



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: September 25, 2019
MOAHR Docket No.: 19-008911
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 September 19, 2019, from Lansing, Michigan.

Petitioner appeared and testified unrepresented. Petitioner called [REDACTED] [REDACTED] as a witness.

The Department of Health and Human Services (Department) was represented by Julie McLaughlin, FIM and Hearing Facilitator.

ISSUE

Did the Department properly propose to reduce Petitioner's FAP benefit on the basis of household composition?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On November 18, 2016 Petitioner was divorced pursuant a [REDACTED] Circuit Court order which ordered joint custody with Petitioner having the children every Tuesday and Thursday of every week, and, every other Friday, Saturday and Sunday. The children go to their other parent's home every other Sunday night after 6:00 pm. divorce decree awards Petitioner and her Ex-spouse "Joint Physical Custody" with parenting time awarded to Petitioner 'every other weekend starting on Fridays at 3:30 pm at their children have finished school until Sunday's at 6:00 pm. Exhibit A.20.

2. After the 2016 divorce, Petitioner had a FAP case opened where the Respondent determined that Petitioner qualified as a 50/50 FAP group composition case due to 50/50 custody of the children. Exhibit A.7.
3. On July 12, 2019 Petitioner reapplied for FAP benefits. Petitioner's household again consists of herself and two minor children. The same custody arrangement is in place. The Department opened Petitioner's case as a group of one. Upon review of the divorce decree, the Department changed Petitioner's FAP benefits to a group size of 3 but then requested a review by a department agent. After information from the agent, the Department changed the group size to 1. The agent determined that Petitioner's custody was "less than 16 nights per month." Exhibit A.24.
4. Petitioner's Ex-spouse has not applied for FAP benefits and there is no issue or question regarding the first in time policy. Testimony of Respondent Representative.
5. On August 5, 2019 the Respondent issued a Notice of Case Action informing Petitioner that effective August 1, 2019 her FAP benefits will be reduced to \$154.00 per month on the basis that Petitioner "... is not the primary caretaker of the children." Exhibit A.8-9.
6. On [REDACTED] [REDACTED] [REDACTED] Petitioner filed a hearing request pursuant to the August 5, 2019 Notice of Case Action. The Department reinstated the benefits pending the outcome of the hearing due to the timely hearing request.

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, applicable policy is found primarily at BEM 212—FAP group composition. Corresponding federal regulations are found at 7 CFR 273.1. Applicable FAP composition policy states in part:

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.

Note: When a caretaker works during a child's normal sleep hours, include the nights the child sleeps away from home when due solely to the caretaker's employment as nights slept in the home of the caretaker; see Example 3.

- 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.

If the child **spends virtually half of the days** in each month, averaged over a twelve-month period with each caretaker, the caretaker who applies and is found eligible first, is the primary caretaker. The other caretaker(s) is considered the absent caretaker(s). BEN 212, p 5 of 13.

Here, the Department argues that Petitioner does not have her children half time and does not have joint custody. Petitioner argues that she does have her children half time and has joint custody per the Muskegon County divorce decree. In addition, the Department in part relies on the policy which instructs the Department to count the number of nights the child "sleeps" in a home; Petitioner points out that the very same policy on the very same page states that the Department is to count the place where the child spends "virtually half of the **days** in each month..."

The Department also testified that the agent indicated its investigation supported that Petitioner did not have her children half time or more. However, this representation is not supported by the narrative comments submitted by the Department regarding the agent's review. The agent apparently stated that Petitioner had the children less than 16 days per month. This however would mean that Petitioner has her children 15 days per month, which would meet the ½ days per month policy.

The Department seemed to have a different testimonial account of the agent's investigation. However, the hearsay is not only explicated contradicted by the written account, but the Department failed to bring the agent into the hearing as a witness where he could have been examined and cross examined. Petitioner credibly attack the credibility of the agent testifying that she contacted the agent to follow up and was informed that he was too busy to make personal contact with her.

After a careful review of the substantial and credible evidence, the undersigned finds that Petitioner meets the policy requirement that she is entitled to have her FAP benefits remain at a group size of 3 on the basis of her current joint custody arrangement, and the number of days the children reside each month with her. The divorce court award was specific—the custody arrangement is joint. The assignment of the number of “days” clearly splits the days equally. Policy clearly identifies days as a possible triggering measure. The arrangement is 50/50. Clearly the one who files first in time prevails. Moreover, the Department calculated Petitioner's FAP benefits at 3 when the 2016 divorce decree was issued.

It is further worth noting that the Department at the administrative hearing here testified that there is no issue in any case regarding first in time as Petitioner's spouse has not applied for FAP and is not in the process of applying.

Under these facts as applied to BEM 212 Petitioner has met her burden of proof and the Department has failed to sufficiently rebut.

For these reasons and for the reasons stated on the record if any, the Department's reduction is not supported by the credible and substantial evidence of record and thus, cannot be upheld.

DECISION AND ORDER


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. Keep Petitioner's FAP case open at the \$ [REDACTED] allotment with a group size of three, and
2. Issue new notice to Petitioner informing her that she is eligible for \$ [REDACTED] in FAP benefits effective August 1, 2019 and continuing, and
3. Change Bridges to reflect that Petitioner is eligible for \$ [REDACTED] per month in FAP benefits from August 1, 2019 and continuing.

IT IS SO ORDERED.

JS/nr



Janice Spodarek
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

Jackie Stempel
2700 Baker Street
PO Box 4290
Muskegon Heights, MI
49444

Muskegon County DHHS- via electronic
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BSC3- via electronic mail

M. Holden- via electronic mail

D. Sweeney- via electronic mail

Petitioner

[REDACTED]
MI