



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: January 26, 2018  
MAHS Docket No.: 17-016039  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Michael Crews**

**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 17, 2018, from Detroit, Michigan. With Petitioner's permission, Petitioner was represented by her daughter, [REDACTED] and her husband, [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist and Hearing Facilitator.

**ISSUE**

Did the Department properly close Petitioner's Medical Assistance (MA) benefits for her and her husband due to excess income?

Did the Department properly close Petitioner's Food Assistance Program (FAP) case due to excess income?

**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 and her husband are ongoing recipients of MA and FAP benefits.
2. Petitioner and her husband also have two minor children, ages [REDACTED] and [REDACTED].
3. The Department submitted a verification of employment dated October 5, 2017 to Petitioner for her husband, [REDACTED], concerning his business [REDACTED].

(Exhibit A, p. 2). Mr. ■ returned the completed verification of employment to the Department on October 18, 2017.

4. Mr. ■ monthly income from his business of ■ was previously budgeted incorrectly as self-employment income. In addition, the Department alleged that Mr. ■ received profits from his business, per his 2016 income taxes, of ■ (Exhibit A, item 5 and 6).
5. Per the documentation from the Department of Licensing and Regulatory Affairs (LARA), Mr. ■ business is a ■ and, as such, Mr. ■ monthly income was to be designated as earned income, not self-employment income (Exhibit A, item 7).
6. Further, the Department designated the business profits of ■ as unearned interest and dividend income and divided the amount by 12, which totaled ■ monthly.
7. As such, the Department calculated Mr. Saiful's monthly income to be ■ (■). When multiplied by 12, the countable income totaled ■, which exceeded the income limit for Petitioner's group size of 4 for MA and FAP benefits.
8. The Department mailed a Health Care Coverage Determination Notice dated October 5, 2017 to Petitioner, which stated that Petitioner and husband were not eligible for MA benefits, effective November 1, 2017, as their countable income exceeded the income limit for MA benefits (Exhibit A, item 4).
9. Petitioner's FAP case was closed effective January 1, 2018 per a Notice of Case Action dated November 7, 2017.
10. Petitioner submitted a hearing request dated December 4, 2017 to dispute the Department's action as to her FAP and MA 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.

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 a hearing request to dispute the Department's action as to closure of her FAP and MA cases.

MA eligibility for children under 19, parents or caretakers of children, pregnant or recently pregnant women, former foster children, MOMS, MICHild, Flint Water Group and Healthy Michigan Plan is based on Modified Adjusted Gross Income (MAGI) methodology. BEM 105 (April 2017), p. 1. Persons may qualify under more than one MA category. Federal law gives them the right to the most beneficial category. 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. A client must meet financial eligibility for MAGI-related MA programs, but there is no asset test. A determination of group size under the MAGI methodology requires consideration of the client's tax status and dependents. The evidence at the hearing established that Petitioner and her husband had two minor children. There was no evidence presented that either were disabled or blind.

Group 2 Caretaker (G2C) is a non-MAGI MA category. BEM 105, p. 4. MA is available to parents and other caretaker relatives who meet the eligibility factors in this item. All eligibility factors must be met in the calendar month being tested. BEM 135 (October 2015), p. 1. When a dependent child lives with both parents, both parents may be caretaker relatives. BEM 135, p. 1. Assets must be considered in determining eligibility for G2C. Assets mean: 1) cash; 2) personal property; and 3) real property. BEM 400 (July 2017), p. 6. Asset eligibility exists when the asset group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400, p. 6 For G2C, the asset limit is \$3,000. BEM 400, p. 7.

Petitioner's group size for MAGI purposes requires consideration of the client's tax filing status. Petitioner and her husband filed taxes jointly and claim two children as dependents. Therefore, Petitioner has a household size of four. As such, 100% of the 2017 FPL for the four person group is [REDACTED]. 133% of the annual FPL in 2017 for a household with four members is [REDACTED]. See <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be eligible for a MAGI-related MA programs, Petitioner's annual income cannot exceed [REDACTED].

Department policy specifically states that S-Corporations and Limited Liability Companies (LLCs) are not self-employment. BEM 502 (July 2017), p. 1. Additionally, Department policy holds that the income a client receives from an S-Corp or LLC is to be counted as wages, even if the client is the owner. BEM 501 (July 2017), p. 5.

Per the verification of employment, for September 2017, Petitioner reported his monthly gross income as [REDACTED] Exhibit A, item 2). When the countable monthly income of [REDACTED] is multiplied by 12, the result is annual income of [REDACTED] which does not exceed the income limit for Petitioner's group size for MAGI-related MA programs. Mr. [REDACTED] reported that he had no other income, earned or unearned.

Mr. [REDACTED] 2016 tax return listed business income of [REDACTED]. The Department considered this as unearned interest and dividend income, divided [REDACTED] by 12, and concluded that Mr. [REDACTED] had an additional [REDACTED] per month in income. When added to the monthly income of [REDACTED], the result is total monthly income of [REDACTED]. If [REDACTED] is then multiplied by 12, the result is annual income of [REDACTED], which exceeds the income limit for Petitioner's group size under MAGI-related MA programs. Interest and dividends paid directly to an individual are counted as unearned income. Interest and dividends that are reinvested or deposited back into the asset are excluded as income. BEM 503 (July 2017), p. 24.

The Department, however, did not present evidence in support of its determination that the [REDACTED] constituted interest or dividends paid by the [REDACTED] to the Petitioner as opposed to business income to the [REDACTED]. As such, the Department was unable to establish that Mr. [REDACTED] was currently receiving \$[REDACTED] monthly in addition to his reported income for September 2017. Further, the Department failed to present evidence that it considered Petitioner's group for any non-MAGI related MA programs.

### **FAP closure**

Employment income received by the FAP group members is considered in the calculation of the FAP group eligibility and amount. BEM 556 (July 2013), pp. 2-6. A food assistance worksheet must be completed at initial application and at each redetermination for all approvals, denials and closures made on the basis of income. In addition, the worksheet is used to document changes in assets, income and expenses, and to document supplemental benefits. BEM 556, p. 1.

The Department testified that Petitioner's FAP case was closed effective January 1, 2018 because the gross income exceeded the income limit for the group. However, the Department did not present a FAP budget to support this conclusion. Further, as discussed above, the Department failed to establish that it properly calculated Petitioner's income.

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 did not

act in accordance with Department policy when it closed Petitioner's MA and FAP cases for excess income.


**DECISION AND ORDER**

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. Reprocess Petitioner's group eligibility under MAGI-related and non-MAGI related MA programs;
2. If Petitioner's group is eligible for MA coverage, provide Petitioner's group with MA coverage that it is eligible to receive from November 1, 2017 ongoing;
3. Prepare a food assistance budget and determine Petitioner's group eligibility for FAP benefits based on income;
4. If Petitioner's group is eligible for FAP benefits, provide Petitioner's group with FAP benefits that it is eligible to receive from January 1, 2018 ongoing;
5. Notify Petitioner in writing of the Department's decision.

MC/tm

  
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**Michael Crews**  
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]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

CC: [REDACTED]  
[REDACTED]