



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: December 11, 2018  
MAHS Docket No.: 18-011194  
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 November 29, 2018, from Lansing, Michigan. Petitioner appeared and represented herself. Also appearing on behalf of Petitioner was witness [REDACTED]. The Department of Health and Human Services (Department) was represented by Diana Weyhmiller, Assistance Payments Supervisor, Lavonne Harbey, Eligibility Specialist, and Scott Matwiejczyk, Regulation Agent for the Department's Office of Inspector General (OIG). During the hearing, a 45-page packet of documents was offered and admitted as Exhibit A, pp. 1-45. Additionally, the parties stipulated to the post-hearing admission of a 19-page packet of documents as Exhibit B, pp. 1-19, and a one-page document as Exhibit 1. Those documents were received by the undersigned Administrative Law Judge and admitted into evidence on December 6, 2018.

**ISSUE**

Did the Department properly add Demario Pettaway to 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 was an ongoing recipient of FAP benefits with a group of six.
2. The father of two of Petitioner's children, [REDACTED], and his income were added to Petitioner's FAP group, effective October 1, 2018.

3. On October 22, 2018, Petitioner submitted to the Department a request for hearing objecting to the Department's action.

### **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 Department and Petitioner have a dispute as to Petitioner's FAP group composition. Petitioner and the Department agree that Petitioner lives together with her five children, two of whom are also the children of [REDACTED]. The Department claims that Mr. [REDACTED] moved into the home with Petitioner and added him to the group. Petitioner had consistently and adamantly denied that Mr. [REDACTED] lives with her and objects to his addition to her FAP group.

Financial eligibility for FAP benefits is determined on a group-wide basis. BEM 212 (January 2017), p. 1. Thus, subject to certain exceptions not applicable in this case, income for any FAP group member is considered when calculating a FAP group's monthly FAP benefits. BEM 212, p. 1. Parents and their children under age 22 who live together must be in the same group for FAP purposes. BEM 212, p. 1.

After an investigation into Petitioner's case, the Department determined that Mr. [REDACTED] lived with Petitioner and added Mr. [REDACTED] to Petitioner's FAP group. When Mr. Pettaway's income was added to the FAP budget, it caused Petitioner's monthly FAP amount to decrease. Petitioner claims that Mr. [REDACTED] never moved into her home and that the Department erroneously added Mr. [REDACTED] and his income to her FAP group.

Petitioner's consistent position with respect to Mr. [REDACTED] living situation is that Mr. Pettaway simply used Petitioner's address as a mailing address and that he never actually lived there. The evidence presented during the hearing is consistent with Petitioner's position. At no point was Mr. [REDACTED] actually observed at Petitioner's home. The only competent evidence presented by the Department was that Mr. [REDACTED] mailing address was the same as Petitioner's address. While that may raise a presumption that Mr. [REDACTED] lived there, Petitioner's credible and consistent testimony was sufficient to overcome that presumption.

After reviewing the record, it is found that the Department failed to meet its burden of substantiating its decision to add Mr. [REDACTED] to Petitioner's FAP group. Thus, the Department erred including Mr. [REDACTED] income when determining Petitioner's monthly FAP benefits. While it is true that if Mr. [REDACTED] was living with Petitioner and their common children, he would become a mandatory FAP group member. However, based on the evidence presented, the Department failed to show that Mr. [REDACTED] in fact lived with Petitioner at any time in 2018. Thus, the Department's decision to add Mr. [REDACTED] and his income to Petitioner's FAP group is reversed.

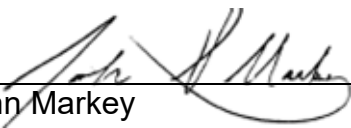
### **DECISION AND ORDER**

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 added Mr. [REDACTED] to Petitioner's FAP group, effective. 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. Delete Mr. [REDACTED] and his income from Petitioner's FAP case, effective October 1, 2018, ongoing.
2. Redetermine Petitioner's monthly FAP amount, effective October 1, 2018, ongoing.
3. If Petitioner is eligible for additional FAP benefits, issue Petitioner a supplement.

JM/nr

  
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John Markey  
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) 763-0155; 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**

Kimberly Kornoelje  
121 Franklin SE  
Grand Rapids, MI  
49507

Kent County DHHS- via electronic mail

BSC3- via electronic mail

M. Holden- via electronic mail

D. Sweeney- via electronic mail

**Petitioner**

