



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: August 7, 2018  
MAHS Docket No.: 18-006596  
Agency No.: ██████████  
Petitioner: ██████████

**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, a telephone hearing was held on August 1, 2018, from Detroit, Michigan. Petitioner appeared and was unrepresented. ██████████, Petitioner's friend, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Haysem Hosny, hearing facilitator.

**ISSUE**

The issue is whether MDHHS properly budgeted Petitioner's spouse's income in determining Petitioner's and her spouse's eligibility for Food Assistance Program (FAP) and Medical Assistance (MA) 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. Petitioner was an ongoing FAP and MA benefit recipient. Petitioner's spouse (hereinafter "Spouse") was a household member with Petitioner.
2. As part of a redetermination of FAP and MA benefits (see Exhibit A, pp. 5-12), Petitioner submitted to MDHHS Spouse's income tax records (Exhibit A, pp. 13-16) which listed \$██████████ in business income and \$██████████ in S-Corporation income.
3. On May 8, 2018, MDHHS determined Petitioner was ineligible for FAP benefits based on \$██████████ /month in unearned income. (Exhibit A, pp. 17-19)

4. On June 11, 2018, MDHHS determined Petitioner and Spouse were eligible for Medicaid subject to a \$[REDACTED]/month deductible based on counting Spouse's business income as unearned income.
5. On June 22, 2018, Petitioner requested a hearing to dispute the changes in FAP and MA eligibility. (Exhibit A, pp. 3-4)

### **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 requested a hearing to dispute a change in FAP benefits, beginning June 2018. MDHHS presented a Notice of Case Action (Exhibit A, pp. 17-19) dated May 8, 2018, which informed Petitioner that she was ineligible to receive FAP benefits beginning June 2018. The notice stated that the reasons for the termination were excess income and a failure of a group member to participate in employment-related activities.

Spouse was the owner of an S corporation. MDHHS calculated Petitioner's FAP eligibility based on Spouse's 2017 tax records which listed \$[REDACTED] in total income. MDHHS budgeted Spouse's income as unearned.

For all programs, Bridges counts the income a client receives from an S corporation as wages, even if the client is the owner. Specialists can refer to BEM 503 for policy on dividends. BEM 501 (January 2017), p. 5.

For all programs, an S corporation and LLC may pay shareholders or partners dividends and/or interest. This is unearned income to the individual. BEM 503 (January 2017), p. 25.

Petitioner verified his income comes from an S corp. MDHHS policy clearly states that income from an S corporation is earned income, even if the person receiving it is the owner.

The one exception to counting S-Corp income as wages is when the company pays a dividend and/or interest. Notably, Spouse's tax return listed \$0 income from ordinary dividends, qualified dividends, and taxable interest. Spouse's tax return also listed \$0 for wage income, however, this does not affect the analysis as MDHHS clearly intended that S-Corp income is employment income.

MDHHS determined that Petitioner was ineligible for FAP benefits based on improperly factoring Spouse's income as unearned. Counting Spouse's income as unearned deprives Petitioner from employment income credits and could greatly affect Petitioner's FAP eligibility. MDHHS will be ordered to redetermine Petitioner's FAP eligibility by counting Spouse's income as employment income.

The written notice also stated that Petitioner's FAP eligibility ended due to a group member's failure to engage in employment-related activities. MDHHS provided no evidence to justify the termination. Given the absence of evidence, MDHHS will be ordered to also redetermine Petitioner's eligibility subject to finding that all group members engaged in employment-related activities.

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 also requested a hearing to dispute a determination of MA benefits. MDHHS presented a Health Care Coverage Determination Notice (Exhibit A, pp. 20-23) dated June 11, 2018, which stated that Petitioner and Spouse were eligible for Medicaid subject to a large deductible. HMP was denied due to excess income.

MDHHS' hearing statements acknowledged that Petitioner's and Spouse's MA eligibility was also determined by factoring all of Spouse's S-Corp income as unearned income rather than wages. As discussed above, S-Corp income, unless dividend income, is considered employment income for all MDHHS programs; this would include MA eligibility.

Given the evidence, it is found that MDHHS improperly factored Spouse's income as unearned income rather than employment income in determining Petitioner's MA eligibility. The distinction again matters because MA also offers budget credits for employment income but not for unearned income. MDHHS will be ordered to redetermine Petitioner's MA eligibility factoring Spouse's income as employment income.

**DECISION AND ORDER**

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

(1) Redetermine Petitioner's and Spouse's FAP and MA eligibility, effective June 2018, subject to the finding that Spouse's annual income of \$ [REDACTED] is employment income;

(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

**DHHS**

Vivian Worden  
MDHS-Macomb-36-Hearings

**Petitioner**

[REDACTED]  
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[REDACTED] MI [REDACTED]

BSC4  
M Holden  
D Sweeney  
D Smith  
EQAD  
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