



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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██████████, MI ██████████

Date Mailed: July 14, 2023  
MOAHR Docket No.: 23-003267  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Linda Jordan**

**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 on July 6, 2023 via teleconference. Petitioner appeared and represented herself. Ilene Kott, Family Independence Manager, and Arnisha Woods, Eligibility Specialist, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

**ISSUES**

1. Did MDHHS properly determined Petitioner's Food Assistance Program (FAP) group composition?
2. Did MDHHS properly process Petitioner's request for a Medicaid (MA) member-add or a reported change in circumstances?
3. Did Petitioner present a triable issue regarding State Emergency Relief (SER)?

**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 April 29, 2023, Petitioner filed an application for MA and FAP on behalf of herself and four children (Exhibit A, p. 32). Petitioner reported that the father of two of the minor children, including ██████████ passed away on May 12, ██████████ (Exhibit A, p. 40).
2. On May 18, 2023, Petitioner filed a request for hearing regarding FAP, MA and SER (Exhibit A, pp. 3-5).

3. On June 5, 2023, MDHHS sent Petitioner a Notice of Case Action approving Petitioner for FAP benefits for a household of four, effective June 5, 2023 to May 31, 2024 (Exhibit A, p. 75). MDHHS determined that Petitioner's FAP group included three of her minor children but excluded Malik Harris because he was active on another case (Exhibit A, p. 76).
4. On June 6, 2023, MDHHS sent Petitioner a Notice of Case Action indicating that she was approved for FAP benefits for a household of four, effective May 1, 2023 to May 31, 2024 (Exhibit A, p. 83). ██████ was not included in the FAP group (Exhibit A, pp. 83-84).

### **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)**

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 FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

At the hearing, Petitioner confirmed that the only remaining dispute regarding her FAP benefits was the exclusion of her minor child, Malik. MDHHS confirmed that Malik was not included in Petitioner's FAP group because he was receiving FAP on his father's case.

For FAP, MDHHS must determine the FAP group composition in order to verify eligibility for benefits. To determine FAP group composition, MDHHS considers (i) who lives together; (ii) the relationships of the people who live together; (iii) whether the people living together prepare food together; and (iv) whether the person resides in a special living situation which requires the consideration of other factors. BEM 212 (January 2022), p. 1. Living together means sharing a home where family members usually sleep and share any common living quarters, excluding access areas such as an entrance or hallway or a laundry area. *Id.*, p. 3.

MDHHS must also determine mandatory and non-mandatory group members based on the relationship of the people who live together. BEM 212, p. 1. If individuals are mandatory group members, they must be included in the same FAP group. *Id.* If they are non-mandatory group members, then MDHHS considers the factors listed above. *Id.* Parents and their children under age 22 who live together must be in the same group regardless of whether the children have their own spouse or a child who lives in the

group. *Id.* In situations involving shared custody of a minor child, MDHHS must determine who is the primary caretaker of the child. 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. BEM 212, pp. 2-5. 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. *Id.*, p. 4. The other caretaker is considered the absent caretaker. *Id.*

Here, MDHHS argued that it properly determined that [REDACTED] father was the primary caretaker of [REDACTED] based on the parties' joint custody arrangement, and because [REDACTED] father applied for FAP on his behalf and was approved first. Petitioner testified that she and [REDACTED] father share joint custody of [REDACTED] and that he spends equal time with both parents. Petitioner did not provide any testimony or documentation to show that there had been a change in custody or that [REDACTED] spent more time with Respondent than with his father. Accordingly, Petitioner failed to present sufficient evidence to show that she was the primary caretaker of [REDACTED] or that a change in primary caretaker status was warranted. Based on the record, MDHHS properly determined that Petitioner had a FAP group of four, which excluded [REDACTED].

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 acted in accordance with Department policy when it determined Petitioner's FAP group composition.

### **Medicaid (MA)**

MA 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. MDHHS administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MA is also known as Medical Assistance. BEM 105 (January 2021), p. 1.

In this case, Petitioner testified that she requested that her minor child, [REDACTED] be added to her MA case. MDHHS confirmed that [REDACTED] MA coverage was open and active, however, it was under her father's case and her father had passed away in 2022. MDHHS testified that it was working to resolve the matter but that it was not able to close [REDACTED] case due to the COVID-19 restrictions regarding continuous coverage.

MA consists of several MA is available (i) under SSI-related categories to individuals who are aged (65 or older), blind or disabled, (ii) to individuals who are under age 19, parents or caretakers of children, or pregnant or recently pregnant women, and (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage. BEM 105 (October 2016), p. 1; BEM 137 (October 2016), p. 1. HMP is a Modified Adjusted Gross Income (MAGI)-related MA category that provides MA coverage to

individuals who (i) are 19 to 64 years of age; (ii) have income at or below 133% of the federal poverty level (FPL) under the MAGI methodology; (iii) do not qualify for or are not enrolled in Medicare; (iv) do not qualify for or are not enrolled in other MA programs; (v) are not pregnant at the time of application; and (vi) are residents of the State of Michigan. BEM 137, p. 1.

Group composition for MAGI-related MA categories follows tax filer and tax dependent rules. BEM 211 (July 2019), p. 1. The size of the household will be determined by the principles of tax dependency in the majority of cases. *Id.* Parents, children and siblings are included in the same household. *Id.* For SSI-Related MA, Group 2 Pregnant Women, Group 2 Persons Under Age 21, Group 2 Caretaker Relative, MDHHS is required to determine the fiscal and asset groups separately for each person requesting MA. *Id.*, p. 5. Only persons living with one another can be in the same group. *Id.* In cases of joint custody, MDHHS is required to determine the primary caretaker and only the primary caretaker can be in the child's fiscal group. *Id.*

Here, Petitioner submitted a MA application on behalf of [REDACTED] on April 29, 2023. Petitioner also informed MDHHS that [REDACTED] father passed away in 2022. Although [REDACTED] had active MA coverage on her father's case, MDHHS should have treated the application as a request for a member-add. See BAM 110 (October 2022), p. 7. Additionally, when MDHHS receives an application for program benefits that are already active, it must review the application for changes in circumstances. *Id.*, p. 8. MDHHS erred by not processing Petitioner's request to add [REDACTED] to her MA case and not processing the change related to Arlon's situation.

Although MDHHS was prohibited from terminating MA coverage due to the COVID-19 Public Health Emergency, the prohibition would not prevent MDHHS from adding a minor child to her primary caretaker's MA case, especially if the change did not result in a loss of coverage. ESA Memo 2020-12 provides that effective March 20, 2020, MA cases, including Healthy Michigan Plan (HMP), must not be closed unless the client requests the closure, dies, or moves out of state. ESA Memo 2020-12 (March 2020), p. 1. In this case, Petitioner was the primary caretaker of Arlon after her father's passing. If the change did not result in a loss of coverage, then the prohibition would not apply.

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 failed to process Petitioner's request for member-add or change report regarding Arlon's MA status.

### **State Emergency Relief (SER)**

SER is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

Regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 792.10101 to R 792.10137 and R 792.11001 to R 792.11020. Rule 792.11002(1) provides as follows:

An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance is denied or is not acted upon with reasonable promptness, has received notice of a suspension or reduction in benefits, or exclusion from a service program, or has experienced a failure of the agency to take into account the recipient's choice of service.

State actions which entitle a client to a hearing include a denial of an application, a reduction in the amount of program benefits, a suspension or termination of program benefits, restrictions under which benefits are provided, and a delay of any action beyond the standard of promptness. BAM 600, p. 5.

In this case, Petitioner alleged that she filed a recent request for SER that was not processed by MDHHS. MDHHS testified that it had not received an SER application from Petitioner in 2023. Petitioner failed to submit sufficient evidence to the contrary. No evidence was presented to show that she submitted an SER application to MDHHS in recent months. Because there was no evidence of a denied application, Petitioner has not presented a triable issue and is not entitled to a hearing on this matter. Petitioner's request for hearing regarding SER is **DISMISSED** for lack of jurisdiction.

### **DECISION AND ORDER**

MDHHS' decision regarding Petitioner's FAP group composition is **AFFIRMED**.

MDHHS's decision regarding Petitioner's MA group composition is **REVERSED**. MDHHS 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. Process Petitioner's April 29, 2023 request to add [REDACTED] to her MA case; and
2. Notify Petitioner of its decision in writing.

Petitioner's request for hearing regarding SER is **DISMISSED** for lack of jurisdiction.



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**Linda Jordan**  
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**  
Dora Allen  
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**Via-First Class Mail :**

**Petitioner**

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