



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

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Date Mailed: October 20, 2023
MOAHR Docket No.: 23-004917
Agency No.: ██████████
Petitioner: ██████████ ██████████

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 September 20, 2023, from Lansing, Michigan. ██████████ ██████████ the Petitioner, appeared on his own behalf. The Department of Health and Human Services (Department) was represented by Ebony Manuel, Assistance Payments Worker (APW).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-34.

ISSUE

Did the Department properly determine Petitioner's eligibility for the Food Assistance Program (FAP)?

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 July ██████ 2023, Petitioner submitted an Assistance Application to add his daughter KW to his active FAP case. (Exhibit A, pp. 1 and 6-13)
2. On August ██████ 2023, the Department contacted Petitioner to discuss the application as KW was active on her mother's case. (Exhibit A, p. 1)
3. On August ██████ 2023, a Notice of Case Action was issued to Petitioner indicating KW could not be added to his FAP case because she was already active on another case. (Exhibit A, pp. 26-31)

4. On August █ 2023, Petitioner provided child support paperwork showing he and the mother have joint legal and physical custody of KW. (Exhibit A, pp. 1 and 14-17)
5. On August 15, 2023, Petitioner filed a hearing request contesting the Department's determination¹. (Exhibit A, pp. 3-4)
6. On August █ 2023, the Department contacted the mother of KW, and verified that the child was living with Petitioner. (Exhibit A, p. 1)
7. KW was removed from her mother's case effective August 16, 2023 and added to Petitioner's case. (Exhibit A, p. 1)
8. On August █ 2023, a Notice of Case Action was issued indicating KW was added to Petitioner's FAP case and the monthly benefit increased to \$█ effective September 1, 2023. (Exhibit A, pp. 32-34)

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.

Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212, January 1, 2022, p. 1.

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, p. 2.

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

¹ The programs indicated on the hearing request included insurance, Family Independence Program (FIP), Medical Assistance (MA), Child Development and Care (CDC), and Food Assistance Program (FAP). However, the evidence presented for hearing indicated the only case actions taken by the Department were regarding FAP. There was no evidence of any contested case actions regarding FIP, MA, or CDC.

parent(s) is living in the home, he/she must be included in the FAP group. BEM 212, p. 3. If primary caretaker status is questionable or disputed, verification is needed. BEM 212, p. 4.

Re-evaluate primary caretaker status when any of the following occur: a new or revised court order changing custody or visitation is provided; there is a change in the number of days the child sleeps in another caretaker's home and the change is expected to continue, on average, for the next twelve months; a second caretaker disputes the first caretaker's claim that the child(ren) sleeps in their home more than half the nights in a month, when averaged over the next 12 months; a second caretaker applies for assistance for the same child. BEM 212, p. 5.

When requesting verifications, the Department is to Tell the client what verification is required, how to obtain it, and the due date. The Department is to use the DHS-3503, Verification Checklist (VCL), to request verification. BAM 130, January 1, 2023. For FAP, the Department is to allow the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. BAM 130, p. 7.

A member add that increases benefits is effective the month after it is reported or, if the new member left another group, the month after the member delete. BEM 212, p. 9.

In calculating the FAP budget, the Department considers income from unemployment benefits. The Department counts the gross amount as unearned income. BEM 503, January 1, 2023, pp. 37-38. For FAP, a shelter expense is allowed when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554, (April 1, 2023), p. 13. Shelter expenses include property taxes and insurance. BEM 554 p. 15. The heat/utility (h/u) standard covers all heat and utility costs including cooling, except actual utility expenses, for example, installation fees etc. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. FAP groups whose heat is included in their rent may still qualify for the h/u standard. Some additional ways include but are not limited to, receipt of the Home Heating Credit (HHC) or a Low Income Home Energy Assistance Payment (LIHEAP). The amount of either payment must be greater than \$20 in the month of application or in the immediately preceding 12 months prior to the application month. BEM 554, p. 16. FAP groups who pay for cooling (including room air conditioners) are eligible for the h/u standard if, they have the responsibility to pay for non-heat electric. BEM 554 p. 18. FAP groups not eligible for the h/u standard who have other utility expenses or contribute to the cost of other utility expenses are eligible for the individual utility standards. Use the individual standard for each utility the FAP group has responsibility to pay. BEM 554 p. 22.

In this case, it appears that the Department did not properly attempt to verify whether there was a change in primary caretaker until after Petitioner's hearing request was filed. On July █ 2023, Petitioner submitted an Assistance Application to add his daughter KW to his active FAP case. (Exhibit A, pp. 1 and 6-13). On August █ 2023, the Department contacted Petitioner to discuss the application as KW was active on her mother's case. (Exhibit A, p. 1). That same day, August █ 2023, a Notice of Case Action was issued to

Petitioner indicating KW could not be added to his FAP case because she was already active on another case. (Exhibit A, pp. 26-31). This would not have allowed time to request verification pursuant to the BAM 130 policy. Further, it is noted that there was no evidence that a Verification Checklist was issued by the Department.

On August █ 2023, Petitioner provided child support paperwork showing he and the mother have joint legal and physical custody of KW. (Exhibit A, pp. 1 and 14-17). However, this did not show which parent KW spends more than half of the days in a calendar month, on average, in a twelve-month period. Accordingly, it was not sufficient to establish that Petitioner was the primary caretaker.

On August 15, 2023, Petitioner filed a hearing request contesting the Department's determination. (Exhibit A, pp. 3-4). On August █ 2023, the Department contacted the mother of KW, and verified that the child was living with Petitioner. (Exhibit A, p. 1). At that point, it was no longer contested that Petitioner was the primary caretaker of KW. Accordingly, KW was removed from her mother's case effective August 16, 2023 and added to Petitioner's case. (Exhibit A, p. 1).

While the Department should have requested verification to re-evaluate the primary caretaker of KW before the August 3, 2023 Notice of Case Action was issued, it does not appear that this would have changed the month the FAP benefit amount changed for Petitioner due to the added household member. Petitioner requested KW be added to the case July █ 2023. If a Verification Checklist had been issued allowing 10 days for Petitioner to provide requested information, the due date would have been in early August 2023. If sufficient verification had been provided by that due date, KW still would have been removed from the mother's case in August 2023, and the first month it would have affected Petitioner's FAP benefit amount would still be September 2023.

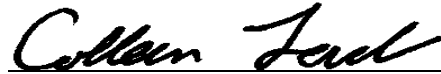
During the hearing, Petitioner also contested the amount of the FAP monthly benefit. The FAP budgets from the August █ 2023 and August █ 2023 Notices of Case Action were reviewed with the parties. The Department confirmed that the shelter expense included in the FAP budgets was based on the Petitioner's prior statements regarding his homeowner's insurance and property taxes. The Department verified Petitioner's unemployment income. (Exhibits A, pp. 18-25, 27-28, and 33; Petitioner and APW Testimony). No errors were found in the FAP budgets.

DECISION AND ORDER

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 acted in accordance with Department policy when it determined Petitioner's eligibility for FAP.

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

CL/dm



Colleen Lack
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
Corlette Brown
Wayne-District 31 (Grandmont)
**MDHHS-Wayne-31-Grandmont-
Hearings@Michigan.gov**

HoldenM

SweeneyD1

MOAHR

Via-First Class Mail :

Petitioner

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