



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: January 8, 2025  
MOAHR Docket No.: 24-012871  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Aaron McClintic**

**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 January 2, 2025, from Lansing, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Lianne Scupholm Hearing Facilitator. Department Exhibit 1, pp. 1-29 was received and admitted.

**ISSUE**

Did the Department properly reduce Petitioner's Food Assistance Program (FAP) benefit amount because her children were no longer residing with her the majority of time?

**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 September 19, 2024, a change report was submitted to the Department alleging that two of Petitioner's daughters were no longer residing with her the majority of time.
2. On November 8, 2024, Petitioner submitted an Order regarding Custody and Parenting Time dated November 23, 2022, that showed ██████████ had sole legal and sole physical custody of ██████████ and ██████████. Petitioner had alternating weekend overnight parenting time and non-overnight parenting time two days a week.
3. On November 8, 2024, a Notice of Case Action was sent to Petitioner informing her that her FAP benefits would be reduced to \$391 per month effective December 1, 2024.

4. On November 15, 2024, Petitioner requested a hearing disputing the reduction of FAP benefits.

### **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.

#### **Primary Caretaker**

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

#### **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, they must be included in the FAP group. BEM 212


In this case, On November 8, 2024, Petitioner submitted an Order regarding Custody and Parenting Time dated November 23, 2022, that showed [REDACTED] had sole legal and sole physical custody of [REDACTED] and [REDACTED]. Petitioner had alternating weekend overnight parenting time and non-overnight parenting time two days a week. Department policy dictates that the parent who has their children in their care for the majority of overnights is permitted to include the children in their FAP group. BEM 212 Petitioner does not have Madison and Cassidy in her care for the majority of overnights according to the most recent Family Court Order. Therefore, the removal of Madison and Cassidy from Petitioner's FAP group was proper and correct and consistent with Department policy. BEM 212. Petitioner testified at hearing that she has an upcoming hearing that will address the custody and parenting time arrangement of the children in question. Petitioner was advised to report to the Department if the custody and parenting time arrangement changes and her daughters are returned to her primary care.

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 acted in accordance with Department policy when it reduced Petitioner's FAP benefit because her children were no longer residing with her the majority of the time.

**DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED**.

AM/ml

  
**Aaron McClintic**  
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**

Kristina Etheridge  
Calhoun County DHHS  
190 East Michigan  
Battle Creek, MI 49016  
**MDHHS-Calhoun-Hearings@michigan.gov**

**Interested Parties**

BSC3  
M Holden  
B Cabanaw  
N Denson-Sogbaka  
MOAHR

**Via First Class Mail:**

**Petitioner**

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