

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:



MAHS Reg. No.: 16-000149
Issue No.: 2001; 3008
Agency Case No.: [REDACTED]
Hearing Date: February 18, 2016
County: WAYNE-DISTRICT 49

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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; 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 February 18, 2016, from Detroit, Michigan. The Petitioner was represented by [REDACTED] (Petitioner). The Department was represented by [REDACTED], Hearings Facilitator.

ISSUES

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) allotment to be \$16 effective [REDACTED]?

Did the Department properly close Petitioner's Medical Assistance (MA) - Healthy Michigan Plan (HMP) coverage effective [REDACTED]?

Did the Department properly provide MA – HMP coverage for Petitioner in December 2015?

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 MA-HMP coverage. See Exhibit B, p. 1.
2. Petitioner is an ongoing recipient of FAP benefits.
3. On [REDACTED], Petitioner submitted her FAP/MA redetermination. See Exhibit A, pp. 5-10.

4. In the redetermination, Petitioner indicated that she plans file a federal income tax return for next year and that she plans to claim both of her children as tax dependents (total tax household composition of three). See Exhibit A, p. 6.
5. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying her that she was approved for FAP benefits in the amount of \$16 effective [REDACTED]. See Exhibit A, pp. 15-16.
6. On [REDACTED], the Department sent Petitioner a Health Care Coverage Determination Notice (determination notice) notifying her that she was not eligible for MA coverage effective [REDACTED], ongoing. See Exhibit A, pp. 17-18. The determination notice also indicated that Petitioner's annual income of \$19,716 exceeded the HMP countable income limit. See Exhibit A, p. 18.
7. On [REDACTED] [REDACTED] Petitioner filed a hearing request, disputing the Department's action. See Exhibit A, pp. 2-3.

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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

FAP allotment

On [REDACTED], the Department sent Petitioner a Notice of Case Action (case action) notifying her that she was approved for FAP benefits in the amount of \$16 effective [REDACTED]. See Exhibit A, pp. 15-16. Petitioner disputed her FAP allotment. As such, the undersigned reviewed the FAP budget located in the case

action dated [REDACTED] [REDACTED] to determine if the Department properly calculated Petitioner's allotment. See Exhibit A, p. 16.

First, it was not disputed that the certified group size is two and that no one is a senior/disabled/disabled veteran (SDV) member(s).

Second, the Department calculated Petitioner's gross earned income to be \$1,632. Petitioner disputed the calculation of her gross earned income.

A group's financial eligibility and monthly benefit amount are determined using: actual income (income that was already received) or prospected income amounts (not received but expected). BEM 505 (July 2015), p. 1. Only countable income is included in the determination. BEM 505, p. 1. Each source of income is converted to a standard monthly amount, unless a full month's income will not be received. BEM 505, p. 1. The Department converts stable and fluctuating income that is received more often than monthly to a standard monthly amount. BEM 505, p. 7. The Department uses one of the following methods: (i) multiply weekly income by 4.3; (ii) multiply amounts received every two weeks by 2.15; or (iii) add amounts received twice a month. BEM 505, pp. 7-8.

Moreover, the Department determines budgetable income using countable, available income for the benefit month being processed. BEM 505, p. 2. The Department uses actual gross income amounts received for past month benefits, converting to a standard monthly amount, when appropriate. BEM 505, p. 2. Except, the Department can use prospective income for past month determinations. BEM 505, p. 2. In prospecting income, the Department is required to use income from the past thirty days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, p. 5.

As part of the evidence record, the Department presented verification of Petitioner's earnings. See Exhibit A, pp. 11-13 (The Work Number). The Department used Petitioner's earnings for November 2015 to calculate her gross earned income of \$1,632 for the benefit period of January 2016. See Exhibit A, p. 13. Petitioner's November 2015 earnings consisted of the following: (i) pay date of [REDACTED] and gross earnings of \$390; (ii) pay date of [REDACTED] and gross earnings of \$312; (iii) pay date of [REDACTED] and gross earnings of \$390; and (iv) pay date of [REDACTED] and gross earnings of \$426.57. See Exhibit A, p. 13. Converting the above earnings to a standard monthly amount, results in a total of \$1,632. BEM 505, pp. 7-8. It should be noted that the pay date of [REDACTED] included two hours of overtime. See Exhibit A, p. 13.

In response, Petitioner testified that she had previously worked for a temporary employment agency, but that she had recently obtained permanent employment in February 2016. Nonetheless, Petitioner provided testimony as to her earnings for January 2016. Petitioner testified that she works 40 hours a weeks, she is paid weekly,

and earns \$9.75/hourly. Based on the Petitioner's testimony, converting her earnings to a standard monthly amount, results in a total of \$1,677. BEM 505, pp. 7-8. Thus, the Department calculated a lower gross earned income as compared to Petitioner's calculation.

Based on the foregoing information, the Department properly calculated Petitioner's gross earned income in accordance with Department policy. See BEM 505, pp. 1-8. The Department presented credible evidence showing how the Department calculated Petitioner's gross earned income of \$1,632. See Exhibit A, pp. 11-13 (The Work Number). Petitioner disagreed with the Department calculation; however, her testimony would have resulted in an even higher calculation for her gross earned income.

Third, the Department properly applied the \$154 standard deduction applicable to Petitioner's group size of two. RFT 255 (October 2015), p. 1.

Fourth, the Department indicated Petitioner's housing expenses were \$113, which she did not dispute. See Exhibit A, p. 16. Also, Petitioner's shelter budget showed that she was not receiving the \$539 heat and utility (h/u) standard nor any of the mandatory individual standards. See Exhibit A, p. 16.

For groups with one or more SDV members, the Department uses excess shelter. See BEM 554 (October 2015), p. 1. In calculating a client's excess shelter deduction, the Department considers the client's monthly shelter expenses and the applicable utility standard for any utilities the client is responsible to pay. BEM 556 (July 2013), pp. 4-5. The utility standard that applies to a client's case is dependent on the client's circumstances. The mandatory h/u standard, which is currently \$539 and the most advantageous utility standard available to a client, is available only for FAP groups (i) that are responsible for heating expenses separate from rent, mortgage or condominium/maintenance payments; (ii) that are responsible for cooling (including room air conditioners) and verify that they have the responsibility for non-heat electric; (iii) whose heat is included in rent or fees if the client is billed for excess heat by the landlord, (iv) who have received the home heating credit (HHC) in an amount greater than \$20 in the current month or the immediately preceding 12 months, (v) who have received a Low-Income Home Energy Assistance Act (LIHEAP) payment or a LIHEAP payment was made on his behalf in an amount greater than \$20 in the current month or in the immediately preceding 12 months prior to the application/recertification month; (vi) whose electricity is included in rent or fees if the landlord bills the client separately for cooling; or (vii) who have any responsibility for heating/cooling expense (based on shared meters or expenses). BEM 554, pp. 16-20 and RFT 255, p. 1.

To show responsibility for heating and/or cooling expenses, acceptable verification sources include, but are not limited to, current bills or a written statement from the provider for heating/cooling expenses or excess heat expenses; collateral contact with the landlord or the heating/cooling provider; cancelled checks, receipts or money order copies, if current as long as the receipts identify the expense, the amount of the expense, the expense address, the provider of the service and the name of the person

paying the expense; DHS-3688 shelter verification; collateral contact with the provider or landlord, as applicable; or a current lease. BEM 554, pp. 16-20. For groups that have verified that they own or are purchasing the home that they occupy, the heat obligation needs to be verified only if questionable. BEM 554, p. 16.

FAP groups not eligible for the mandatory h/u standard who have other utility expenses or contribute to the cost of other utility expenses are eligible for the individual utility standards that the FAP group has responsibility to pay. BEM 554, p. 19. These include the non-heat electric standard (\$119 as of [REDACTED]) if the client has no heating/cooling expense but has a responsibility to pay for non-heat electricity; the water and/or sewer standard (currently \$81) if the client has no heating/cooling expense but has a responsibility to pay for water and/or sewer separate from rent/mortgage; the telephone standard (currently \$33) if the client has no heating/cooling expense but has a responsibility to pay for traditional land-line service, cell phone service, or voice-over-Internet protocol; the cooking fuel standard (currently \$33) if the client has no heating/cooling expense but has a responsibility to pay for cooking fuel separate from rent/mortgage; and the trash removal standard (currently \$19) if the client has no heating/cooling expense but has a responsibility to pay for trash removal separate from rent/mortgage. BEM 554, pp. 20-24 and RFT 255, p. 1.

Sometimes the excess shelter deduction calculation will show more than one utility deduction. However, if the client is eligible for the \$539 mandatory h/u, that is all the client is eligible for. If she is not eligible for the mandatory h/u, she gets the sum of the other utility standards that apply to her case. BEM 554, pp. 15 and 20.

In this case, the evidence established that Petitioner was not eligible for the \$539 mandatory h/u standard nor any of the mandatory individual standards at the time of the redetermination. See BEM 554, pp. 15-20. Petitioner's shelter rent included all utilities such as heat, electric, trash etc... Thus, Petitioner would not be eligible for the \$539 mandatory h/u standard. During the hearing, though, Petitioner did mention that she is responsible for a telephone expense. Petitioner did not list such an expense in her redetermination. See Exhibit A, p. 9. As such, the Department also properly did not budget Petitioner's telephone standard deduction. See BEM 554, p. 22. However, the Department is now aware that she is responsible for the telephone expense and should budget it for future benefit periods.

As a result of the above calculations and a review of the FAP budget provided, the Department calculated Petitioner's monthly net income (after deductions) to be \$1,151. See Exhibit A, p. 16. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Petitioner's group size and net income, the Department properly determined that Petitioner's FAP benefit issuance is found to be \$16 effective [REDACTED]. RFT 260 (October 2015), p. 15.

MA coverage for December 2015

Petitioner argued that she did not have MA coverage for December 2015. However, the Department presented evidence that Petitioner received HMP coverage for December 2015. See Exhibit B. As such, the Department properly provided Petitioner with MA – HMP coverage she was eligible to receive for December 2015.

MA closure

Finally, on [REDACTED] the Department sent Petitioner a determination notice notifying her that she was not eligible for MA coverage effective [REDACTED], ongoing. See Exhibit A, pp. 17-18. The determination notice also indicated that Petitioner's annual income of \$19,716 exceeded the countable income limit. See Exhibit A, p. 18. Based on Petitioner's testimony, she would not be eligible for other MA categories other than HMP. As such, the undersigned addresses below whether Petitioner is income eligible for HMP.

HMP is considered a Modified Adjusted Gross Income (MAGI) related category. MAGI Related Eligibility Manual, *Michigan Department of Community Health* (DCH), May 2014, p. 4.

Available at http://michigan.gov/documents/mdch/MAGI_Manual_457706_7.pdf.

The HMP provides health care coverage for individuals who:

- Are 19-64 years of age
- Have income at or below 133% of the federal poverty level under the MAGI methodology
- Do not qualify for or are not enrolled in Medicare
- Do not qualify for or are not enrolled in other Medicaid programs
- Are not pregnant at the time of application
- Are residents of the State of Michigan

Medicaid Provider Manual, *Michigan Department of Community Health*, October 2015, p. 462. Available at <http://www.mdch.state.mi.us/dch-medicaid/manuals/MedicaidProviderManual.pdf>. All criteria for MAGI eligibility must be met to be eligible for the Healthy Michigan Plan. Medicaid Provider Manual, p. 462.

In the present case, Petitioner must have income at or below 133% of the federal poverty level under the MAGI methodology to be eligible for HMP. See Medicaid Provider Manual, p. 462.

Before determining whether Petitioner's income is at or below 133% of the federal poverty level, the Department must determine Petitioner's household composition. The size of the household will be determined by the principles of tax dependency in the majority of cases. MAGI Related Eligibility Manual, p. 14.

In this case, the Department determined Petitioner's household composition was one. Therefore, the Department argued that Petitioner's annual income of \$19,716 exceeds the HMP income limit of \$15,654.10 for a household size of one. See Exhibit A, p. 18. However, the undersigned concludes that the Department did not properly calculate Petitioner's household composition.

In Petitioner's redetermination, she indicated that she plans file a federal income tax return for next year and that she plans to claim both of her children as tax dependents. See Exhibit A, p. 6. Based on this statement, Petitioner's claims that her household composition will be three (Petitioner plus two tax dependents).

The Department manual differentiates between tax filers and non-tax filers. The household for a tax filer, who is not claimed as a tax dependent, consists of: (i) individual; (ii) individual's spouse; and (iii) tax dependents. MAGI Related Eligibility Manual, p. 14.

Furthermore, 42 CFR 435.603(f)(1), basic rule for taxpayers not claimed as a tax dependent states the following:

In the case of an individual who expects to file a tax return for the taxable year in which an initial determination or renewal of eligibility is being made, and who does not expect to be claimed as a tax dependent by another taxpayer, the household consists of the taxpayer and, subject to paragraph (f)(5) of this section, all persons whom such individual expects to claim as a tax dependent.

Based on the above policy manuals and federal regulations, the Department did not properly determine Petitioner's household composition. Instead, Petitioner's household composition should be three, Petitioner plus her two tax dependents that she expects to claim. Petitioner clearly indicated in her redetermination that she expects to file a tax return and claim two tax dependents. See MAGI Related Eligibility Manual, p. 14 and 42 CFR 435.603(f)(1) – (f)(5).

Because the undersigned concludes Petitioner's household composition is three, the HMP income limit now increases to \$26,719.70 as that amount represents 133% of the poverty guidelines for a household size of three. See Exhibit A, p. 18. Because the Department improperly determined Petitioner's household composition for HMP purposes, it improperly closed her HMP case effective [REDACTED]. As such, the Department will redetermine Petitioner's MA eligibility for [REDACTED], ongoing. Now, the undersigned does not conclude one way or another that Petitioner is eligible for HMP. Petitioner's annual income of \$19,716 is clearly below the HMP income limit for a household size of three (\$26,719.70). See Exhibit A, p. 18. However, now that her household size has increased to three for MAGI-related purposes, the other household member's income, if any, are possibly countable as well. Thus, the Department has to redetermine her eligibility for HMP or other MA categories.

DECISION AND ORDER

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 (i) the Department acted in accordance with Department policy when it properly calculated Petitioner's FAP allotment effective [REDACTED]; (ii) the Department acted in accordance with Department policy when it properly provided Petitioner with MA – HMP coverage she was eligible to receive for December 2015; and (iii) the Department did not act in accordance with Department policy when it improperly closed Petitioner's MA – HMP coverage effective [REDACTED].

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to FAP allotment and MA coverage for December 2015 and **REVERSED IN PART** with respect to MA coverage for [REDACTED], ongoing.

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 MA eligibility for [REDACTED], ongoing (for MAGI related groups household composition is three);
2. Issue supplements to Petitioner for any MA benefits she was eligible to receive but did not from [REDACTED], ongoing; and
3. Notify Petitioner of its decision.



Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **FEBRUARY 25, 2016**

Date Mailed: **FEBRUARY 25, 2016**

EF / hw

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of

the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from MAHS within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion. MAHS may grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

CC:

