



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

████████████████████
████████████████████
████████████████████ MI ██████████

Date Mailed: November 22, 2023
MOAHR Docket No.: 23-006935
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 November 16, 2023, via teleconference. Petitioner appeared and represented himself. Valarie Foley, Hearings Facilitator, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUE

Did MDHHS properly terminate Petitioner’s Food Assistance Program (FAP) benefits?

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 benefits.
2. On February 24, 2023, the Third Judicial Circuit Court for Wayne County entered an Order after Evidentiary Hearing (Exhibit A, p. 14). The Order granted joint physical and legal custody of ██████████ (Daughter) to Petitioner and her mother (Exhibit A, p. 14). Regarding parenting time during the school year, the Order indicated that Petitioner would have physical custody of Daughter during the week, from Sunday to Friday, and Daughter’s mother would have physical custody of Daughter on the weekends from Friday night to Sunday night (Exhibit A, p. 14).

3. On July 21, 2023, MDHHS sent Petitioner a Notice of Case Action, indicating that he was denied for FAP benefits, effective August 1, 2023 – ongoing, due to gross income exceeding the income limit for the program (Exhibit A, p. 6). The Notice indicated that Daughter was eligible for FAP on another case (Exhibit A, p. 7).
4. On October 16, 2023, Petitioner filed a Request for Hearing (Exhibit A, p. 3).

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. MDHHS 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, MDHHS terminated Petitioner's FAP benefits due to his gross income exceeding the limit for a household of one, after removing Daughter from Petitioner's FAP case and adding Daughter to her mother's FAP case. Petitioner disputed this action because he had physical custody of Daughter the majority of the time.

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, p. 2.

MDHHS testified that Daughter was properly on her mother's case rather than Petitioner's case because the custody order indicated that the parties had joint custody. However, an order granting joint physical and legal custody to the parents of a minor child is insufficient to show who the primary caretaker of the child is for the purposes of FAP. In situations of joint custody, MDHHS must determine who is responsible for the care and supervision of the child in the home where the child sleeps more than half of the days in a calendar month, on average, in a twelve-month period. According to the information that MDHHS had, Daughter slept more than half of the days in the calendar month at Petitioner's house.

Petitioner credibly testified that that Daughter sleeps in his house during the week and at her mother's house on the weekends. This means that Daughter's mother had approximately eight overnights with Daughter per month and the remaining nights were spent with Petitioner. The custody order presented at the hearing was incomplete and did not provide a complete picture of the physical custody arrangement. However, there was no evidence that MDHHS attempted to verify the number of overnights with Petitioner prior to removing Daughter from the case and terminating his FAP benefits. Based on Petitioner's credible testimony regarding the physical custody arrangement at the hearing, Petitioner was and continues to be the primary caretaker of Daughter for the purposes of FAP.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it terminated Petitioner's FAP benefits.

DECISION AND ORDER

Accordingly, MDHHS' decision 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. Add Daughter to Petitioner's FAP group, effective August 1, 2023 – ongoing;
2. Redetermine Petitioner's eligibility for FAP based on the inclusion of Daughter in the FAP group;
3. Issue supplemental payments to Petitioner for any FAP benefits that he was entitled to receive, but did not, from August 1, 2023 – ongoing; and
4. Notify Petitioner of its decision in writing.



LJ/nr

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
Susan Noel
Wayne-Inkster-DHHS
26355 Michigan Ave
Inkster, MI 48141
**MDHHS-Wayne-19-
Hearings@michigan.gov**

Interested Parties
Wayne 19 County DHHS
BSC4
M. Holden
N. Denson-Sogbaka
B. Cabanaw
MOAHR

Via-First Class Mail :

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