



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: February 21, 2019
MAHS Docket No.: 18-013487
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 February 19, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Brenda Drewnicki.

ISSUE

1. Did the Department properly decrease Petitioner's Food Assistance Program (FAP) benefit rate?
2. Did the Department properly close Petitioner's Medical Assistance (MA) Program Healthy Michigan Plan (HMP) 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 receives \$ [REDACTED] per month in alimony.
2. Petitioner receives \$ [REDACTED] per month as her Retirement Survivors Disability Insurance (RSDI) benefit.
3. Petitioner receives \$ [REDACTED] per month as her pension benefit.
4. On September 27, 2018, the Department received Petitioner's completed Shelter Verification form showing a change in her rental expense to \$ [REDACTED] per month,

which included her electric, heating/cooling, water/sewer, cooking fuel, and trash removal expenses and was effective September 5, 2018.

5. On October 17, 2018, the Department issued a Notice of Case Action to Petitioner informing her that her FAP benefits would decrease to \$[REDACTED] per month, effective November 1, 2018, as a result of the change in her shelter expense.
6. On December 7, 2018, Petitioner reported a change in her income due to new employment with [REDACTED] Community Schools.
7. On December 13, 2018, the Department completed the change processing and issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner informing her that she was not eligible for MA HMP benefits, effective January 1, 2019, because her income was over the income limit; no notice was issued for Petitioner's FAP benefits because the change did not affect her benefit rate.
8. On December 19, 2018, the Department received Petitioner's request for hearing disputing the closure of her MA HMP benefits as well as the calculation of her FAP benefit rate.

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).

Food Assistance Program (FAP)

The 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.

In this case, Petitioner submitted a verification of a change in her shelter expense to the Department on September 27, 2018. Prior to the submission of the change, Petitioner had been living at a motel paying over \$[REDACTED] per month in rent. Effective September 5, 2018, the Petitioner began residing in her own apartment paying \$[REDACTED] per month with all utilities except her phone included in her rent. As a result of the reported change, the Department recalculated Petitioner's FAP benefit rate and issued a Notice of Case Action to Petitioner informing her that her FAP benefits would be reduced, effective November 1, 2018, to \$[REDACTED] per month because of the change in her shelter expenses.

In support of its case and the calculation of Petitioner's FAP benefit rate, the Department submitted the shelter verification, the Notice of Case Action, and the budget for calculation of the benefit rate. To determine Petitioner's FAP benefit rate, all countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (July 2017), pp. 1-5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (October 2017), p. 1. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, pp. 5-7. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. At the time of the review in October 2018, Petitioner received \$[REDACTED] in alimony, \$[REDACTED] for her RSDI benefit, and \$[REDACTED] for her pension. Each of these sources of income is received on a monthly basis; therefore, no further calculation is necessary to standardize each source of income. Her total monthly income was \$[REDACTED] (dropping the cents).

After consideration of income, the Department considers all appropriate deductions and expenses. Petitioner was eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.

BEM 554 (August 2017), p. 1; BEM 556 (April 2018), p. 3.

The Department budgeted \$0.00 for a child support and dependent care expense. Petitioner did not dispute that she does not have these expenses. The Department also budgeted the standard deduction of \$158.00 for a group size of one in accordance with Department policy. RFT 255 (October 2018), p. 1. After consideration of each of these expenses, the Department properly calculated Petitioner's Adjusted Gross Income (AGI) of \$[REDACTED]

Once the AGI is calculated, the Department must then consider the Excess Shelter Deduction. Based upon Petitioner's reported change and verification, she has a rental expense of \$[REDACTED] per month. The Department improperly budgeted \$[REDACTED] due to a typographical error. In addition to the rental expense, the Department properly afforded Petitioner the telephone standard deduction of \$31.00. BEM 554, pp. 14-15; RFT 255, p. 1. Telephone standard deductions are available to those individuals who do not have a heating or cooling expense but have a responsibility to pay for a traditional land-line service, cellular phone service including per-minute or per-call service, and voice over Internet protocol. BAM 554, p. 22. Once the rental expense and telephone standard

are added together, 50% of Petitioner's AGI is subtracted to achieve Petitioner's Excess Shelter Deduction. BEM 556 (April 2018), p. 5. If 50% of Petitioner's AGI is greater than the total amount of the shelter expense, there are no excess shelter costs; therefore, there is no Excess Shelter Deduction. Based upon the Department's calculations, the Department determined Petitioner was not eligible for the Excess Shelter Deduction. Even if Petitioner's rental expense was corrected, her total shelter expense is \$[REDACTED] which is still less than 50% of her AGI of \$[REDACTED]. Therefore, while the Department erred in considering Petitioner's shelter expense, the error did not result in any changes in Petitioner's Excess Shelter Deduction.

After the Excess Shelter Deduction is calculated, it is then subtracted from Petitioner's AGI to achieve her Net Income. Since Petitioner did not receive an Excess Shelter Deduction, her net income is equal to her adjusted gross income totaling \$[REDACTED]. Finally, the net income amount is compared against the FAP Issuance Table to determine Petitioner's benefit rate of \$[REDACTED] per month. RFT 260 (October 2018), p. 14.

After reviewing all of the evidence presented, the Department's error did not result in a change to Petitioner's FAP benefit rate. Petitioner was properly afforded a FAP benefit rate of \$[REDACTED] per month.

Any changes to Petitioner's income in December 2018 were not considered in this decision because the Department did not make any changes to Petitioner's FAP benefit rate or issue a Notice of Case Action based upon those reported changes prior to Petitioner's request for hearing.

Medical Assistance (MA) Program

The 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, the Department closed Petitioner's MA HMP benefits, effective January 1, 2019, due to Petitioner's income being greater than the income limit. At the hearing, the Department conceded that Petitioner's income had been improperly calculated because her alimony income had been double-counted. Based on this miscalculation, the Department is uncertain whether Petitioner would be eligible for HMP once properly calculated.

Medicaid is available (i) under Supplemental Security Income (SSI)-related categories to individuals who are aged (65 or older), blind or disabled, (ii) to individuals who are under age 19, parents or caretakers of children, or pregnant or recently pregnant women, and (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan

(HMP) coverage. BEM 105 (April 2017), p. 1. HMP 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 (April 2018), p. 1; MPM, Healthy Michigan Plan, § 1.1. Based upon the evidence presented, if Petitioner was eligible for any of the programs, she would be eligible for the HMP.

Healthy Michigan Plan uses the Modified Adjusted Gross Income (MAGI) methodology to determine countable income. BEM 137 (April 2018), p. 1. An individual is eligible for HMP if 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. The household for a tax filer, who is not claimed as a 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. In this case, no evidence was presented that Petitioner was married or had any dependents. Therefore, in determining Petitioner's MA status, the Department properly considered Petitioner as having a group size of one.

133% of the annual FPL in 2018 for a household with one member is \$16,146.20. See <https://aspe.hhs.gov/2018-poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's annual income cannot exceed \$16,146.20. To determine financial eligibility under HMP, income must be calculated in accordance with MAGI rules 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.

In order to determine income in accordance with MAGI rules, a client's adjusted gross income (AGI) is added to any tax-exempt foreign income, tax-exempt Social Security benefits, and tax-exempt interest. In determining an individual's eligibility for MAGI-related MA, 42 CFR 435.603(h)(2) provides that for current beneficiaries and "for individuals who have been determined financially-eligible for Medicaid using the MAGI-based methods ..., a State may elect in its State plan to base financial eligibility either on current monthly household income ..." Michigan has adopted this practice. MAGI is calculated by reviewing the client's adjusted gross income (AGI) and adding it to any tax-exempt foreign income, tax-exempt Social Security benefits, and tax-exempt interest. AGI is found on IRS Tax Form 1040 at line 37, Form 1040 EZ at line 4, and Form 1040A at line 21. Alternatively, it is calculated by taking the "federal taxable wages" for each income earner in the household as shown on the paystub or, if not shown on the paystub, by using gross income before taxes reduced by any money the employer takes out for health coverage, child care, or retirement savings. See <https://www.healthcare.gov/income-and-household-information/income/>. This figure is multiplied by the number of paychecks the client expects during the year to estimate

income for the entire year. *Id.* In addition, MAGI calculations also consider spousal support, wages, pensions, and unemployment benefits. MREM, § 7.1.

As of December 2018, Petitioner received income in the form of wages from her employer, alimony, RSDI benefits, and a pension benefit. Petitioner's paystubs from November 16, 2018, and November 30, 2018, totaled \$[REDACTED] and \$[REDACTED] respectively, in gross wages. Based upon Petitioner's paystubs, contributions are made to a "Retire Def Benefit," a "Retire Def Cont," and a "Personal HC FND." These items appear to be a retirement defined benefit, retirement defined contribution, and personal health care fund. The record is unclear as to whether Petitioner pays these amounts from her bi-weekly paycheck towards her health care and retirement savings or if the employer pays them as part of her overall benefits package. If Petitioner pays these instead of the employer, then her gross income is reduced as part of the MAGI calculation. If the employer pays these items, then Petitioner's MAGI is equal to her gross income. In addition to her wages, Petitioner received \$[REDACTED] per month for her RSDI benefit which was properly considered. She also received \$[REDACTED] per month for alimony. The Department properly created a line item for Petitioner's alimony or spousal support income and considered it in her overall MAGI calculation. However, when the Department considered Petitioner's pension benefit, the Department either double-counted Petitioner's alimony payment and included it with the pension or had a typographical error in considering Petitioner's Pension. The Department listed her pension as being \$[REDACTED] per month; however, the letter from the pension management company submitted in the hearing show that her actual pension benefit was \$[REDACTED]. Since the record is unclear as to whether Petitioner was eligible for deductions to her wages based on contributions to retirement accounts and health care coverage and because the Department over estimated Petitioner's pension or double counted her alimony, the Department has not shown that it properly calculated Petitioner's MAGI.

Since the Department has not shown that Petitioner's MAGI was properly calculated, the Department has not met its burden of proof in showing that Petitioner had income which was greater than the HMP income limit.

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 acted in accordance with Department policy when it afforded Petitioner a FAP benefit rate of \$[REDACTED] per month but did not act in accordance with Department policy when it determined Petitioner had income greater than the income limit for MA HMP benefits.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to Petitioner's FAP benefit rate effective November 1, 2018, and **REVERSED IN PART** with respect to the closure of Petitioner's MA HMP benefits effective January 1, 2019.

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 and redetermine Petitioner's eligibility for MA benefits effective January 1, 2019;
2. If Petitioner is otherwise eligible, issue supplements to Petitioner or on Petitioner's behalf for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.



AMTM/jaf

Amanda M. T. Marler

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

DHHS

Tolisha Bates
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Petitioner

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