



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: February 26, 2021  
MOAHR Docket No.: 21-000192  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Landis Lain**

### **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 24, 2021, from Lansing, Michigan. Petitioner [REDACTED] self-represented at the hearing. The Department of Health and Human Services (Department or Respondent) was represented by Angela Drost, Assistance Payments Worker/Hearings Facilitator.

Department's Exhibit A pages 1-22 were admitted as evidence.

### **ISSUE**

Did the Department properly deny Petitioner's application for 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. On [REDACTED] 2020, Petitioner filed an application for Food Assistance Program and Medical Assistance Program benefits.
2. On December 18, 2020, the application was approved for Petitioner and one child.
3. The application was denied because the other two children, [REDACTED] and [REDACTED] are receiving benefits in another case.
4. December 18, 2020, the Department sent Petitioner Notice of the negative action.

5. On January 11, 2021, Petitioner filed a Request for Hearing to contest the Department's negative action.
6. On January 21, 2021, the Michigan Office of Administrative Hearings and Rules received a Hearing summary and attached documents.
7. Petitioner conceded on the record that the mother of the children is considered the custodial parent.

### **CONCLUSIONS OF LAW**

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Pertinent Depart policy indicates:

**Medical Assistance:**

The primary caretaker is the parent 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, when averaged over a twelve-month period. The twelve-month period begins at the time the determination is being made. Vacations and visitation with the absent parent do not interrupt primary caretaker status.

Joint physical custody occurs when parents alternate taking responsibility for the child's day-to-day care and supervision. It may be included in a court order or may be an informal arrangement between parents. A child is considered to be living with only one parent in a joint custody arrangement. This parent is the primary caretaker. BEM 211, page 5

Primary Caretaker verification sources are:

- Court order that addresses custody or visitation.
- School records indicating who enrolled the child and who is called in an emergency situation.
- Medical records stating where the child lives, who is responsible for the child's medical care.
- Child care records showing where the child lives and who makes and pays for the child care arrangements. BEM 211, page 9

A dependent child can be temporarily absent from only one home. When a child spends time with two parents who do not live together, a primary caretaker must be determined. Scheduled vacations and visitation do not interrupt primary caretaker status. BEM 211, page 7

### **Food Assistance Program:**

Bridges will help determine who must be included in the Food Assistance Program (FAP) group prior to evaluating the non-financial and financial eligibility of everyone in the group. Food Assistance Program group composition is established by determining all of the following:

1. Who lives together.
2. The relationship(s) of the people who live together.
3. Whether the people living together purchase and prepare food together or separately.
4. Whether the person(s) resides in an eligible living situation; see LIVING SITUATIONS in this item. BEM 212, page 1

When a child spends time with multiple caretakers who do not live together such as joint physical custody, parent/grandparent, etc., determine a primary caretaker. Only one person can be the primary caretaker and the other

caretaker(s) is considered the absent caretaker(s). The child is always in the FAP group of the primary caretaker. If the child's parent(s) is living in the home, he/she must be included in the FAP group. Exception: If otherwise eligible, the absent caretaker may receive FAP benefits for the child when the child is visiting the absent caretaker for more than 30 days (not temporarily absent from the primary caretaker's home.)

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). BEM 212, pages 3-4

In this case, Petitioner conceded on the record that the other parent was the custodial parent.


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 has established by the necessary competent, material and substantial evidence on the record that it was acting in accordance with Department policy when it determined that Petitioner was not eligible to receive Food Assistance Program benefits for [REDACTED] and [REDACTED] because they have an open Food Assistance Program and Medical Assistance case with the other parent and because the other parent is considered the custodial

parent. The Department has established its case by a preponderance of the evidence. If circumstances have changed, Petitioner would need to reapply for benefits.

**DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED**.

LL/hb

  
\_\_\_\_\_  
**Landis Lain**  
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

**DHHS**

Kent County via electronic mail

BSC3 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

**Petitioner**

[REDACTED], MI [REDACTED]