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GOVERNOR

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

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DIRECTOR

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Date Mailed: December 13, 2022
MOAHR Docket No.: 22-005216
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 hearing was held via telephone conference line on December 7, 2022. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Corlette Brown, hearings facilitator, and Shanita Crawford, specialist.

ISSUE

The issue is whether MDHHS properly determined Petitioner's group size in determining Food Assistance Program (FAP) eligibility.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. As of January 2022, Petitioner was an ongoing recipient of FAP benefits with a benefit period certified through ██████████ 2022.
2. On February 28, 2022, Petitioner submitted to MDHHS a Redetermination form reporting he lives with his minor daughter, ██████████ (hereinafter, "Daughter").
3. On an unspecified date in or near ██████████ 2022, MDHHS approved Daughter's mother for FAP benefits and included Daughter in her FAP benefit group.
4. On an unspecified date, Petitioner submitted to MDHHS documents verifying he was the primary caretaker for Daughter.

5. On November 4, 2022, Petitioner requested a hearing to dispute MDHHS's failure to process Petitioner's FAP eligibility beginning [REDACTED] 2022.
6. On [REDACTED] 2022, MDHHS processed Petitioner's Redetermination form and approved Petitioner for FAP benefits in [REDACTED] 2022 based on a benefit group that included Daughter. MDHHS also approved Petitioner for FAP benefits beginning [REDACTED] 2022 based on a benefit group that did not include Daughter.

CONCLUSIONS OF LAW

The 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. MDHHS administers the FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. FAP policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute MDHHS's failure to process his FAP eligibility after his benefit period expired beginning [REDACTED] 2022. MDHHS partially resolved Petitioner's dispute after Petitioner requested a hearing. A Notice of Case Action dated [REDACTED] 2022, approved Claimant for FAP in [REDACTED] 2022 based on a benefit group that included Daughter; beginning [REDACTED] 2022, MDHHS approved Claimant for FAP based on a benefit group that did not include Daughter. Exhibit A, pp. 12-14. Claimant disputed MDHHS's failure to include Daughter in his benefit group since April 2022.

When a child spends time with multiple caretakers who do not live together, MDHHS is to determine a primary caretaker. BEM 212 (January 2022) p. 3. 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. *Id.*, p. 2. Only one person can be the primary caretaker; non-primary caretakers are considered absent caretakers. *Id.*, p. 4.

If primary caretaker status is questionable or disputed, verification is needed. *Id.* MDHHS is to allow both caretakers to provide evidence supporting his/her claim. Suggested verifications include the following: the most recent custody order, school records stating who enrolled the child and/or the first contact for emergency, childcare records stating who picks up the children, and medical provider records stating who takes the child to appointment. *Id.*, p. 12.

Petitioner submitted a Redetermination form to MDHHS on February 28, 2022, reporting Daughter as a household member. Exhibit A, pp. 7-11. During the hearing, MDHHS acknowledged that Petitioner verified his status as Daughter's primary caretaker since at least February 2022. Based on Petitioner's reporting and verification, MDHHS should have added Daughter to Petitioner's FAP group to affect the first month of the redetermined benefit period: [REDACTED] 2022. After eight months, MDHHS eventually approved Claimant for FAP benefits beginning [REDACTED] 2022, but only included Daughter

in Petitioner's FAP group for March 2022. MDHHS stated it was technologically hamstrung to add Daughter to Petitioner's group beginning April 2022 because Daughter was previously added to her mother's benefit group on a separate case.¹

When reinstating benefits, MDHHS is to process the case as if no closure occurred. BEM 205 (January 2022) p. 2. Had MDHHS timely processed Petitioner's redetermination in February or March 2022, it would have done so before Daughter was added to her mother's FAP case in April 2022. Instead, MDHHS allowed Petitioner's FAP eligibility to lapse and attempted to reinstate benefits months later.

As of the hearing date, Daughter was still on her mother's FAP benefit case rather than Petitioner's. MDHHS provided no reasonable excuse as to why it failed to process Petitioner's FAP eligibility over eight months or why Daughter was not removed from her mother's case in the month since Petitioner requested a hearing. Given the evidence, Petitioner is entitled to ongoing FAP benefits beginning [REDACTED] 2022 based on a FAP benefit group that includes Daughter.²

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's FAP eligibility beginning [REDACTED] 2022. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Reprocess Petitioner's FAP eligibility beginning [REDACTED] 2022 subject to the findings that Petitioner timely reported and verified his status as primary caretaker to Daughter; and
- (2) Issue supplements and notice in accordance with policy.

The actions taken by MDHHS are **REVERSED**.

CG/mp



Christian Gardocki

Administrative Law Judge

¹ Persons may not participate in more than one FAP group within the same month. BEM 212 (January 2022) p. 4.

² MDHHS policy precludes Daughter from receiving FAP benefits on two different cases (see BEM 212). However, MDHHS can avoid violating its policy by adding Daughter to Petitioner's case beginning [REDACTED] 2022 and pursuing recoupment against Daughter's mother for any months since April 2022 that FAP benefits were issued for Daughter.

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-31-Grandmont-Hearings
D. Sweeney
M. Holden
MOAHR
BSC4

Via-First Class Mail :

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]