



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

[REDACTED]  
[REDACTED], MI [REDACTED]

Date Mailed: July 5, 2024  
MOAHR Docket No.: 24-004627  
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 June 6, 2024. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Monique Jones, Eligibility Specialist.

### **ISSUE**

Did the Department properly determine Petitioner's Family Independence Program (FIP) eligibility for periods prior to April 1, 2024?

Did the Department properly determine Petitioner's Food Assistance Program (FAP) group composition from March 1, 2024 to April 30, 2024?

### **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 from at least January 1, 2024 in the amount of \$1,386 per month for a certified group of six. (Exhibit A, p. 17).
2. On February 22, 2024, the Department received a request for hearing from Petitioner regarding denial of FIP and the amount of his FAP benefits. The request was unsigned and was returned to Petitioner for his signature. (Exhibit A, pp. 3 – 4).

3. From March 1, 2024 to April 30, 2024, the Department decreased Petitioner's FAP benefits to \$973 per month based on a decrease in Petitioner's certified group size. (Exhibit A, p. 17).
4. On March 3, 2024, the Department received an application (March application) for FIP, FAP, and other programs from Petitioner for himself and his five minor children, █████ (KY), █████ (KH), █████ (KN), █████ (KA), and █████ (DE). (Exhibit A, pp. 5 – 16).
5. On April 18, 2024, the Department sent Petitioner a Notice of Case Action (NOCA) increasing his FAP benefit to \$1,386 per month for a certified group size of six effective May 1, 2024 ongoing. (Exhibit A, pp. 19 – 26).
6. On April 22, 2024, the Department received a Petitioner's signed request for hearing regarding denial of FIP and the amount of his FAP benefits. (Exhibit A, pp. 3 – 4).
7. On April 29, 2024, the Department approved Petitioner for FIP effective April 1, 2024. (Exhibit A, p. 1).

### **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).

Petitioner requested a hearing to dispute denial of his application for FIP and the amount of his FAP benefits.

### **FIP**

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

Petitioner requested a hearing on April 22, 2024 to dispute denial of his FIP applications for periods prior to April 1, 2024. Petitioner began applying for FIP assistance in October 2023.

It is noted that Petitioner applied for FIP benefits, among other assistance programs, again on the March application. (Exhibit A, pp. 5 – 16). On April 29, 2024, the Department approved Petitioner for FIP benefits effective April 1, 2024 ongoing. (Exhibit A, p. 1). Petitioner does not dispute approval of FIP from April 1, 2024 ongoing.

Department policy requires that a request for hearing regarding FIP must be in writing and be signed by an adult member of the group or an authorized hearing representative or the Michigan Office of Administrative Hearings and Rules (MOAHR) will deny the request (BAM 600 (February 2024), p. 2). Requests for hearings must be received by the Department within 90 days of the NOCA the client disputes. BAM 600, p. 6.

Petitioner's original request for hearing was received by the Department on February 22, 2024 (Exhibit A, p. 3), however, Petitioner did not originally sign his request for hearing, and it was returned to him for signature. Petitioner's signed request was received by the Department on April 22, 2024 (Exhibit A, p. 3). Therefore, if April 22, 2024 were the last day on which Petitioner could have requested a hearing, any NOCA Petitioner sought to dispute would have had to have been issued on or after January 23, 2024 in order for Petitioner's request to have been timely.

In his request for hearing, Petitioner states that he has been applying and being denied for FIP since October 2023. (Exhibit A, p. 4). Petitioner credibly testified that he completed Partnership. Accountability. Training. Hope. (PATH) for FIP in February 2024 and received a notice from the Department later that month stating he was not eligible for FIP because he did not have children in his household. The Department was unable to identify if or when Petitioner applied for FIP prior to the March application and if or when a NOCA for FIP was issued to Petitioner prior to February 22, 2024, the date it originally received Petitioner's request for hearing.

Therefore, because the Department was unable to identify if and when it processed a FIP application for Petitioner prior to his March application and/or issued a NOCA regarding FIP for Petitioner prior to his March application, it failed to satisfy its burden of showing that it acted in accordance with Department policy with regard to Petitioner's FIP application submitted prior to the March application.

## **FAP**

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 requested a hearing to dispute a decrease in his FAP benefits for the period of March 1, 2024 through April 30, 2024 which occurred when the Department removed DE and KA from his certified FAP group. The Department testified that it removed DE and KA from Petitioner's group when it received an email to do so.

Certain people who live together must be included in a FAP group, including minor children who live with their parents. BEM 212 (January 2022), p. 1. However, if someone applies for assistance for children who are already receiving assistance, the

Department must re-evaluate primary caretaker status. BEM 212, p. 5. Policy defines the primary caretaker as 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 person can be the primary caretaker for any one child. BEM 212, p. 2 – 4. When re-evaluating primary care status, the Department must use the same criteria used for making initial determinations.

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. Additionally, a FAP group member, including a child, may be temporarily absent if their location is known, they lived with the group prior to the absence, there is a definite plan for them to return, and the absence has lasted, or is expected to last, 30 days or less. BEM 212, p. 3. Group members who are temporarily absent are considered to be living with the group. BEM 212, p. 3.

In this case, Petitioner has custody of his five minor children, all of whom are under the age of six. Petitioner testified that he was in jail from December 20, 2023 through December 27, 2023 and that his children were cared for by relatives during that time. He credibly testified that no legal processes were instituted or undertaken regarding the care or custody of his children during his time away from home and that all his children were back in his care on or before January 5, 2024. The Department did not offer any evidence to contradict Petitioner's testimony.

The Department explained that it received an email stating that DE and KA were no longer living with Petitioner but did not offer any additional details regarding the email it received, including who sent the email. The Department could not confirm that it investigated the veracity of the email and did not offer evidence or testimony that verification of the allegations was requested or received by the Department beyond it attempting to reach Petitioner by telephone and being unable to do so. Ultimately, the Department testified that it reached its conclusion to remove DE and KA from Petitioner's case based on the email and removed DE and KA from Petitioner's FAP case effective March 1, 2024, and consequently reduced Petitioner's FAP benefits from March 1, 2024 to April 30, 2024 due to the reduction in his certified FAP group size.

Because Petitioner was already recognized as DE and KA's primary caretaker, allegations that he wasn't, alone, were insufficient for the Department to remove DE and KA from Petitioner's case. Rather, the Department was obligated to obtain verifications from each individual asserting to be the primary caretaker and make a determination based on the evidence provided. BEM 212, pp. 4, 12. The Department did not and therefore, the Department did not act in accordance with Department policy when it removed DE and KA from Petitioner's FAP case, and reduced his FAP benefits from March 1, 2024 to April 30, 2024, without re-evaluating Petitioner's primary caretaker status.

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 with regard to Petitioner's FIP application submitted prior to the March application and did not act in accordance with Department policy when it removed DE and KA from Petitioner's FAP case, and reduced his FAP benefits from March 1, 2024 to April 30, 2024, without re-evaluating Petitioner's primary caretaker status.

### **DECISION AND ORDER**

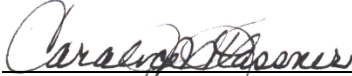
Accordingly, the Department's decision is **REVERSED** with respect to Petitioner's FIP application submitted prior to the March application and with respect to the reduction of Petitioner's FAP benefits from March 1, 2024 to April 30, 2024.

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. Redetermine Petitioner's eligibility for FIP benefits based on any application Petitioner previously submitted that resulted, or should have resulted, in a NOCA issued on or after January 23, 2024 and before April 29, 2024;
2. If Petitioner is eligible for any supplemental FIP benefits, issue supplemental payments to Petitioner for any FIP benefits he was eligible to receive but did not, prior to April 1, 2024;
3. Redetermine Petitioner's eligibility for FAP benefits, including re-evaluating who DE's and KA's primary caretaker was from March 1, 2024 to April 30, 2024;

4. If Petitioner is eligible for any supplemental FAP benefits, issue supplemental payments to Petitioner for any FAP benefits he was eligible to receive but did not, from March 1, 2024 to April 30, 2024; and
5. Notify Petitioner of its decision in writing.

CML/nr

  
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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**

Keisha Koger-Roper  
Wayne-District 31 (Grandmont)  
17455 Grand River  
Detroit, MI 48227

**MDHHS-Wayne-31-Grandmont-  
Hearings@Michigan.gov**

**Interested Parties**

BSC4

M. Holden

N. Denson-Sogbaka

B. Cabanaw

B. Sanborn

MOAHR

**Via-First Class Mail :**

**Petitioner**

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