



GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

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Date Mailed: June 3, 2024
MOAHR Docket No.: 24-004429
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Julia Norton

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 telephone hearing was held on May 23, 2024. Petitioner was present and self-represented. The Department of Health and Human Services (Department) was represented by Anjeleise McKinley, Eligibility Specialist.

ISSUE

Did the Department properly determine Petitioner’s Food Assistance Benefit (FAP) eligibility?

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 a recipient of FAP benefits certified as a group size of one for the period beginning October 9, 2023.
2. Petitioner notified the Department in October of 2023 that her two children, ██████████ and ██████████, were residing with her and requested they be added to her FAP group.
3. The Department approved Petitioner for Child Development and Care (CDC) benefits for ██████ and ██████, effective June 18, 2023 to January 13, 2024. Exhibit A, pp. 12-19.
4. The Department told Petitioner that neither ██████ nor ██████ was eligible in her FAP case because ██████ was on his father’s (█████ Father) case and ██████ was on her father’s (█████ Father) case.

5. On January 9, 2024, [REDACTED] Father reported to the Department that [REDACTED] was no longer residing with him as of January 1, 2024. Exhibit B, pp. 1-2.
6. On February 29, 2024, Petitioner requested a hearing regarding the Department's exclusion of her two children from her FAP group. Exhibit A, pp. 4-5.
7. On April 19, 2024, the Department sent an email to representatives at the [REDACTED] County office where [REDACTED] Father's case was assigned notifying that office of Petitioner's report that [REDACTED] was residing with Petitioner and not with his father.
8. On April 24, 2024, the Department sent Petitioner a Notice of Case Action indicating that the Department added [REDACTED] to Petitioner's FAP case and certified a group size of two with a monthly FAP benefit of \$228.00, effective April 1, 2024 to September 30, 2024. Exhibit A, pp. 12-17.
9. The Department issued a supplemental payment for April 2024.

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.

In this case, Petitioner disputed the Department's determination of her FAP group composition. The Department excluded [REDACTED] and [REDACTED] from Petitioner's FAP group because the children were eligible on their respective fathers' cases.

The Department has to determine the FAP group members prior to evaluating the non-financial and financial eligibility of everyone in the group. FAP group composition is established by determining the following: (i) who lives together; (ii) the relationship(s) of the people who live together; (iii) whether the people living together purchase and prepare food together or separately; (iv) whether the person(s) resides in an eligible living situation. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. Children include natural, step and adopted children. BEM 212 (March 2024), p.1. Department policy provides that when a child spends time with multiple caretakers who do not live together such as joint physical custody or parent/grandparent, the Department must determine a primary caretaker. Only one person can be the primary

caretaker and the other caretaker(s) is considered the absent caretaker(s). The child is always in the FAP group of the primary caretaker. BEM 212,p. 3.

At the hearing, Petitioner testified that ■ and ■ are her children and never lived outside her home and she asked the Department to add them to her FAP case in October 2023. Petitioner credibly testified that in October 2023 she reported to the Department that ■ and ■ were living with her. The Department provided documentation that Petitioner was approved for CDC benefits for ■ and ■, effective June 18, 2023 through January 13, 2024, further supporting Petitioner's claim that the children resided with her in October 2023. Eligibility for CDC benefits requires that the parent/substitute parent, which includes a legal or biological parent, live in the same home with the children needing care. BEM 703 (March 2024) p. 1,4. Therefore, the Department should have known the children resided with Petitioner at the time Petitioner notified the Department in October 2023. When Petitioner learned that the children were included on their respective fathers' FAP cases, she reported this to the Department as fraud on February 29, 2024. Exhibit A, p. 4. Although the Department eventually added ■ to Petitioner's case, ■ was not added until April 2024 and there was still a dispute regarding ■ eligibility.

The Department determines the primary caretaker by using a twelve-month period. The twelve-month period begins when a primary caretaker determination is made. In determining the primary caretaker, the Department asks the client how many days the child sleeps at his/her home in a calendar month. The Department accepts the client's statement unless it is questionable or disputed by another caretaker. If primary caretaker status is questionable or disputed, verification is needed, and the Department allows both caretakers to provide evidence supporting his/her claim. BEM 212, p. 4. Further, the Department is required to reevaluate primary caretaker status when any of the following events occur: a new or revised court order changing custody or visitation is provided; there is a change in the number of days the child sleeps in another caretaker's home and the change is expected to continue, on average, for the next twelve months; a second caretaker disputes the first caretaker's claim that the child(ren) sleeps in their home more than half the nights in a month, when averaged over the next 12 months; or a second caretaker applies for assistance for the same child. BEM 212, p.5.

When an eligibility factor is in dispute, the Department is required to request verification. BAM 130 (October 2023), p. 1. Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. The Department obtains verification when, for example, information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. *Id.* When primary caretaker status is questionable or disputed, suggested verifications include the most recent court order that addresses custody and/or visitation; school records indicating who enrolled the child in school, first person contacted in case of emergency, and/or who arranges for child's transportation to and from school; child care records showing who makes and pays for child care arrangements, and who drops off and picks up the child(ren); and medical providers' records showing where the child lives and who generally takes the child to medical appointments. BEM 212, pp. 12-13. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is

required, how to obtain it, and the due date. BAM 130, p. 3. For FAP cases, the Department allows the client 10 calendar days (or other time limit specified in policy) to provide the verification that is required. BAM 130, p. 7. In the event of discrepancies, before determining eligibility, Petitioner is afforded a reasonable opportunity to resolve any discrepancy between her statements and information from another source. BAM 130, p. 9.

In this case, Petitioner's actions required the Department to reevaluate primary caretaker status and request verification. Petitioner applied for FAP benefits for ■ and ■. She continued to dispute that ■ lived with ■ Father. Lastly, the Department was aware Petitioner was approved for CDC program benefits for ■ and ■ during the time Petitioner requested the children be added to her FAP case. There was no evidence presented that the Department requested any verification to determine how many days ■ or ■ slept at Petitioner's home in a calendar month. Instead, the Department testified it emailed the ■ County office regarding ■ Father's case and never received a response. The Department testified it added ■ to Petitioner's case and certified a group size of two, effective April 1, 2024. Department policy provides that a member add that increases benefits is effective the month after it is reported. BEM 550 (February 2024), p. 4. The Department did not act in accordance with Department policy when Petitioner disputed the primary caretaker status of ■ and ■ in October 2023 and again in February 2024 and a review of the Department's own records revealed it approved Petitioner for CDC benefits for the same children during the October 2023 timeframe.

At the hearing, Petitioner also disputed her monthly FAP benefit amount. Specifically, she contested the unemployment income included in her FAP budget. She testified she reported to the Department on April 19, 2024, that she no longer received unemployment benefits. The Department budgets income, and changes to that income, based on information known or reported to the Department. The Department has 10 days to act on reported changes. BAM 220 (November 2023), p. 7. A reported change that may result in an increase in benefits must be effective not later than the first benefit allotment issued ten days after the date the change was reported, provided any necessary verification was returned by the due date. In some cases, a supplemental issuance may be necessary. *Id.* While the Department must consider Petitioner's loss of unemployment income, the earliest that the change reported on April 19th may impact FAP benefits would be May 2024. Petitioner may request a hearing if she disputes the Department's processing of her reported change.

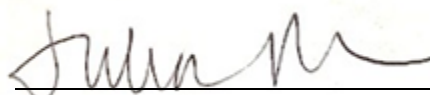
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it determined Petitioner's eligibility for FAP benefits.

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 primary caretaker status for ■ and ■ from October 9, 2023 ongoing, requesting additional verifications, if necessary;
2. Redetermine Petitioner's FAP benefit rate based on any changes to group size and income;
3. If Petitioner is eligible for an increased amount of FAP benefits, issue supplements to Petitioner for FAP benefits that she was entitled to but did not receive from November 1, 2023 ongoing; and
4. Notify Petitioner of its decision in writing.



Julia Norton
Administrative Law Judge

JN/cc

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 :

Interested Parties

MDHHS-Wayne-15-Greydale-Hearings
BSC4-HearingDecisions
N. Denson-Sogbaka
B. Cabanaw
M. Holden
MOAHR

Via-First Class Mail :

Petitioner

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