



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: September 26, 2024
MOAHR Docket No.: 24-008717
Agency No.: ██████████
Petitioner: ██████████ ██████████

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 September 18, 2024, from Lansing, Michigan. ██████████ ██████████ the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Amber Gibson, Hearing Facilitator (HF).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-27. Petitioner's additional documentation was admitted as Exhibit 1, pp. 1-19.

ISSUE

Did the Department properly determine Petitioner's eligibility for Food Assistance Program (FAP) benefits?

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 June ██████ 2024, Petitioner applied for FAP and other benefits. Petitioner reported a household of four, herself and three children (████████████████████ and ██████████). Petitioner reported that ██████████ and ██████████ spend half their time at her house and half their time with their dad. Petitioner reported income from child support. (Exhibit A, pp. 4-15)
2. The Department determined eligibility based on a FAP group size of one, just Petitioner. The three children were active on a different FAP case. (Exhibit A, pp. 1 and 20-21; HF Testimony)

3. On July █ 2024, a Notice of Case Action was issued to Petitioner denying FAP because Petitioner is not the primary caretaker of the children and the gross income exceeds program limits. (Exhibit A, pp. 22-27)
4. On July 15, 2024, Petitioner verbally requested a hearing contesting the Department's determination. (Exhibit A, p. 3)

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.

BEM 212 addresses FAP group composition:

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.

BEM 212, March 1, 2024, p. 1.

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, March 1, 2024, p. 3.

DETERMINING PRIMARY CARETAKER

When a child spends time with multiple caretakers who do not live together such as joint physical custody, parent/grandparent, etc., 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. If the child's parent(s) is living in the home, he/she must be included in the FAP group.

Exception: If otherwise eligible, the absent caretaker may receive FAP benefits for the child when the child is visiting the absent caretaker for more than 30 days (not temporarily absent from the primary caretaker's home.)

Determine primary caretaker by using a twelve-month period. The twelve-month period begins when a primary caretaker determination is made. To determine the primary caretaker:

- Ask the client how many days the child sleeps at his/her home in a calendar month.
- Accept the client's statement unless questionable or disputed by another caretaker.

Note: When a caretaker works during a child's normal sleep hours, include the nights the child sleeps away from home when due solely to the caretaker's employment as nights slept in the home of the caretaker; see Example 3.

- If primary caretaker status is questionable or disputed, verification is needed.
- Allow both caretakers to provide evidence supporting his/her claim.

Base your determination on the evidence provided by the caretakers; see Verification Sources in this item.

- Document who the primary caretaker is in the case.

If the child spends virtually half of the days in each month, averaged over a twelve-month period with each caretaker, the caretaker who applies and is found eligible first, is the primary caretaker. The other caretaker(s) is considered the absent caretaker(s)

BEM 212, March 1, 2024, pp. 3-4.

Changes in Primary Caretaker

Re-evaluate primary caretaker status when any of the following 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.
- A second caretaker applies for assistance for the same child.

BEM 212, March 1, 2024, p. 5.

In this case, Petitioner applied for FAP and other benefits on June █ 2024. Petitioner reported a household of four, herself and three children (█ █ and █). Petitioner reported that █ and █ spend half their time at her house and half their time with their dad. Petitioner reported income from child support. (Exhibit A, pp. 4-15).

The Department determined eligibility based on a FAP group size of one, just Petitioner. The three children were active on a different FAP case. The Department asserted that it was a first to apply and be approved for benefits gets the benefits situation. (Exhibit A, pp. 1 and 20-21; HF Testimony).

However, the above cited BEM 212 policy states that the Department is to re-evaluate primary caretaker when a second caretaker applies for assistance for the same child. Accordingly, the Department should have reevaluated the primary caretaker when Petitioner applied for benefits and included three children that were already active on another FAP case as members of her household. Further, the information Petitioner provided on the application only indicated that two of the children, █ and █ spend half their time with their father. This indicates that Petitioner was asserting that the third child, █ does not reside with the father of █ and █ half of the time. Accordingly, it appears there is disagreement between the two caretakers regarding where █ spends her time. This is another basis for re-evaluating the primary caretaker under the BEM 212 policy. Both caretakers should have been given an opportunity to provide evidence supporting their claim.

Additionally, Petitioner provided a copy of the Final Order Regarding Custody and Parenting Time for █ (Exhibit 1, pp. 3-7).

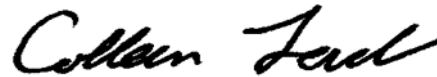
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's eligibility for FAP because the Department did not reevaluate the primary caretaker of the children.

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 eligibility for FAP for the June ■ 2024 application in accordance with Department policy.



CL/dm

Colleen Lack
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
Amber Gibson
Ingham County DHHS
**MDHHS-Ingham-
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HoldenM

DensonSogbakaN

BSC2HearingDecisions

MOAHR

Via-First Class Mail :

Petitioner

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