



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  
DIRECTOR



Date Mailed: March 19, 2024  
MOAHR Docket No.: 24-001188  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Caralyce M. Lassner**

### **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 by telephone on March 13, 2024. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Princess Ogundipe, Assistance Payments Supervisor.

### **ISSUE**

Did the Department properly process Petitioner's 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 [REDACTED] 2024, Petitioner applied for FAP benefits for herself and her two (2) minor children (Children). (Exhibit A, pp. 26 – 33).
2. On her application, Petitioner disclosed that Children live with her and that they have a parent (CH) living outside the home. (Exhibit A, pp. 27 – 29).
3. On January 18, 2024, the Department interviewed Petitioner as required by policy for determining FAP eligibility and the Department completed an interview guide. (Exhibit A, pp. 19 – 25).

4. On January 18, 2024, the Department processed Petitioner's FAP application and sent her a Notice of Case Action (NOCA) denying Petitioner benefits for exceeding the gross income limits of \$1,580.00 on the NOCA, which is the income limit for a group size of one (1) and stating that Children are eligible for the FAP program in another case. (Exhibit A, pp. 15 – 16 see also RFT 250 (October 2023)).
5. On February 5, 2024, the Department received Petitioner's request for hearing disputing that Children reside with CH. (Exhibit A, pp 4 – 5).

### **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.

Petitioner applied for FAP benefits for herself and Children on [REDACTED] 2024, asserting that Children live with her full time. (Exhibit A, pp. 26 – 33). The Department determined that Children were already receiving FAP benefits in another case and denied Petitioner's application due to excess gross income for a group of one (1). (Exhibit A, pp. 15 – 16).

Upon receiving an application for FAP and before evaluating the financial or non-financial eligibility of the group, the Department must first determine who must be included in the FAP group. BEM 212 (January 2022), p. 1. Certain people who live together must be included in a FAP group, including minor children who live with their parents. BEM 212, p. 1. However, when minor children live with both parents, who do not live together, the Department must determine who the primary caretaker is. BEM 212, p. 3. Policy defines the primary caretaker is the person who is primarily responsible for a 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 the course of a twelve-month period and only one (1) person can be the primary caretaker for any one (1) child. BEM 212, p. 2 – 4.

To determine the primary caretaker, the Department must:

- a) ask how many days the child sleeps at the client's home in a calendar month,
- b) accept the client's statement unless it is questionable or disputed by another caretaker,
- c) obtain verification if the client's statements are questionable or disputed,
- d) allow both individuals asserting primary caretaker status to provide evidence in support of their assertion,
- e) base the Department's decision on the evidence provided, and
- f) document who the primary caretaker is in the case.

BEM 212, p. 4. If the Department determines that the child spends an average of half of the child's time with each caretaker over the course of a year, the first caretaker to apply for FAP benefits is deemed the primary caretaker. BEM 212, p. 4.

The Department must re-evaluate primary care status when a second caretaker applies for assistance for the same child, a second caretaker disputes the first caretaker's claim that the child sleeps in their home more than half the nights in a month, when averaged over the next 12 months, there is a change in the number of average overnights, or a new or revised court order changes custody or visitation. BEM 212, p. 5. When re-evaluating primary care status, the Department must use the same criteria as is used for making initial determinations.

In this case, Petitioner reported to the Department in the application that Children reside with her 30 days per month and that she pays \$150 per week, per child, for child care. (Exhibit A, pp. 19, 21). When processing Petitioner's FAP application, the Department determined that Children were included on CH's FAP case and therefore should be excluded from Petitioner's case. (Exhibit A, pp. 1, 16). Because Petitioner has applied for assistance for Children, when they are already receiving assistance, and disputes CH's claim as the primary caretaker, the Department must re-evaluate CH's primary caretaker status. BEM 212, p. 5. In doing so, as Petitioner disputes CH's assertion that he is primary caretaker, the Department must obtain verifications from each asserted primary caretaker and make a determination based on the evidence provided. BEM 212, pp. 4, 12.

Contrary to the Department's position that it could rely on only school records or court orders, policy identifies some suggested verifications such as child care records showing who makes and pays for child care arrangements, medical records showing where the child lives and who generally takes the child to medical appointments, school records, or court orders, but does not mandate its suggestions, thus there is no limitation to the type of verifications a caretaker may provide. BEM 212, p. 12. Here, Petitioner alleged that she paid for Children's day care expenses and provided an IV-D Child Support Services Application/Referral, dated as having been received by the Department, Office of Child Support, on July 14, 2023, in which she asserted herself to be the custodial parent/caretaker of Children. (Exhibit 1, pp. 1 – 3). Petitioner may wish

to provide this information to the Department as part of the Department's consideration of evidence in the re-evaluation process required by BEM 212.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that Petitioner was not the primary caretaker of Children without re-evaluating CH's primary caretaker status.

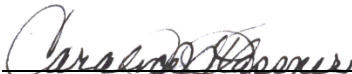
### **DECISION AND ORDER**

Accordingly, the Department's 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 dated [REDACTED] 2024, including re-evaluating who Children's primary caretaker is;
2. Redetermine Petitioner's eligibility for FAP benefits based on her group size and applicable household income for [REDACTED] 2024 ongoing;
3. If Petitioner is eligible for any supplemental FAP benefits, issue supplemental payments to Petitioner for any FAP benefits she was eligible to receive but did not, from [REDACTED] 2024 ongoing; and
4. Notify Petitioner of its decision in writing.

CML/ml

  
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**Caralyce M. Lassner**  
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**

Jared Ritch  
Oakland County Pontiac-Woodward Dist.  
51111 Woodward Ave 5th Floor  
Pontiac, MI 48342

**MDHHS-Oakland-District-IV-Hearings@michigan.gov**

**Interested Parties**

BSC4  
M Holden  
B Cabanaw  
N Denson-Sogbaka

**Via First Class Mail:**

**Petitioner**

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