



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: August 9, 2022
MOAHR Docket No.: 22-002856
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 July 27, 2022 via teleconference. Petitioner appeared and represented herself. Michael Heck, Caseworker, and Corlette Brown, Hearings Facilitator, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUE

Did MDHHS properly determine Petitioner's group composition for the Food Assistance Program (FAP) and the Family Independence Program (FIP)?

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 and FIP benefits.
2. On May 26, 2022, MDHHS received an email from the MDHHS Office of Inspector General (OIG) requesting that minor child, [REDACTED] (Son), be removed from Petitioner's FAP and FIP cases (Exhibit A, p. 11). The reason for the request was that based on an OIG Front End Eligibility (FEE) Investigation, Son had been living with his father and not with Petitioner since December 12, 2021 (Exhibit A, p. 11).

3. On May 26, 2022, MDHHS sent Respondent a Notice of Case Action, indicating a decrease in her FIP and FAP benefits, effective July 1, 2022 (Exhibit A, p. 19). The FAP benefit rate was based on a household-size of two and the FIP benefit rate was based on a household size of one (Exhibit A, p 19). Son was not included in the FIP or FAP group. The reason for the decrease was that Petitioner was not the primary caretaker of Son (Exhibit A, p. 20).
4. On [REDACTED], 2022, Petitioner requested a hearing to dispute the removal of Son from her household.

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.

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. MDHHS 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.

In this case, MDHHS removed Son from Petitioner's case following a FEE Investigation, which determined that Son was living with his father and not Petitioner. Petitioner filed a hearing request to dispute this action and argued that Son resided with her the majority of the time and that she was his primary caretaker.

Verification

When an eligibility factor is in dispute or the information is unclear or incomplete, MDHHS is required to request verification. BAM 130 (January 2022), p. 1. To obtain verification, MDHHS must tell the client what verification is required, how to obtain it and the due date. *Id.* MDHHS is required to use a VCL to request verification from clients. *Id.* Clients are required to obtain the requested verification, but the local office must help if they need and request help. BAM 130, p. 3. If neither the client nor the local office can obtain verification despite a reasonable effort, MDHHS is required to use the best available information. *Id.* Verifications are considered timely if they are received by the date they are due. BAM 130, p. 7. In addition, before making a final determination

regarding eligibility, MDHHS must give clients a reasonable opportunity to resolve any discrepancies between their statements and information from another source. *Id.*, p. 9.

In this case, OIG initiated a FEE Investigation following a complaint from [REDACTED] (Father), that Son was residing with him and not with Petitioner, and therefore, he asserted that he was entitled to receive benefits on Son's behalf (Exhibit A, p. 13). On January 10, 2022, an OIG agent visited Father's household and concluded that Son was living with Father based on Father's statements (Exhibit A, p. 13). The FEE Investigation concluded that Son and Father were living together, and that Petitioner had not seen Son since his birthday on [REDACTED] 2021 (Exhibit A, p. 13).

At the hearing, Petitioner credibly testified that this information was false and that OIG reached the wrong conclusion. Petitioner stated that Son stays with her primarily and that Son stays with Father approximately eight days per month. This arrangement is in line with the parties' current legal custody arrangement. She further stated that she recently gave birth and was experiencing complications, which caused her to be hospitalized for a few weeks. While she was in the hospital, Son temporarily stayed with Father.

Given the discrepancies between Father's statements and Petitioner's, MDHHS should have requested verification from Petitioner. MDHHS is required to request verification when an eligibility factor is unclear by sending a VCL. BAM 130, p. 1. No evidence was presented that MDHHS sent a VCL to Petitioner or otherwise attempted to verify her group composition. In addition, MDHHS is required to give clients a reasonable opportunity to resolve any discrepancies between their statements and information from another source and it did not do so here.

Thus, MDHHS did not act in accordance with Department policy when it removed Son from Petitioner's household without attempting to verify her group composition or allowing her a reasonable opportunity to resolve the discrepancy.

Group Composition

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.

For FIP, MDHHS must determine which individuals living together are included in the FIP eligibility determination group (EDG) and the FIP certified group. BEM 210 (July 2021), p. 1. In cases where a minor child has two caretakers who live separately, MDHHS must determine who the primary caretaker is. The primary caretaker is defined as the caretaker 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 month, when averaged over a twelve-month period. *Id.*, p. 3. The twelve-month period begins at the time the determination is being made. *Id.* An absence from the primary caretaker's home does not change the result of the primary caretaker determination, unless the child is away, or expected to be away from the home for more than 30 consecutive days. *Id.*, p. 13.

In this case, Petitioner testified that she was the primary caretaker of Son and that Son stayed with his father approximately eight nights out of every month. The rest of the time, Son stays at Petitioner's house. Son was temporarily absent from Petitioner's home for a period of time while she was hospitalized; however, this period was less than 30 days. Petitioner also stated that the current legal custody arrangement between the parties provides that Son stays with Petitioner the majority of the time. No evidence was presented to the contrary, besides out-of-court statements from Son's Father. Son's Father did not appear at the hearing, nor did the OIG agent who interviewed him. Therefore, Petitioner's sworn testimony is afforded more weight than the statements included on the FEE Report. Because Son sleeps at Petitioner's house more than half of the days in a calendar month, on average in a twelve-month period, Petitioner is primary caretaker of Son for the purposes of FAP and FIP.

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 MDHHS did not act in accordance with Department policy when it removed Son from Petitioner's FIP and FAP group.

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 Son to Petitioner's FAP and FIP groups, effective July 1, 2022 ongoing;
2. Redetermine Petitioner's FAP and FIP benefit rates based on the inclusion of Son in the FAP and FIP groups;
3. If Petitioner is eligible for an increased amount of FAP and FIP benefits, issue supplements to Petitioner for FAP and FIP benefits that she was entitled to but did not receive; and
4. Notify Petitioner of its decision in writing.



Linda Jordan
Administrative Law Judge

LJ/tm

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
LaClair Winbush
Wayne-District 31 (Grandmont)
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Detroit, MI 48227

Interested-Parties

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D. Sweeney
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Via-First Class Mail :

Petitioner

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