



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: February 12, 2021
MOAHR Docket No.: 20-007920
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 February 11, 2021. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Corlette Brown, Hearings Facilitator, and Pamela Brooks-Brown, Family Independence Specialist.

ISSUE

Did Petitioner submit a timely hearing request?

Did the Department properly determine Petitioner's Food Assistance Program (FAP) group eligibility and 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 [REDACTED] 2020, Petitioner submitted an Application for FAP and Family Independence Program (FIP) benefits for himself and his two children.
2. On the same day, the Department issued a Notice of Case Action to Petitioner advising him that he was approved for FIP benefits for his son in the amount of \$158.00 per month effective June 1, 2020 and was eligible for FAP benefits for a group size of one which only included Petitioner, but that Petitioner's son was not eligible for FAP under Petitioner's case because his son was eligible in another case.

3. Petitioner's daughter eligibility was not determined anywhere for either program on the Notice of Case Action.
4. Between April and December, Petitioner believed that his children would be placed on his FAP case once they were removed from their mother's case and thought that process was underway.
5. On December 7, 2020, the Department received Petitioner's verbal request for hearing disputing the Department's failure to include his children in his FAP group.
6. In January 2021, Petitioner's children were placed on Petitioner's FAP case.

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, Petitioner disputes the Department's failure to place his children on his FAP case effective as of his Application on [REDACTED] 2020.

Policy provides that clients must file their hearing requests with the local office within 90 days from the date of the written notice of case action. BAM 600 (January 2020), p. 6. However, in FAP cases, the client may request a hearing disputing the current level of benefits at any time within the benefit period. BAM 600, p. 7. The Department issued a Notice of Case Action regarding Petitioner's and his son's FAP eligibility on [REDACTED] 2021. Therefore, Petitioner's hearing request as it relates to his son's eligibility cannot be addressed by this decision from April 2020 through the month before his hearing request. However, Petitioner's daughter's eligibility for FAP was not addressed by the Notice of Case Action in April 2020 and no evidence was presented that Petitioner was notified of her eligibility on another date. Since the Department failed to take action and there was no Notice of Case Action attributable to Petitioner's daughter's eligibility, Petitioner's daughter's FAP eligibility may be addressed by this decision for the period April 2020, ongoing.¹ Finally, because Petitioner can request a hearing at any time

¹ It is noted that the Department stated at the start of the hearing that both children were listed on the Application but then later changed its testimony indicating that only Petitioner's son was listed. Petitioner testified that he applied for both children. Given Petitioner's testimony, the Department's initial testimony,

regarding the current month's FAP benefit rate, Petitioner's son's eligibility can be reviewed by this decision as of December 2020, when Petitioner requested the hearing.

FAP group composition is determined by who lives together, the relationships of those living together, whether they purchase and prepare food together, and finally, whether there are any special considerations based in policy. BEM 212 (July 2019), p. 1. Parents and their children under 22 years of age who live together must be in the same group. *Id.* For minor children, the primary caretaker must be considered to determine FAP group composition and eligibility. BEM 212, p. 2. 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. *Id.* Only one person can be the primary caretaker and anyone else is considered the absent caretaker. BEM 212, p. 3. The child is always in the group of the primary caretaker. *Id.* If the primary caretaker status is disputed or questionable, the Department must seek verification and both caretakers are allowed to provide evidence supporting their claim. BEM 212, p. 4. Primary caretaker status must be reevaluated when a second caretaker disputes the first caretaker's claim that the children sleep in their home more than half the nights in the month on average or when the second caretaker applies for assistance for the same child. BEM 212, p. 5. Policy further provides the following example:

██████ has lived in Mom's home more than half the days in a month on average over the past several years. He is now a teenager and becoming a problem for Mom. There is a change in the custody arrangement. Mom and Dad agree that it would be better for ██████ to live with Dad. They now expect him to stay at Dad's home more than half the days in a month, when averaged over the next twelve months. Dad is now the primary caretaker. Mom is considered the absent caretaker.

Petitioner applied for FAP and FIP benefits for his two children. The Department failed to address the eligibility of Petitioner's daughter and denied Petitioner's son's eligibility in Petitioner's case because the children were already listed on the mother's case. Policy specifically dictates that when a second caretaker applies for assistance for the same child, primary caretaker status must be evaluated. Given policy and the example provided, there is no reason why the Department should not have investigated the children's status in the home and sought verifications to determine the primary caretaker. If both parents had the same address listed for their residence, the cases should have been combined. If the mailing address was the same, but living situations were different, the Department should have taken action to resolve any discrepancies. Therefore, the Department must go back and determine Petitioner's FAP group eligibility with respect to his daughter as of the Application dated ██████ 2020.

the slim likelihood that Petitioner would apply for one child but not the other, and because the Department did not produce the actual Application in question to provide clarity in this case, it is assumed that Petitioner applied for both children to be placed on his FAP case.

Furthermore, since Petitioner can request a hearing regarding his current FAP benefit rate, the Department must reevaluate whether son should be included in the group as of December 2020, when Petitioner submitted his request for hearing.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's FAP group eligibility.

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. Redetermine Petitioner's daughter's FAP eligibility in Petitioner's FAP group as of Petitioner's Application dated [REDACTED] 2020;
2. If otherwise eligible, issue supplements to Petitioner for FAP benefits not previously received effective [REDACTED] 2020;
3. Redetermine Petitioner's daughter's and son's FAP eligibility as part of Petitioner's FAP group as of December 2020;
4. If otherwise eligible, issue supplements to Petitioner for FAP benefits not previously received effective December 2020;
5. Notify Petitioner in writing of its decisions.

AMTM/cc



Amanda M. T. Marler
Administrative Law Judge
for Elizabeth Hertel, 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-Wayne-31-Grandmont-Hearings
BSC4-HearingDecisions
D. Sweeney
M. Holden
MOAHR

Petitioner- Via USPS:

