



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: August 26, 2022
MOAHR Docket No.: 22-003279
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Danielle Nuccio

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 August 25, 2022. The Petitioner appeared and represented himself. The Department of Health and Human Services (MDHHS) was represented by Raven Douphard, Hearings Facilitator.

ISSUE

Did MDHHS properly determine Petitioner's group size when determining his Food Assistance Program (FAP) monthly amount?

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.
2. Petitioner receives \$ [REDACTED] in monthly unearned income from Retirement, Survivors, and Disability Insurance (RSDI) (Exhibit A, pp. 11-12).
3. On March 25, 2022, MDHHS received Petitioner's Change Report form, reporting that he had earned income from employment at [REDACTED] (Employer) (Exhibit A, p. 5).
4. On June 9, 2022, MDHHS issued a Notice of Case Action to Petitioner, informing him that his FAP benefits had decreased to \$ [REDACTED] monthly, effective July 1, 2022. MDHHS also informed Petitioner that his minor son, [REDACTED] (Son), would no longer be included in his FAP group because he is a member of Son's mother's FAP group (Exhibit A, pp. 13-17).

5. On [REDACTED], 2022, MDHHS received Petitioner's timely submitting hearing request, disputing the determination of his FAP group size (Exhibit A, pp. 3-4).

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 determination of his FAP group size, specifically that Son is not included in his FAP group.

FAP 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

BEM 212 (January 2022), p. 1.

Parents and their children under 22 years of age who live together must be in the same group. When a child spends time with multiple caretakers who do not live together, such as joint physical custody, MDHHS must determine a primary caretaker. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent caretaker. 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. 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. BEM 212, pp. 1-4.

In this case, Petitioner submitted a Change Report to MDHHS reporting earned income from Employer. MDHHS received this Report on March 25, 2022, but, due to agency error, it was not processed until June 2022. MDHHS then asked Petitioner if Son resides with him 15 days per month. Petitioner testified that he was unsure of the exact

amount of days when asked, but had provided Joint Custody Agreement for Son to MDHHS on December 17, 2020. Effective July 1, 2022, MDHHS removed Son from Petitioner's FAP group, stating that he was included in his mother's FAP group. MDHHS testified that the case worker that took this action noted that Son resided with Petitioner 17 days per month. MDHHS was unable to testify as to why Son was removed from Petitioner's FAP group on July 1, 2022, when the Joint Custody Agreement was unchanged. MDHHS should have determined whether Petitioner or Son's mother was eligible for FAP first and included Son in that group, pursuant to BEM 212. Since MDHHS was unable to testify as to why Son was removed at this time, it failed to satisfy its burden of showing that it acted in accordance with Department policy when it changed Petitioner's group size.

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 group size.

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. Determine the proper FAP group size for Petitioner;
2. If Petitioner's group size increases, recalculate his monthly FAP amount based on a group size of two and issue supplements, if necessary;
3. Notify Petitioner of its decision in writing.

DN/mp



Danielle Nuccio

Administrative Law Judge

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-Electronic Mail :

DHHS
MDHHS-Wayne-18-Hearings
D. Sweeney
M. Holden
MOAHR
BSC4

Via-First Class Mail :

Petitioner
[REDACTED]
[REDACTED], MI [REDACTED]