



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: January 18, 2019
MAHS Docket No.: 18-010890
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 December 19, 2018, from [REDACTED]. Petitioner's wife, [REDACTED] (herein referred to as Petitioner) appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payments Specialist and [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly close Petitioner's Medical Assistance (MA) case effective October 1, 2018?

Did the Department properly process Petitioner's Food Assistance Program (FAP) case?

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 recipient of FAP benefits and MA benefits under the Transitional Medicaid (TMA) category.
2. Petitioner's MA eligibility was due for an annual redetermination. For an unverified reason, Petitioner's MA case was closed.

3. In or around August 2018 Petitioner requested a hearing disputing the Department's closure of her MA case. During the hearing, the Department representative acknowledged that the closure was done in error. The Department representative reinstated Petitioner's MA case and approved Petitioner and her husband for MA under the Healthy Michigan Plan (HMP).
4. On or around August 20, 2018 Petitioner requested a hearing disputing the Department's actions with respect to the FAP. Petitioner's request for hearing was assigned MAHS Docket No: 18-008632 and scheduled for a hearing to be held on September 20, 2018. Petitioner failed to appear for the scheduled hearing and MAHS issued an Order of Dismissal of the hearing request on September 24, 2018. After an Order Denying Request to Vacate Dismissal was issued on October 9, 2018 Petitioner appealed the Order of Dismissal to the Wayne County Circuit Court and the matter was assigned [REDACTED] (Exhibit B)
5. On an unverified date, the Department contacted Petitioner and verbally informed her that the representative from the prior MA hearing had opened Petitioner's MA case under the HMP category in error, as she and her husband were ineligible for MA under that program.
6. On September 13, 2018 the Department sent Petitioner a Health Care Coverage Determination Notice (Notice) informing her that effective October 1, 2018 her MA case would be closed. The Notice advised Petitioner that she and her husband had excess income for the Modified Adjusted Gross Income (MAGI)-related MA categories and that they were ineligible for MA under the SSI-related MA categories for aged, blind or disabled individuals. (Exhibit 1)
 - a. The Notice does not reference Petitioner's eligibility for MA under any Group 2 Category.
7. On September 13, 2018 the Department sent Petitioner a verification checklist (VCL) instructing her to submit proof of her assets by September 24, 2018. The VCL was not presented for review and it was unclear whether Petitioner timely submitted the requested information.
8. There were no further Health Care Coverage Determination Notices sent to Petitioner regarding her MA eligibility as of the hearing date.
9. On September 25, 2018 Petitioner requested a hearing disputing the Department's actions with respect to her FAP benefits and the closure of her MA case effective October 1, 2018.
10. Petitioner agreed to the dismissal of her request for hearing concerning the FAP, as she indicated it was being resolved by the Circuit Court.

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).

FAP

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.

Petitioner requested a hearing disputing the Department's actions concerning her FAP benefits. During the hearing, Petitioner confirmed that on September 25, 2018 she resubmitted the same hearing request that was previously filed on August 20, 2018 and subsequently dismissed by MAHS, as Petitioner failed to appear for the hearing scheduled for September 20, 2018. Petitioner further confirmed that the dismissal has been appealed to the Circuit Court and a decision has not been made as of yet. Therefore, Petitioner agreed to the dismissal of the September 25, 2018 request for hearing, as the undersigned Administrative Law Judge does not have the authority or jurisdiction to address the issues raised, as that authority is now with the Circuit Court. Accordingly, Petitioner's request for hearing concerning the FAP is **DISMISSED**.

MA

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.

Petitioner requested a hearing on September 25, 2018 disputing the Department's actions with respect to the closure of her MA case effective October 1, 2018, as notified in the September 13, 2018 Health Care Coverage Determination Notice (Notice). (Exhibit 1).

MA is available (i) under SSI-related categories to individuals who are aged (65 or older), blind or disabled under SSI-related categories; and (ii) under the MAGI-related categories to individuals who are under age 19, parents or caretakers of children, or pregnant or recently pregnant women, and to individuals who meet the eligibility criteria for HMP, which 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. BEM 105 (April 2017), p. 1; BEM 137 (April 2018), p. 1.

For Group 1 MA categories, which have no deductible, net income (countable income minus allowable income deductions) must be at or below a certain income limit for eligibility to exist. BEM 105, p. 1. Clients may be eligible for Group 2 coverage, with a deductible that must be satisfied before MA is activated, when their income exceeds the income limit. BEM 105, p. 1.

During the hearing, the Department representatives explained that Petitioner's MA case was previously reinstated in error, as she and her husband were not eligible for MA under the HMP category. Initially, the Department testified that Petitioner and her husband are ineligible for HMP because they are the parents of minor children. Later, and upon review of the September 13, 2018 Notice, the Department asserted that Petitioner's MA case under the HMP and other MAGI-related categories was closed for excess income. Although the Department testified that Petitioner and her spouse may be eligible for MA under a Group 2 category with a deductible/spend-down based on their status as parents/caretakers, the evidence showed that eligibility under the Group 2 categories was never determined, as no further eligibility notices were issued to Petitioner subsequent to the Notice dated September 13, 2018.

HMP is a MAGI-related MA category that provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income at or below 133% of the federal poverty level (FPL) under the Modified Adjusted Gross Income (MAGI) methodology; (iii) do not qualify for or are not enrolled in Medicare; (iv) do not qualify for or are not enrolled in other MA programs; (v) are not pregnant at the time of application; and (vi) are residents of the State of Michigan. BEM 137, p. 1. Thus, there is no policy supporting the Department's testimony that Petitioner and her spouse may be ineligible for HMP based solely on their status as parents of minor children.

Additionally, an individual is eligible for HMP if her household's income does not exceed 133% of the FPL applicable to the individual's group size. A determination of group size under the MAGI methodology requires consideration of the client's tax status and dependents. The evidence showed that Petitioner's household size for MAGI purposes is five, as she and her husband file taxes and claim three children as tax dependents. 133% of the annual FPL in 2018 for a household with five members is \$39,128.60. <https://aspe.hhs.gov/2018-poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's annual MAGI cannot exceed \$39,128.60.

The Department provided inconsistent testimony regarding the income amounts considered in making the determination that Petitioner's household had excess income for HMP. Initially, the Department testified that according to the MAGI-Summary from Bridges, the Department considered \$[REDACTED] monthly for Petitioner and \$[REDACTED] monthly for [REDACTED] amounts which were based on income information previously in the case file. However, when the MAGI-Summary was printed for and reviewed by the undersigned Administrative Law Judge, income amounts of \$[REDACTED] monthly for

Petitioner and \$[REDACTED] for [REDACTED] were reflected. (Exhibit A). The Department also testified that the income amounts considered may have been based on the information from Petitioner's 2017 Form 1040, Individual Tax Return, which the Department had on file since March 2018. (Exhibit C). However, upon review, the adjusted gross income of [REDACTED] identified on the Form 1040 does not appear to have been relied upon by the Department.

Petitioner asserted that while she and her husband have two companies [REDACTED] [REDACTED] from which Petitioner presumably receives self-employment income), the adjusted gross income reflected on the Form 1040 in the amount of [REDACTED] is accurate. The Department is to count income a client receives from an S-Corp or LLC as wages and income from self-employment in accordance with the policy found in BEM 502. See BEM 501 (October 2018), pp. 3-8. and BEM 502 (July 2017). There was no evidence presented that the Department properly determined or accurately considered Petitioner's household income.

Upon review, the Department failed to sufficiently explain what exact income amounts were considered which resulted in a finding of excess income for the HMP category as reflected in the September 13, 2018 Notice. The Department did not establish that Petitioner's household has income in excess of the HMP MAGI limit based on the group size of five. Additionally, prior to closing Petitioner's MA case under the HMP, the Department was required to determine eligibility for all programs, including Group 2 categories. See BEM 105, p. 5.

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 case effective October 1, 2018.

DECISION AND ORDER

Accordingly, the hearing request with respect to FAP is **DISMISSED** and the Department's MA 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. Reinstate Petitioner and her husband's MA cases effective October 1, 2018 and determine their eligibility for MA under the most beneficial program;

2. Provide Petitioner and her husband with MA coverage, under the most beneficial category, from October 1, 2018 ongoing, and in accordance with Department policy; and
3. Notify Petitioner in writing of its decision.

ZB/tlf



Zainab A. Baydoun
Administrative Law Judge
for Robert Gordon, 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

Via Email:

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Petitioner – Via First-Class Mail:



