



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: August 17, 2018
MAHS Docket No.: 18-005212
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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, an in-person hearing was held on August 8, 2018 from Redford, Michigan. Petitioner appeared and was represented by her attorney, Elisa Gomez of Lakeshore Legal Aid. The Michigan Department of Health and Human Services (MDHHS) was represented by Kelley McLean, assistant attorney general, who appeared via telephone. April Williams, supervisor, and Joseph Crain, specialist, testified on behalf of MDHHS.

ISSUES

The first issue is whether MDHHS properly terminated Petitioner's Food Assistance Program (FAP) eligibility.

The second issue is whether MDHHS properly terminated Petitioner's Healthy Michigan Plan (HMP) eligibility.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. At all relevant times, Petitioner was a member of a household that included an adult son with whom Petitioner bought and prepared food.
2. Petitioner was an ongoing FAP and HMP recipient.

3. On March 20, 2018, MDHHS received Petitioner's Redetermination. Petitioner reported employment with [REDACTED] (hereinafter, "Employer1") as a substitute teacher who did not work in the summer. Exhibit A, pp. 7-14. Pay stubs submitted with the Redetermination listed biweekly gross pays of \$ [REDACTED] on February 15, 2018, and \$ [REDACTED] on March 1, 2018. (Exhibit A, pp. 15-16).
4. For purposes of MA eligibility, MDHHS calculated that Respondent's monthly employment income was \$ [REDACTED] (Exhibit A, p. 21)
5. On March 22, 2018, MDHHS mailed Petitioner a Health Care Coverage Determination Notice informing Petitioner of a termination of MA benefits effective May 2018. The stated reason for HMP termination was excess income. (Exhibit A, pp. 23-25)
6. On April 17, 2018, MDHHS received Employer1 pay stubs for Petitioner which listed biweekly gross pays of \$ [REDACTED] on March 15, 2018, \$ [REDACTED] on March 29, 2018, and \$ [REDACTED] on April 12, 2018.
7. On May 10, 2018, MDHHS received documents concerning Petitioner's employment with [REDACTED] (hereinafter, "Employer2"). Petitioner's past weekly gross pays included \$ [REDACTED] on April 6, 2018, \$ [REDACTED] on April 13, 2018, \$ [REDACTED] on April 20, 2018, and \$ [REDACTED] on May 4, 2018. (Exhibit A, pp. 26-29)
8. On May 17, 2018, MDHHS terminated Petitioner's FAP eligibility, effective June 2018, due to excess income. MDHHS calculated Petitioner's income to be \$ [REDACTED] (Exhibit A, pp. 33-34)
9. On May 25, 2018, Petitioner requested a hearing to dispute the terminations of MA and FAP benefits. (Exhibit A, pp. 2-5)

CONCLUSIONS OF LAW

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner's hearing request dated May 17, 2018, checked a dispute concerning FAP closure. MDHHS presented a Notice of Case Action (Exhibit A, pp. 33-34) dated May 17, 2018, informing Petitioner of a FAP benefit closure beginning June 2018. The stated basis for closure was that Petitioner's gross income exceeded gross income limits.

For non-child support income, MDHHS is to use past income to prospect income for the future unless changes are expected. BEM 505 (October 2017), p. 4). Income calculations are prioritized as follows:

- The past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. Pays may be discarded if they are unusual.
- Income from the past 60 or 90 days may be used 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.

MDHHS is to convert stable and fluctuating income that is received more often than monthly to a standard monthly amount. Weekly income is multiplied by 4.3. Biweekly income is multiplied by 2.15. These conversions takes into account fluctuations due to the number of scheduled pays in a month. (*Id.*, p. 8)

In determining Petitioner's FAP eligibility for June 2018, MDHHS calculated Petitioner's employment income to be \$█████. During the hearing, MDHHS did not state how the income amount was calculated. Given Petitioner's known pays, there appears to be no proper method that MDHHS could have calculated Petitioner's income to be \$█████. Though there is temptation to reverse MDHHS's action, the evidence verified that Petitioner's income renders her ineligible for FAP benefits.

Looking at the most recent 30 day periods of Petitioner's income submissions, Petitioner's biweekly pays from Employer1 were \$█████ on March 29, 2018, and \$█████ on April 12, 2018. Multiplying the average pay by 2.15 results in a countable income of \$█████. Petitioner's most recent weekly pays from Employer2 were \$█████ on April 13, 2018, \$█████ on April 20, 2018, \$█████ on April 27, 2018, and \$█████ on May 4, 2018. Multiplying the average pays by 4.3 results in a countable income from Employer2 of \$█████. Adding Petitioner's income results in a total gross employment income of \$█████.

The notice of FAP closure listed Petitioner's monthly income to be \$█████ and the gross monthly income limit to be \$█████. Per RFT 250, a gross income limit of \$█████ is 130% of the federal poverty limit for 2 persons.

Applicants and recipients are eligible for enhanced authorization for Domestic Violence Prevention Services (DVPS). If their gross income is at or below 200 percent of the federal poverty level and they meet the asset test, they are also categorically eligible. BEM 213 (January 2018) p. 1. FAP groups whose members are not all FIP and/or SDA and/or SSI are categorically eligible based on DVPS.

MDHHS policy is not very clear, but it suggests that all FAP groups have a gross income standard that is 200% of the federal poverty level except for groups with a senior, disabled, disabled veteran, or disqualified member. Given the evidence, Petitioner's group's gross income limit should be based off of 200% of the FPL rather than the 130% level used by MDHHS. Per RFT 250, Petitioner's proper gross income limit is \$2,708. As Petitioner's gross income exceeds the income limit, MDHHS properly determined Petitioner to exceed gross income levels and terminated Petitioner's FAP eligibility.

Petitioner's attorney contended that MDHHS' income calculation should have factored the seasonal nature of Petitioner's employment (such as not working in summer). The contention was not persuasive because MDHHS policy does not allow for such factoring. If Petitioner's employment stops or is reduced during the summer, Petitioner is encouraged to reapply for FAP benefits at that time.

Petitioner's attorney stated that Petitioner requested a hearing to dispute FAP eligibility from April 2018. Petitioner's hearing request clearly disputed a FAP closure; no reference was made to a dispute concerning April 2018 eligibility. Given Petitioner's hearing request, Petitioner did not request a hearing to dispute the amount of FAP eligibility.

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

HMP is a health care program administered by the Michigan Department of Community Health, Medical Services Administration. The program is authorized under the Affordable Care Act of 2010 as codified under 1902(a)(10)(A)(i)(VIII) of the Social Security Act and in compliance with the Michigan Public Act 107 of 2013. HMP policies are found in the Medicaid Provider Manual and Modified Adjusted Gross Income Related Eligibility Manual (MAGIM).

Petitioner requested a hearing to dispute a termination of HMP benefits. MDHHS presented a Health Care Coverage Determination Notice (Exhibit A, pp. 23-25) dated March 22, 2018 stating that Petitioner's HMP was terminated due to excess income.

MAGI-based income means income calculated using the same financial methodologies used to determine modified adjusted gross income as defined in section 36B(d)(2)(B) of the Internal Revenue Code. 42 CFR 435.603(e). Federal regulations require MDHHS to determine a person's financial eligibility for HMP based on a person's "household

income". 42 CFR 435.603(c). Household income is the sum of MAGI-based income for each household member. 42 CFR 435.603(d).

For individuals who have been determined financially-eligible for MA 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. 42 CFR 435.603 (h)(2). 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, as evidenced by a signed contract for employment, a clear history of predictable fluctuations in income, or other clear indicia of such future changes in income. 42 CFR 435.603 (h)(3).

Documents from the Michigan Department of Community Health furnished by Petitioner's attorney, appeared to be part of the "State plan" referenced in federal regulations. The documents included the State of Michigan's preferences in how MAGI-related income would be calculated. They stated the following preferences:

When determining eligibility for current beneficiaries, financial eligibility is based on... projected annual household income and family size for the remaining months of the current calendar year. In determining current monthly or projected annual household income, the state will use reasonable methods to

- Include a prorated portion of a reasonably predictable increase in future income and/or family size.
- Account for a reasonably predictable decrease in future income and/or family size (Exhibit (Exhibit 2, pp. 3-4).

Given federal regulations and the State of Michigan's preferences. HMP eligibility for recipients must factor annual income and reasonably predictable decreases in income. MDHHS failed to factor the latter.

MDHHS calculated Petitioner's income to be \$ [REDACTED] /month for purposes of MA eligibility (Exhibit A, p. 21); this amount was calculated by adding Petitioner's income from February 15, 2018, and March 1, 2018. Multiplying the monthly pay by 12 results in an annual income of \$ [REDACTED] MDHHS actually calculated Petitioner's gross annual income to be \$ [REDACTED] (see Exhibit A, p. 24) though it is unknown how this amount was calculated. For purposes of this decision, it will be assumed that Petitioner's termination was based on the income amount of \$ [REDACTED] In determining Petitioner's annual income, MDHHS failed to factor a Petitioner's reported future income stoppage

Petitioner reported on her Redetermination that she does not receive income from Employer1 during summer (see Exhibit A, p. 11). MDHHS contended that Petitioner

needed to verify that she does not work in summer before the income stoppage can be factored in Petitioner's HMP eligibility. It is debatable whether Petitioner has an obligation to verify the income stoppage, but it is not debatable that MDHHS would need to first request verification from Petitioner if Petitioner had such an obligation. As MDHHS did not request such verification, MDHHS did not follow proper procedure before terminating Petitioner's HMP eligibility. The remedy for the procedural failing is reinstatement of Petitioner's HMP eligibility. Petitioner should be forewarned that the reinstatement may be short-lived as Petitioner may not be eligible for HMP even after MDHHS factors a lack of summer income from Employer1.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly terminated Petitioner's FAP eligibility effective June 2018. Concerning FAP benefits, the actions taken by MDHHS are **AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's HMP eligibility. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Reinstate Petitioner's HMP eligibility effective May 2018 subject to the finding that MDHHS failed to factor Petitioner's reported income stoppage in summer for Employer1; and
- (2) Initiate a supplement of any benefits improperly not issued.

The actions taken by MDHHS are **REVERSED**.

CG/



Christian Gardocki

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) 763-0155; 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

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