



GRETCHEN WHITMER  
GOVERNOR

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

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ACTING DIRECTOR

[REDACTED]  
[REDACTED], MI [REDACTED]

Date Mailed: December 8, 2023  
MOAHR Docket No.: 23-007189  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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 November 29, 2023. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Kelly Davenport, specialist.

### **ISSUE**

The issue is whether MDHHS properly determined Petitioner's Food Assistance Program (FAP) group composition.

### **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 September 30, 2022, a county circuit court recommended that Petitioner receive child support based on 183 annual overnights with her daughter, Kamillah (hereinafter "Daughter").
2. As of September 2023, Daughter received FAP benefits on a case with her father.
3. On [REDACTED] [REDACTED] 2023, Petitioner applied for FAP benefits and reported a household that included Daughter and a second minor child.

4. On October 11, 2023, MDHHS approved FAP benefits for Petitioner beginning October 2023 based on a benefit group excluding Daughter.
5. On October 24, 2023, Petitioner requested a hearing to dispute benefit group composition in the processing of her FAP benefit application.

### **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 FAP benefit eligibility after applying for FAP benefits. Exhibit A, pp. 5-6. Petitioner applied for FAP benefits on [REDACTED] 2023, and reported a household including two minor child which included Daughter. A Notice of Case action dated October 11, 2023, stated that Petitioner was eligible for FAP benefits as a member of a benefit group that did not include Daughter. The stated reason for excluding Daughter was she was an active member on another case: her father's. Petitioner contended that her benefit group should have included Daughter.

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 and the other caretaker(s) is considered the absent caretaker(s). *Id.*, p. 3.

MDHHS is to determine primary caretaker status by using a twelve-month period. *Id.*, p. 4. The twelve-month period begins when a primary caretaker determination is made. *Id.* MDHHS is to determine the primary caretaker as follows:

- Ask the client how many days the child sleeps at his/her home in a calendar month.
- Accept the client's statement unless questionable or disputed by another caretaker. Note: When a caretaker works during a child's normal sleep hours, include the nights the child sleeps away from home when due solely to the caretaker's employment as nights slept in the home of the caretaker.
- If primary caretaker status is questionable or disputed, verification is needed. Allow both caretakers to provide evidence supporting his/her claim.
- Base the determination on the evidence provided by the caretakers. Document who the primary caretaker is in the case.
- 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.

MDHHS contended it properly determined that Daughter was a benefit group member on her father's case. MDHHS indicated it first considered which caretaker had custody of Daughter. MDHHS contended that Petitioner and Daughter's father share legal and physical custody of Daughter; Petitioner did not disagree. Concerning overnights, MDHHS contended that Petitioner reported having virtually the same number of overnights with Daughter as Daughter's father. Thus, MDHHS concluded, primary caretaker status was properly determined by which person applied first; in the present case, it was Daughter's father.

Petitioner presented MDHHS with a Wayne County Circuit Court document dated September 30, 2022. Exhibit A, pp. 23-30. The court recommended a modification in child support received by Petitioner. Notably, the modification factored that Petitioner had Daughter 183 nights per year and that Daughter's father had Daughter for 182. Presumably, the 183 nights per year Petitioner has Daughter remains unchanged as MDHHS testified that Daughter's father presented no documentation indicating differently. Given the evidence, Petitioner had Daughter for 183 nights per year.

The one extra day per year that Petitioner had Daughter renders Petitioner to be Daughter's primary caretaker because she has more overnights over a one-year period than Daughter's father. Given the evidence, MDHHS improperly determined that Daughter's father was Daughter's primary caretaker.

Generally, person must not participate as a member of more than one FAP group in any given month.<sup>1</sup> BEM 212 (January 2022) p. 10. If the person is a mandatory group member, MDHHS must act as soon as possible to remove the member from the former group and added to the new group. *Id.*

Petitioner contended she is entitled to an administrative remedy of having Daughter on her case since she applied for FAP benefits in September 2023. However, such a remedy would contradict MDHHS policy by MDHSH issuing FAP benefits for Daughter in two different cases. Petitioner is entitled to the removal of Daughter from her father's group so that Daughter can be added to Petitioner's group.

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<sup>1</sup> The only authorized exception is for residents of battered person shelters.

**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] 2023. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Remove Daughter from her father's FAP benefit group as soon as possible so she can be added to petitioner's FAP benefit group; and
- (2) Issue notice and supplements, if any, in accordance with all MDHHS policy.

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

CG/nr

  
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**Christian Gardocki**  
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**

Chelsea McCune  
Macomb County DHHS Warren Dist.  
13041 E 10 Mile  
Warren, MI 48089

**MDHHS-Macomb-20-  
Hearings@michigan.gov**

**Interested Parties**

Macomb 20 County DHHS  
BSC4

M. Holden

N. Denson-Sogbaka

B. Cabanaw

MOAHR

**Via-First Class Mail :**

**Authorized Hearing Rep.**

[REDACTED]  
MI [REDACTED]

**Petitioner**

[REDACTED]  
MI [REDACTED]