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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]  
[REDACTED] MI [REDACTED]

Date Mailed: March 26, 2024  
MOAHR Docket No.: 24-001438  
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 18, 2024. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Danielle Moton, Assistance Payments Worker.

**ISSUE**

Did the Department properly remove Petitioner's children from her Food Assistance Program (FAP) case?

**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 for a certified group of two (2), which was comprised of her two minor children (Children). (Exhibit A, p. 10).
2. On December 19, 2023, the Department sent Petitioner a Notice of Case Action (NOCA) closing her FAP case effective January 1, 2024, stating that the Children were no longer living with Petitioner. (Exhibit A, pp. 8, 10).
3. On December 19, 2023, the Department added Children to Children's father's (Father) FAP case. (Exhibit A, pp. 1, 14 (Lines 122 – 123)).
4. On January 30, 2024, the Department received Petitioner's request for hearing disputing the Department's finding that Children no longer resided with Petitioner. (Exhibit A, pp. 3 – 5).

5. The Department instructed Petitioner to reapply for FAP benefits with proof that she has custody of Children. (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).

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.

The Department removed Children, the only members of Petitioner's FAP group, from Petitioner's FAP case and added them to Father's FAP case, after concluding that Children no longer resided with Petitioner. Petitioner's FAP case closed effective January 1, 2024. (Exhibit A, pp. 8, 10). Petitioner disputed the Department's determination and requested a hearing. (Exhibit A, pp. 3 – 5).

Beginning in September 2023, Father reported to the Department that Children were no longer residing with Petitioner, alleging Children were removed from Petitioner's care by child protective services. (Exhibit A, p. 14). Petitioner acknowledged that she had been the subject of a child protective services investigation and that, incident to that, she spent several days in jail, from Thursday, September 7, 2023 through Monday, September 11, 2023, but she testified that Children stayed with her family while she was held in jail, no action was taken against her related to the investigation, and that Children were not removed from her custody or care and have continuously resided with her.

Although the Department asserted that in order for Children to be added back to Petitioner's FAP case, Petitioner had to reapply for FAP benefits with proof of custody of Children (Exhibit A, p. 1), it failed to show that it complied with policy when it initially moved Children out of Petitioner's FAP case and to Father's FAP case.

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, 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 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 (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.

When issues arise related to primary caretaker, the Department must re-evaluate primary care status. Specifically, when a) a second caretaker applies for assistance for the same child, b) 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, c) there is a change in the number of average overnights, or d) a new or revised court order changes custody or visitation, a re-evaluation is required. BEM 212, p. 5. When re-evaluating primary care status, the Department must use the same criteria as is used for making initial determinations.

Here, the Department acted on Father's allegations that, beginning September 8, 2023 and continuing until at least December 19, 2023 when Children were added to his FAP case, Children no longer resided with Petitioner and were residing with Father. However, the Department did not offer evidence or testimony that verification of Father's allegations were requested or received by the Department, that it contacted Petitioner regarding Father's allegations, or how the Department reached its conclusion to remove Children from Petitioner's case.

Pursuant to policy, allegations alone were insufficient for the Department to remove Children from Petitioner's case. Because Petitioner was already recognized as Children's primary caretaker, when Father disputed Petitioner was Children's primary caretaker, the Department had an obligation to re-evaluate Petitioner's primary caretaker status. BEM 212, p. 5. To complete its re-evaluation, the Department must obtain verifications from each asserted primary caretaker and make a determination based on the evidence provided. BEM 212, pp. 4, 12. The Department did not.

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 did not act in accordance with Department policy when it removed Children from Petitioner's FAP case without re-evaluating Petitioner's primary caretaker status.

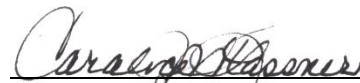
**DECISION AND ORDER**

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. Redetermine Petitioner's eligibility for FAP benefits, including re-evaluating who Children's primary caretaker is, for January 1, 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 January 1, 2024 ongoing; and
4. Notify Petitioner of its decision in writing.

CML/pt



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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**  
Tara Roland 82-17  
Wayne-Greenfield/Joy-DHHS  
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**Interested Parties**

BSC4  
M Holden  
B Cabanaw  
N Denson-Sogbaka  
MOAHR

**Via-First Class Mail:**

**Petitioner**

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