



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], MI [REDACTED]

Date Mailed: July 15, 2019  
MOAHR Docket No.: 19-006199  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

### **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. After due notice, a telephone hearing was held on July 10, 2019, from Lansing, Michigan. Petitioner represented herself. The Department of Health and Human Services was represented by Tamika Auberry and Nicole Hawkins.

### **ISSUE**

Did the Department of Health and Human Services (Department) properly exclude a child from Petitioner's Food Assistance Program (FAP) group?

### **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 Food Assistance Program (FAP) recipient whose household includes a child excluded from the benefit group. Exhibit A, p 10.
2. On February 13, 2019, the Third Judicial Circuit Court ordered that Petitioner would share equal parenting time on a rotating 3 day on 3 day off schedule. Exhibit A, pp 6-9.
3. On June 6, 2019, the Department received Petitioner's request for a hearing protesting the size of her Food Assistance Program (FAP) benefit group. Exhibit A, pp 2-5.

## **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.

FAP group composition is established by determining who lives together, the relationship of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the persons resides in an eligible living situation. Department of Human Services Bridges Eligibility Manual (BEM) 212 (July 1, 2109), p 1.

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.

Petitioner is an ongoing FAP recipient protesting the exclusion of a child from her FAP benefit group. As ordered by the Third Judicial Circuit Court, this child spends equal time in Petitioner's household as another household, and the child moves back and forth between the two households on a rotating 3 day on, 3 day off schedule.

For the purposes of FAP eligibility, a child can only be a member of one FAP benefit group. The child is a member of the benefit group in the household where the person defined as the "primary caretaker" lives, as defined by BEM 212. The role of "primary caretaker" as defined by this policy is entirely separate from the circuit order granting equal parenting time among the two households.

Petitioner argued that in certain months, that the rotating parenting time will result in the child living with the household for 16 days.

However, the Department determined which household contains the "primary caretaker" by averaging how many nights the child spends in that home over a 12-month period as directed by BEM 212. Therefore, a single month where the child spending 16 days in Petitioners' household does not change the Department's determination of the "primary caretaker."

Although the circuit court's order allows for parenting time scheduled by agreement between the parents, the language of court order supports a finding that the child spends virtually half of the days in each month with each caretaker. Petitioner failed to offer evidence that the actual parenting time is different than as outlined in the court order.

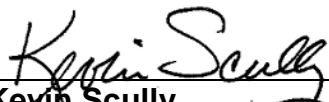
In cases such as this, the Department is required to consider the caretaker that is found eligible for FAP benefits first to be the primary caretaker. Since Petitioner was not found eligible for FAP benefits first, she is considered to be the "absent caretaker" for the purposes of determining the FAP benefit group. Petitioner is not absent from parenting time, just absent from the FAP group containing the child. The child can only be a part of one FAP benefit group and the Department placed the child in that group as directed by BEM 212.

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 determined the size of Petitioner's Food Assistance Program (FAP) benefit group.

**DECISION AND ORDER**

Accordingly, the Department's decision is AFFIRMED.

KS/hb

  
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**Kevin Scully**  
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**

Dora Allen  
14061 Lappin  
Detroit, MI 48205

Wayne County (District 76), DHHS

BSC4 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

**Petitioner**

[REDACTED]  
[REDACTED], MI [REDACTED]