



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: November 16, 2017
MAHS Docket No.: 17-013357
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 November 9, 2017, from Detroit, Michigan. Petitioner was present and represented himself. The Department of Health and Human Services (Department) was represented by Tonya Davis, Eligibility Specialist.

ISSUES

1. Did the Department properly close Petitioner's Food Assistance Program (FAP) benefit case?
2. Did the Department properly close Petitioner's Medical Assistance (MA) benefit case?

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 FAP recipient and MA recipient under the Health Michigan Plan (HMP).
2. On September 26, 2017, Petitioner submitted a redetermination related to his FAP benefit case (Exhibit A). With the redetermination, Petitioner submitted pay statements from his income from employment (Exhibit B).
3. On [REDACTED], 2017, the Department conducted an interview with Petitioner related to the redetermination.

4. Petitioner was not married, was not the caretaker of any minor children and has not been determined as disabled by a state or federal agency.
5. On September 28, 2017, the Department sent Petitioner a Benefit Notice informing him that his FAP benefits were ending effective September 30, 2017, ongoing, and his MA benefit case was ending October 31, 2017, ongoing (Exhibit G).
6. On September 28, 2017, the Department sent Petitioner a Health Care Coverage Determination Notice informing him that he was not eligible for MA benefits effective November 1, 2017, ongoing (Exhibit H).
7. On October 6, 2017, Petitioner submitted a request for hearing disputing the Department's actions.

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).

FAP

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 completed a redetermination on September 26, 2017. Petitioner was a member of FAP group that consisted solely of himself. With the redetermination, Petitioner submitted pay statements from his income from employment. The Department determined Petitioner exceeded the net income limit. The Department submitted a FAP budget to establish Petitioner's FAP eligibility (Exhibit F).

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (July 2017), pp. 1-5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (October 2017), p. 1. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. Income received twice per month is added together. BEM 505, p. 8. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. Income received weekly is converted to a standard

amount by multiplying the average of the weekly pay amounts by the 4.3 multiplier. BEM 505, pp. 7-9.

The Department testified Petitioner's earned income from employment was calculated to be \$2,034 per month. Petitioner submitted pay statements which showed on July 21, 2017, Petitioner was paid \$362.68; on July 28, 2017, Petitioner was paid \$320.73; on August 4, 2017, he was paid \$332.95; on August 11, 2017, he was paid \$693.09; and on August 18, 2017, he was paid \$546.24. Petitioner was paid on a weekly basis. The Department testified it averaged Petitioner's pay statements from July 28, 2017; August 4, 2017; August 11, 2017; and August 18, 2017. The Department then multiplied that figure by the 4.3 multiplier.

In prospecting income, the Department is required to use income from the past 30 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, pp. 5-6. The Department can use income from the past 60 or 90 days for fluctuating or irregular income if: the past 30 days is not a good indicator of future income and 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.

On [REDACTED], 2017, Petitioner completed an interview with the Department. Petitioner informed the Department that his income fluctuates. Petitioner stated he does not always work the same number of hours and is paid at different rates depending on the type of work he performs. The Department obtained Petitioner's payroll history from October 2016 through May 2017 (Exhibit C). When observing the payroll history, as well as Petitioner's year-to-date totals from his August 2017 pay statements, it is clear that Petitioner's income fluctuates significantly and the pay statements from the previous 30 days that the Department used to calculate his income were not a good indicator of his future income. Therefore, the Department failed to establish that it properly followed policy when it calculated Petitioner's earned income and determined he exceeded the net income limit.

MA

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.

In this case, the Department testified it used the same pay statements to calculate Petitioner's yearly income for MA eligibility as it did to determine his FAP eligibility. The Department determined Petitioner's yearly income was \$24,588.

The Department concluded that Petitioner was not eligible for HMP because his income exceeded the applicable income limit for her group size. HMP uses a Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (October 2016), p. 1. An individual is eligible for HMP if her household's income does not exceed 133% of the Federal Poverty Level (FPL) applicable to the individual's group size. BEM 137, p. 1. An individual's group size for MAGI-related purposes requires consideration of the client's tax filing status. In this case, Petitioner was not married and had no dependents. Therefore, Petitioner's would be a group size of one for MAGI-related purposes.

133% of the annual FPL in 2017 for a household with one member is \$16,039.80. See <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's annual income cannot exceed \$16,039.80. To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. BEM 500 (July 2017), p. 3. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500, p. 3. Income is verified via electronic federal data sources in compliance with MAGI methodology. MREM, § 1.

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. This figure is multiplied by the number of paychecks the client expects in 2017 to estimate income for the year. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>.

As stated above, the figures used by the Department did not accurately reflect Petitioner's yearly income, as his income fluctuates significantly. Additionally, Petitioner's year-to-date total as of August 18, 2017, was only \$9,848.63. Therefore, the Department's calculation of Petitioner's yearly income of \$24,588 was not accurate. Thus, the Department failed to establish that Petitioner was eligible for HMP and that it properly closed his MA benefit case.

DECISION AND ORDER

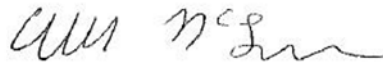
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's FAP and MA benefit cases.

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 FAP eligibility as of October 1, 2017, ongoing;
2. If Petitioner is eligible for FAP benefits, issue supplements to Petitioner that he was eligible to receive but did not as of October 1, 2017, ongoing;
3. Redetermine Petitioner's MA eligibility as of November 1, 2017, ongoing;
4. Provide Petitioner with MA coverage he was eligible to receive for November 1, 2017, ongoing; and
5. Notify Petitioner of its MA and FAP decisions in writing.



EM/

Ellen McLemore

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.

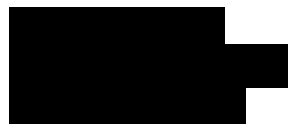
If submitted by mail, the written request must be addressed as follows:

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

DHHS

MDHHS-Wayne-31-Hearings

Petitioner



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