



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: January 17, 2018  
MAHS Docket No.: 17-015528  
Agency No.: ██████████  
Petitioner: ██████████

**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 January 10, 2018, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by ██████████, Hearing Facilitator, and Gloria Baxter, Eligibility Specialist.

**ISSUE**

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

**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 November 6, 2017, Petitioner submitted an application for FAP and MA benefits.
2. Petitioner had income from employment.
3. Petitioner was a member of a group that consisted of herself and her minor child.

4. On November 6, 2017, the Department sent Petitioner a Notice of Case Action informing her that she was approved FAP benefits in the amount of \$█ for November 6, 2017, through November 30, 2017, and \$█ per month effective December 1, 2017, ongoing.
5. On November 17, 2017, the Department sent Petitioner a Health Care Coverage Determination Notice informing her that she was not eligible for MA benefits.
6. On November 27, 2017, Petitioner submitted a hearing request disputing the Department's actions regarding her FAP and MA cases.

### **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.

In this case, Petitioner submitted an application for FAP benefits for her and her minor child, as well as for MA benefits for herself on November 6, 2017. The Department sent Petitioner a Notice of Case Action on November 6, 2017, informing her that her FAP benefits were approved for \$█ per month effective December 1, 2017, ongoing. The Department sent Petitioner a Health Care Coverage Determination Notice on November 17, 2017, informing Petitioner that she was not eligible for MA benefits. The Department testified Petitioner was only eligible for MA benefits under the Healthy Michigan Plan (HMP) and that she was denied benefits because she was income ineligible due to excess income. Petitioner submitted a hearing request disputing the Department's actions regarding her FAP and MA benefits. Specifically, Petitioner disputed the Department's calculation of her income.

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), pp. 1-2. 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. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 7-8.

For FAP cases, income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. BEM 505, pp. 7-9. An employee's wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (July 2016), pp. 6-7.

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 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/>.

The Department testified that for both Petitioner's MA and FAP case they used pay statements that were submitted by Petitioner. The Department stated that the pay statements showed Petitioner was paid in the following gross amounts: \$ [REDACTED] on October 16, 2017; \$ [REDACTED] on October 23, 2017; \$ [REDACTED] on October 30, 2017; and \$ [REDACTED] on November 6, 2017. The Undersigned requested that the Department submit the pay statements to affirm the income amounts. The Department later submitted documents but did not include the pay statements. However, Petitioner submitted a copy of her pay statements that she sent to the Department (Exhibit 1). The pay statements actually reflect that Petitioner was paid the following gross amounts: \$ [REDACTED] on October 16, 2017; \$ [REDACTED] on October 24, 2017; \$ [REDACTED] on October 30, 2017; and \$ [REDACTED] on November 6, 2017. It is evident the Department did not use the

correct income figures. As such, the Department failed to establish it properly calculated Petitioner's income from employment.

The Department also testified it included payments that Petitioner received for child support as unearned income. According to the Consolidated Inquiry, Petitioner receives direct child support and certified child support (Exhibit C). Court-ordered child support may be either certified or direct. BEM 503 (July 2017), p. 6. Certified support is retained by the state due to the child's FIP activity. BEM 503, p. 6. Direct support is paid to the client. BEM 503, p. 6. For FAP cases, certified support is excluded from the client's income. BEM 503, p. 7. Direct support is included as income. BEM 503, p. 9. The Department testified it included Petitioner's certified support as income. The Department conceded that was incorrect. Therefore, the Department did not properly calculate Petitioner's child support income.

The Department did not properly calculate Petitioner's income from employment or child support income. As such, it follows that the Department did not properly determine Petitioner's MA or FAP eligibility, as both are income based. Therefore, the Department failed to establish that it acted in accordance with policy when it determined Petitioner's MA and FAP eligibility.

Additionally, persons may qualify under more than one MA category. BEM 105 (April 2017), p. 2. Federal law gives them the right to the most beneficial category. BEM 105, p. 2. The most beneficial category is the one that results in eligibility, the least amount of excess income or the lowest cost share. BEM 105, p. 2. Therefore, Petitioner's eligibility under other MA programs should have been assessed. Petitioner was a caretaker of a minor child that lived in her home. Petitioner notified the Department of her status as a parent/caretaker in the application. Petitioner would qualify for MA under the Group 2-Caretaker (G2C) category. The Department acknowledged that at the time the November 17, 2017 Health Care Coverage Determination notice was sent, it did not consider her eligibility for the G2C category. Therefore, the Department also failed to establish it properly followed policy when it failed to consider Petitioner's eligibility for other MA categories.

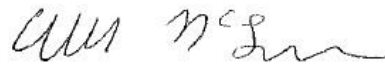
### **DECISION AND ORDER**

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 the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's FAP benefit amount and denied her application for MA benefits.

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. Reregister and reprocess Petitioner's November 6, 2017 MA application;
2. Provide Petitioner with MA benefits she is entitled to receive but did not as a result of the application denial;
3. Redetermine Petitioner's FAP eligibility as of November 6, 2017, ongoing;
4. If Petitioner is eligible for additional FAP benefits, issue supplements she was entitled to receive but did not as of November 6, 2017, ongoing; and
5. Notify Petitioner of its FAP and MA decisions in writing.



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**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**

[REDACTED]

**Petitioner**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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