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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: June 30, 2017
MAHS Docket No.: 17-006768
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. 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; 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 [REDACTED], from Detroit, Michigan. Petitioner was present for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator.

ISSUE

1. Did the Department properly decrease Petitioner's Food Assistance Program (FAP) benefits to \$ [REDACTED] effective [REDACTED]?
2. Did the Department properly close Petitioner's Healthy Michigan Plan (HMP) coverage effective [REDACTED]?

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 is an ongoing recipient of FAP benefits.
2. Petitioner was an ongoing recipient of Medical Assistance (MA) – HMP coverage.
3. On [REDACTED], Petitioner submitted a change report with copies of his check stubs. [Exhibit A, pp. 14-19.]

4. As a result of the submitted change report, Petitioner had an increase in income, which resulted in a decrease in his FAP benefits and closure of his HMP coverage. [Exhibit A, p. 1.]
5. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits decreased to \$ [REDACTED] effective [REDACTED]. [Exhibit A, pp. 3-8.]
6. On [REDACTED], the Department sent Petitioner a Health Care Coverage Determination Notice (determination notice) notifying him that his HMP coverage would close effective [REDACTED], due to excess income. [Exhibit B, pp. 1-4.]
7. On [REDACTED], Petitioner filed a hearing request, protesting the Department's action. [Exhibit A, pp. 20-21.]

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 benefits

The first issue Petitioner disputed was the decrease in his FAP benefits. The Department presented the June 2017 FAP budget for review. [Exhibit A, pp. 9-10.] It was not disputed that the certified group size is one and that Petitioner was not a senior/disabled/disabled veteran (SDV) member.

As stated above, Petitioner's FAP benefits decreased because he submitted a change report with copies of his check stubs, which showed an increase in his income. [Exhibit A, pp. 14-19.] Based on these check stubs, the Department calculated

Petitioner's gross earned income to be \$ [REDACTED] which he disputed. [Exhibit A, p. 9.] The calculation of Petitioner's gross income was based the following four check stubs he submitted: (i) pay date of [REDACTED], with a gross pay of \$ [REDACTED] [REDACTED] hours worked weekly; (ii) pay date of [REDACTED], with a gross pay of \$ [REDACTED] [REDACTED] hours worked weekly; (iii) pay date of [REDACTED], with a gross pay of \$ [REDACTED] [REDACTED] hours worked weekly; and (iv) pay date of [REDACTED], with a gross pay of \$ [REDACTED] [REDACTED] hours worked weekly. [Exhibit A, pp. 16-19.] Converting the above earnings to a standard monthly amount, results in a total income of \$ [REDACTED] [Exhibit A, p. 9, and see BEM 505 (April 2017), p. 8, (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).]

In response, Petitioner testified that his hours and gross income do fluctuate. He testified his gross income per week is approximately \$ [REDACTED]. He basically argued that his gross income fluctuates and his income was less than the amount calculated by the Department.

The Department uses income from the past 60 or 90 days for fluctuating or irregular income, if: (i) the past 30 days is not a good indicator of future income, and (ii) the fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month. BEM 505, p. 6. The Department will compute the average monthly income (and convert weekly and every-other-week amounts) based on the amounts and the number of months entered. BEM 505, p. 6. Note, the 60- or 90-day period used can begin up to 60 or 90 days before the interview date or the date the information was requested. BEM 505, p. 6.

Based on the above policy, the undersigned questioned the Department if whether it should have used Petitioner's income from the past 60 or 90 days since his income fluctuated. In response, the Department testified that policy states you use the past 60 or 90 days only *if the past 30 days is not a good indicator of future income*. BEM 505, p. 6 (emphasis added). The Department testified that "The Work Number" showed Petitioner's past 30 days was a good indicator of his future income. [Exhibit B, p. 6 (emphasis added)] The undersigned agrees with the Department's argument. A review of Petitioner's income via "The Work Number" does show that his income fluctuates, but that the past 30 days of his income for the month of [REDACTED] and the beginning of [REDACTED], was a good indicator of his future income. [Exhibit B, p. 6.] Therefore, the undersigned finds that the Department properly used the past 30 days of Petitioner's income he submitted on [REDACTED], to calculate his gross earned income of \$ [REDACTED] in accordance with Department policy. BEM 505, pp. 6-8.

Then, Petitioner's gross countable earned income is reduced by a 20% earned income deduction. See BEM 550 (January 2017), p. 1. This results in Petitioner's post earned income deduction amount to be \$ [REDACTED] (\$ [REDACTED] total income minus \$ [REDACTED] (20% of the total income)). [Exhibit A, p. 9.]

Next, the Department applied the \$ [REDACTED] standard deduction applicable to Petitioner's group size of one. RFT 255 (October 2016), p. 1. Petitioner also did not dispute that

the dependent care, medical, and child support deductions were calculated as zero. [Exhibit A, p. 9.] Once the Department subtracts the \$[REDACTED] standard deduction from the post earned income deduction, this results in an adjusted gross income of \$[REDACTED] [Exhibit A, p. 9.]

Also, the Department provides Petitioner with an excess shelter deduction, which is comprised of his housing expenses and utility expenses. Before proceeding to the FAP – Excess Shelter Deduction budget (shelter budget), it has to be noted that the Department conducted subsequent actions for the shelter budget in which it corrected his shelter expenses. The original shelter budget (prior to the hearing request) indicated his housing expenses was \$[REDACTED] however, the subsequent shelter budget (after his hearing request) showed his housing expenses was \$[REDACTED] [Exhibit A, p. 11, and Exhibit B, p. 9.] The correct amount for his housing expense was \$[REDACTED] which he did not dispute. Also, the original shelter budget (prior to the hearing request) indicated that he was eligible for the \$[REDACTED] heat and utility standard; however, the subsequent shelter budget (after his hearing request) showed he was only eligible for the \$[REDACTED] telephone standard deduction. [Exhibit A, p. 11, and Exhibit B, p. 9.] The undersigned reviewed both budgets because the outcome of Petitioner’s FAP allotment would have remained at \$[REDACTED] despite the changes to the shelter calculations. The Department did not properly calculate the shelter expenses in the original shelter budget, but it corrected its action, and presented a subsequent budget showing the proper calculations, which Petitioner did not dispute. See BEM 554 (January 2017), pp. 12-25, and RFT 250, p. 1. Using the updated budget, the undersigned proceeds with the analysis to determine if the FAP benefits were properly calculated. The undersigned finds that the excess shelter amount was properly calculated to be \$[REDACTED] [Exhibit B, pp. 8-9.]

Finally, the Department calculated a total net income of \$[REDACTED] [Exhibit B, pp. 8-9.] 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 \$[REDACTED] for [REDACTED]. RFT 260 (October 2016), p. 12.

HMP coverage

The second issue Petitioner disputed was the closure of his HMP benefits.

Medical Assistance is available (i) under Supplemental Security Income (SSI)-related categories to individuals who are aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled or (ii) for children under 19, parents or caretakers of children, pregnant or recently pregnant women, former foster children, MOMS, MICHild, Flint Water Group, and HMP based on the Modified Adjusted Gross Income (MAGI) methodology. BEM 105 (April 2017), p. 1. The evidence at the hearing established that the most beneficial MA category available to Petitioner was HMP.

The Healthy Michigan Plan (HMP) is based on Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (October 2016), p. 1. The Healthy Michigan Plan provides

health care coverage for a category of eligibility authorized under the Patient Protection and Affordable Care Act and Michigan Public Act 107 of 2013 effective April 1, 2014. BEM 137, p. 1.

The Healthy Michigan Plan (HMP) provides health care coverage for individuals who:

- Are 19-64 years of age
- 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
- Meet Michigan residency requirements
- Meet Medicaid citizenship requirements
- Have income at or below 133% Federal Poverty Level (FPL) Cost Sharing.

BEM 137, p. 1.

Before determining whether Petitioner's income is at or below 133% of the FPL, the Department must first 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, *Michigan Department of Community Health (DCH)*, May 2014, p. 14. Available at http://michigan.gov/documents/mdch/MAGI_Manual_457706_7.pdf.

In this case, the Department properly determined Petitioner's household composition was one.

The analysis now turns to whether Petitioner's income was at or below 133% of the FPL. The 2017 Poverty Guidelines indicated that the poverty guidelines for persons in family/household size of one is \$ [REDACTED] 2017 Poverty Guidelines, *U.S. Department of Health & Human Services*, January 26, 2017, p. 1. Available at: <https://aspe.hhs.gov/poverty-guidelines>. However, the poverty guidelines for a household size of one must be multiplied by 1.33 (133%) to obtain the 133% FPL calculation. The result is that Petitioner's annual income must be at or below \$ [REDACTED] (\$ [REDACTED] multiplied by 1.33) of the FPL for a household size of one. For monthly eligibility, the income must be at or below \$ [REDACTED] for a household size of one (\$ [REDACTED] divided by 12 months).

In this case, Petitioner received weekly employment earnings that the Department used to make its determination that his income exceeded the limits. The determination notice stated that Petitioner's annual income was \$ [REDACTED] which exceeded the limits. [Exhibit B, p. 2.] However, the undersigned used Petitioner's income submitted with his change report on [REDACTED], to determine his income calculation. [Exhibit A, pp. 14-19.] When the undersigned adds together all of his submitted check stubs gross income, the resulting total monthly income is approximately \$ [REDACTED] [Exhibit A, pp. 14-19.]

Medicaid eligibility is determined on a calendar month basis. BEM 105, p. 2. Unless policy specifies otherwise, circumstances that existed, or are expected to exist, during the calendar month being tested are used to determine eligibility for that month. BEM 105, p. 2. When determining eligibility for a future month, assume circumstances as of the processing date will continue unchanged unless you have information that indicates otherwise. BEM 105, p. 2.

MAGI for purposes of Medicaid eligibility is a methodology which state agencies and the federally facilitated marketplace (FFM) must use to determine financial eligibility. BEM 500 (January 2016), p. 3. It is based on Internal Revenue Service (IRS) rules and relies on federal tax information to determine adjusted gross income. BEM 500, pp. 3-4. It eliminates asset tests and special deductions or disregards. BEM 500, p. 4. Every individual is evaluated for eligibility based on MAGI rules. BEM 500, p. 4. The MAGI rules are aligned with the income rules that will be applied for determination of eligibility for premium tax credits and cost-sharing reductions through exchanges. BEM 500, p. 4.

In order to determine income in accordance with MAGI, a client's adjusted gross income (AGI) is added to any tax-exempt foreign income, tax-exempt Social Security benefits, and tax-exempt interest. AGI is found on IRS Tax Form 1040 at line 37, Form 1040 EZ at line 4, and Form 1040A at line 21. Alternatively, it is calculated by taking the "federal taxable wages" for each income earner in the household as shown on the paystub or, if not shown on the paystub, by using gross income before taxes reduced by any money the employer takes out for health coverage, child care, or retirement savings. The figure is multiplied by the number of paychecks the client expects in [REDACTED] to estimate income for the year. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>. Additionally for review, there is a chart that shows common types of income countable towards a MAGI eligibility determination and with respect to federal taxable wages from employment, a client is to use federal taxable wages if indicated on a paystub and if not, use gross income and subtract amounts your employer takes out of your pay for child care, health insurance, and retirement plans. See <https://www.healthcare.gov/income-and-household-information/income/> and http://laborcenter.berkeley.edu/pdf/2013/MAGI_summary13.pdf.

Additionally, federal law provides further guidance in the determination of an individual's financial eligibility for MAGI related categories. Specifically, in determining an individual's financial eligibility for a budget period, 42 CFR 435.603(h)(2) states that for current beneficiaries:

For individuals who have been determined financially-eligible for Medicaid using the MAGI-based methods set forth in this section, a State may elect in its State plan to base financial eligibility either on current monthly household income and family size or income based on projected annual household income and family size for the remainder of the current calendar year.

Finally, 42 CFR 435.603(h)(3) states:

In determining current monthly or projected annual household income and family size under paragraphs (h)(1) or (h)(2) of this section, the agency may adopt a reasonable method to include a prorated portion of reasonably predictable future income, to account for a reasonably predictable increase or decrease in future income, or both . . .

Based on the above policy manuals and federal regulations, the Department has established by a preponderance of evidence that Petitioner was not eligible for HMP benefits due to excess income. Based on Petitioner's submitted check stubs on [REDACTED] [REDACTED] his resulting total monthly income is approximately \$ [REDACTED] [Exhibit A, pp. 14-19.] Furthermore, if the undersigned takes Petitioner monthly income amount of \$ [REDACTED] and multiplies it by 12 months, this result is an annual income of \$ [REDACTED]. As a result, Petitioner's annual income exceeds the annual HMP income limit of \$ [REDACTED] for a household size of one. The Department's determination notice had a slightly different calculation for Petitioner's annual income, but ultimately, in either scenario, his income exceeds the HMP income limits.


Accordingly, the Department acted in accordance in Department policy when it determined that Petitioner was not eligible for HMP benefits effective [REDACTED], due to excess income. BEM 105, p. 2; BEM 137, p. 1; BEM 500, pp. 3-4; 42 CFR 435.603(h)(2) to (3); and MAGI Related Eligibility Manual, pp. 1-51.

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 to be \$ [REDACTED] effective [REDACTED]; and (ii) the Department acted in accordance with Department policy when it properly closed Petitioner's HMP/MA benefits effective [REDACTED].

Accordingly, the Department's FAP and HMP/MA decision is **AFFIRMED**.

EJF/



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

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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

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

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

DHHS

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