



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: March 27, 2023
MOAHR Docket No.: 23-000922
Agency No.: ██████████
Petitioner: ██████████

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 March 20, 2023. The Petitioner appeared and represented herself. The Department of Health and Human Services (MDHHS) was represented by Valarie Foley, Hearings Facilitator, and Tanya Bridgewater, Assistant Payments Worker.

ISSUE

Did MDHHS properly determine Petitioner’s group size when processing her Food Assistance Program (FAP) application?

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 ██████████ 2022, Petitioner submitted an application for FAP and Child Development and Care (CDC) benefits for her two minor children, ██████████ (Daughter) and ██████████, and herself. Petitioner reported that Daughter lives in her home (Exhibit A, pp. 11-18).
2. On November 22, 2022, MDHHS issued a Notice of Case Action to Petitioner, informing her that she was approved for \$23.00 in monthly FAP benefits for a group size of two. MDHHS informed Petitioner that Daughter was not included in her group because she is active on another FAP case with her father (Father) (Exhibit A, pp. 19-25).
3. On February 15, 2023, MDHHS received Petitioner’s timely submitting hearing request, disputing the determination of her FAP group size (Exhibit A, pp. 3-10).

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 her FAP group size, specifically that Daughter is not included in her 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 reported that Daughter lives with her full-time. While processing Petitioner's application, MDHHS discovered that Daughter is active on another FAP case, with Father. Petitioner contends that Daughter spends every night in Petitioner's home. MDHHS testified that they reached out to Father's caseworker to verify where Daughter lives but did not receive a response. MDHHS testified that Petitioner's statement alone was not sufficient to add Daughter to her FAP group and that Petitioner needed to submit documentation to establish that she is Daughter's primary caretaker.

However, MDHHS did not inform Petitioner that this documentation was needed. Rather, Petitioner learned that Daughter was excluded from her FAP group when she received the Notice of Case Action. MDHHS should have issued a Verification Checklist (VCL) to Petitioner to request this information. MDHHS is required to tell the client what verification is required, how to obtain it, and the due date. MDHHS uses the DHS-3503, Verification Checklist (VCL), to request verification. BAM 130 (January 2022), p. 3. Verification is requested when information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. BAM 130, p. 1. Since MDHHS had contradictory information regarding who Daughter's primary caretaker was, they should have issued a VCL to Petitioner, explaining that she must submit documentation to establish herself as primary caretaker, otherwise Daughter would not be included in Petitioner's FAP group. Since MDHHS did not issue a VCL to Petitioner to establish her FAP group size, they failed to act in accordance with policy in processing Petitioner's FAP application.

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 MDHHS did not act in accordance with Department policy when it processed Petitioner's FAP application.

DECISION AND ORDER


Accordingly, MDHHS' 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. Reprocess Petitioner's FAP application for [REDACTED] 2022 ongoing in accordance with Department policy and consistent with this Hearing Decision;
2. If Petitioner is eligible for supplements, issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from [REDACTED] 2022 ongoing.

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-19-Hearings
D. Sweeney
M. Holden
MOAHR
BSC4

Via-First Class Mail :

Petitioner

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