



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: October 30, 2018  
MAHS Docket No.: 18-009751  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE:** Landis Lain

**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 October 24, 2018, from Lansing, Michigan. Petitioner was represented by his wife and Authorized Hearings Representative, ██████████. The Department of Health and Human Services (Department) was represented by Authorized Hearings Representative Lori Williams, Family Independence Manager.

Respondent's Exhibit A pages 1-20 were admitted as evidence.

**ISSUE**

Did the Department properly cancel Petitioner's Healthy Michigan Medical Assistance (HMP-MA) and reduce Petitioner Food Assistance Program (FAP) benefits?

**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 a Healthy Michigan Medical Assistance and Food Assistance Program benefit recipient with her husband.
2. On July 2, 2018, Petitioner was sent a DHS – 1046 semiannual contact report with a due date of August 1, 2018.
3. On August 21, 2018, Petitioner returned the semi-annual contact report and indicated a change in income.

4. On September 10, 2018, the new income was updated, and Petitioner was notified of a reduction of FAP benefits.
5. Petitioner has no unearned income.
6. Petitioner's monthly earned income was counted as [REDACTED]. Her housing costs of \$500 in receipt of heat and utility standard were allotted.
7. The Department generated a new budget with a group size of two and Petitioner was allotted \$40.00 per month in ongoing FAP benefits.
8. Petitioner's HMP case was closed due to the client having earned income above the earned income limit for the Healthy Michigan program.
9. The Department determined that Petitioner's annual income was [REDACTED]. The HMP income limit for the program is \$21,891.90 for a two-person household.
10. On September 10, 2018, the Department sent Petitioner a Notice of Case Action indicating that Food Assistance Program benefits were approved for \$40.00 per month.
11. On September 10, 2018, the Department sent Petitioner a Health Care Coverage Determination Notice stating that Petitioner and his wife were not eligible to receive HMP-MA as of October 1, 2018, because countable household income exceeds the income limit for the group size.
12. On September 14, 2018, the Department received a request for hearing from Petitioner to contest the negative action.
13. On September 28, 2018, the Michigan Administrative Hearing System received a hearing summary and attached documents.

### **CONCLUSIONS OF LAW**

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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.

Pertinent FAP policy indicates:

Income means a benefit or payment received by an individual which is measured in money. It includes money an individual owns even if not paid directly such as income paid to a representative. Income remaining after applying the policy in the income related items is called countable. This is the amount used to determine eligibility and benefit levels. Count all income that is not specifically excluded. BEM 500, page 1.

Gross income is the amount of income before any deductions such as taxes or garnishments. This may be more than the actual amount an individual receives. BEM 500, pages 4-5.

Fluctuating income: Income received on a regular schedule but that varies from check to check, such as a waitress' income whose hours vary each week. BEM 505, page 2.

Prospect income using a best estimate of income expected to be received during the month (or already received). Seek input from the client to establish an estimate, whenever possible. To prospect income, you will need to know:

- The type of income and the frequency it is received (such as, weekly).
- The day(s) of the week paid.
- The date(s) paid.
- The gross income amount received or expected to be received on each pay date. BEM 505, page 4.

A standard monthly amount must be determined for each income source used in the budget.

### ***Stable and Fluctuating Income***

Convert stable and fluctuating income that is received more often than monthly to a standard monthly amount. Use one of the following methods:

- Multiply weekly income by 4.3.
- **Multiply amounts received every two weeks by 2.15. (Emphasis added)**
- Add amounts received twice a month.

This conversion takes into account fluctuations due to the number of scheduled pays in a month.

Use only available, countable income to determine eligibility. The Bridges Eligibility Manual (BEM) 500 series defines countable income. BEM 505 defines available income and income change processing. This item describes income budgeting policy.

Always calculate income on a calendar month basis to determine eligibility and benefit amounts. Use income from a month specified in this item for the benefit month being considered. Budget the entire amount of earned and unearned countable income. Every case is allowed the standard deduction shown in Reference Tables Manual (RFT) 255. Document income budgeting on either a manually-calculated or an automated FAP worksheet. (BEM 550, page 1)

**In the instant case, Petitioner was working and had earned income. The Department counted [REDACTED] (August 11 - 17, 2018 pay) + [REDACTED] (July 28-August 3, 2018 pay) = [REDACTED] (income for the month).**

**[REDACTED] divided by 4 weeks = [REDACTED] x 4.3 = [REDACTED] in monthly countable income.**

**The Department determined that Petitioner had [REDACTED] in total income. Petitioner was given a \$388.00 earned income deduction for post earned income deduction income of [REDACTED].**

**Petitioner was then given the standard deduction of \$158.00 for an Adjusted Gross income of [REDACTED].**

**Petitioner was given an excess shelter deduction of \$348.00.**

**[REDACTED] in adjusted gross income - \$348.00 in excess housing deduction = [REDACTED] in net income.**

**[REDACTED] in net income x .30 (net income) = [REDACTED].**

**The maximum monthly FAP benefit for a two-person group = \$353.00.**

**\$353.00 maximum benefit - [REDACTED] = \$40.00 in monthly FAP benefit allotment.**

The Department's calculations, when using this amount of income, were incorrect, because Department policy dictates that the calculation should multiply amounts received every two weeks by 2.15 rather than the weekly amount calculation used by the Department.

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 request for hearing disputing the Department's decision to close his wife's MA benefit case. Petitioner's wife was an ongoing MA recipient under the HMP program.

Pertinent Department Policy dictates:

The Healthy Michigan Plan (HMP) is based on Modified Adjusted Gross Income (MAGI) methodology. The Healthy Michigan Plan provides health care coverage for a category of eligibility authorized under the Patient Protection and Affordable Care Act and Michigan Public Act 107 of 2013 effective April 1, 2014.

The Healthy Michigan Plan (HMP) provides health care coverage for individuals who:

- Are 19-64 years of age.
- Do not qualify for or are not enrolled in Medicare.
- Do not qualify for or are not enrolled in other Medicaid programs.
- Are not pregnant at the time of application.
- Meet Michigan residency requirements.
- Meet Medicaid citizenship requirements.
- Have income at or below 133% Federal Poverty Level (FPL) Cost Sharing.

The Healthy Michigan Plan has beneficiary cost sharing obligations. Cost sharing includes copays and contributions based on income, when applicable. Copayments for services may apply to HMP beneficiaries. Prior to enrollment in a health plan, beneficiaries are eligible to receive Healthy Michigan Plan services through the Fee-for-Service system. Copays are collected at the point of service, with the exception of chronic conditions and preventive services. Modified adjusted gross income must be at or below 133 percent of the Federal Poverty Level (FPL). BEM 137, pages 1-3.

Department policy requires the Department to count and budget all income received that is not specifically excluded. There are three main types of income: countable earned, countable unearned, and excluded. Earned income means income received from another person or organization or from self-employment for duties that were

performed for remuneration or profit. Unearned income is any income that is not earned. The amount of income counted maybe more than the amount a person actually receives, because it is the amount before deductions are taken including the deductions for taxes and garnishments. The amount before any deductions are taken is called a gross amount. BEM, item 500, p. 1.

HMP uses a Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (October 2016), p. 1. An individual is eligible for HMP if his/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 and his wife are counted in the income group. The household for a tax filer, who is not claimed as at tax dependent consists of: (i) the individual; (ii) the individual's spouse; and (iii) the individual's tax dependents. BEM 211 (January 2016), pp. 1-2. Therefore, in determining Petitioner's MA status, the Department properly considered Petitioner and his wife as having a group size of two people.

133% of the annual FPL in 2018 for a household with two members ages 19-64 is \$21,891.80. See <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's and Petitioner's wife's annual income cannot exceed \$21,891.80. 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.

MA income budgeting policy requires:

Non-averaged income: Use amounts that will be, or are likely to be, received/available in the future month; see PROSPECTING INCOME in this item.

***Exceptions:***

- Do not budget an extra check (example, fifth check for person paid weekly). If prospecting income based on bi-weekly or twice a month payments, multiply by 2. If prospecting income based on weekly pay, multiply by 4.
- Base estimate of daily income (example: insurance pays \$40 for every day in hospital) on a 30-day month. When the amount of income from a source changes from month to month, estimate the amount that will be received/available in the future month. BEM 530, page 3.

Prospecting income means arriving at a best estimate of the person's income. Prospect income when estimating income to be received in a processing or future month. A best estimate may not be the exact amount of income received. Some of the reasons income fluctuates is because:

- The number of hours worked in a month may fluctuate.
- The amount of tips may vary from payday to payday.

Use the following guidelines for prospecting income:

- For fluctuating earned income, use the expected hourly wage and hours to be worked, as well as the payday schedule, to estimate earnings.
- Paystubs showing year-to-date earnings and frequency of pay are usually as good as multiple paystubs to verify income.
- A certain number of paystubs is not required to verify income. If even one paystub reflects the hours and wages indicated on the application, that is sufficient information.
- If a person reports a pay rate change and/or an increase or decrease in the number of hours they usually work, use the new amount even if the change is not reflected on any paystubs.
- If you have an opportunity to talk with the client, that may help establish the best estimate of future income. BEM 530, page 4.

Petitioner's Authorized Hearings Representative alleges that her income fluctuates and that the paychecks used by the Department when determining her income were paychecks that includes more hours than she usually works and also included overtime which she does not always work, but she needed the extra income to make ends meet. Now, her income has fallen again.

Petitioner's allegation that the calculation does not take into consideration her fluctuating income has merit. Petitioner started a new job on July 10, 2018.

The four income stubs indicate that Petitioner was paid the following:

August 31, 2018	██████████
August 17, 2018	██████████
August 03, 2018	██████████
July 20, 2018	██████████

However, the paystub for August 26, 2018 - September 8, 2018, indicates that Petitioner earns ██████████ per hour and works on average of 74.5 regular hours. Even with overtime and paid time off Petitioner earned ██████████ in gross income x 2 = ██████████. ██████████ x 12 = ██████████.

BEM 530 instructs the Department to use expected hourly wage and hours to be worked, as well as the payday schedule to estimate earnings.

Without overtime and paid time off, Petitioner's wife worked 74.5 hours and received [REDACTED] per hour. She earned a gross of [REDACTED] x 2 = [REDACTED] x 12 = [REDACTED].

If the caseworker had picked the two most recent paychecks: [REDACTED] + [REDACTED] = [REDACTED], divided by 2 = [REDACTED].

[REDACTED] average bi-weekly earned income x 2.15 = [REDACTED] average monthly income x 12 months = [REDACTED] in yearly income.

The Department's calculations do not make sense to this Administrative Law Judge. It is unclear how the Department made its determination of income in this case.

A review of Petitioner's case reveals that the Department did not budget the correct amount of income received by Petitioner at the time of determination. Deductions and shelter allotment are governed by Food Assistance Program policy and cannot be changed by the Department or this Administrative Law Judge.

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 has not established by the necessary competent, material, and substantial evidence on the record that it was acting in accordance with Department policy when it determined that Petitioner was eligible for a \$40.00 per month in Food Assistance Program benefits. The Department also did not properly determine that Petitioner had excess income for purposes of Healthy Michigan Medical Assistance using the income calculated. If Petitioner's income has changed, she should reapply. The Department has established its case by a preponderance of the evidence.

### **DECISION AND ORDER**

Accordingly, the Department's decision is **REVERSED**.

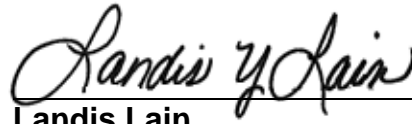
THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Initiate reinstatement of Petitioner's FAP application to the August 8, 2018 application date;
2. Redetermine eligibility for FAP benefits; and



3. If Petitioner is otherwise eligible, pay to Petitioner any FAP benefits to which she is entitled from the August 8, 2018 application date forward.

LL/dh



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**Landis Lain**  
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**

Tara Roland 82-17  
8655 Greenfield  
Detroit, MI 48228

Wayne County (District 17), DHHS

BSC4 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

**Petitioner**

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