition of the children to her group in April.

Group size is relevant to the determination of an applicant's FAP benefit allotment; all else being equal, the more members in a group, the greater the allotment. RFT 260 (October 2018). People who live together and purchase and prepare food together are members of the same FAP group. BEM 212 (January 2017), p. 1. A person acting as a parent and the child or children for whom he or she acts as a parent who live with him or her must be in the same FAP group. BEM 212, p. 2.

In this case, Petitioner lived with two children who were placed in her care. Petitioner was acting as their parent. Thus, those children were required to be members of her FAP group. The Department, however, refused to place the children on Petitioner's FAP case until April 1, 2019, because the children were allegedly on the open case of the children's mother, who was no longer living with the children nor acting as their parent. The Department knew as early as January 29, 2019, that Petitioner had custody of the children. Thus, the Department erred in determining Petitioner's FAP benefits from the time of application through the end of March 2019 by basing her allotment on a group size of one instead of a group size of three.

DECISION AND ORDER

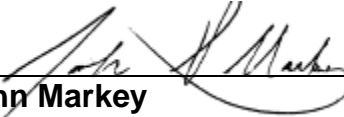
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with law and Department policy when it processed Petitioner's application for FIP cash assistance and FAP benefits. 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. Reprocess Petitioner's [REDACTED] 2019, application for FIP cash assistance and FAP benefits;
2. Properly determine Petitioner's FIP cash assistance based on Petitioner's request to have cash assistance only for the children;
3. Properly determine Petitioner's FAP benefits on the basis of Petitioner having a FAP group size of three;
4. If Petitioner is eligible for additional FIP cash assistance or FAP benefits, promptly issue to Petitioner a supplement; and
5. Notify Petitioner in writing of its decisions.

JM/cg



John Markey
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

Via Email:

MDHHS-Saginaw-Hearings
MDHHS-Wayne-Taylor-Hearings
B. Sanborn
B. Cabanaw
M. Holden
D. Sweeney
BSC4-Hearing Decisions
BSC2- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

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