



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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Date Mailed: December 28, 2018
MAHS Docket No.: 18-011984
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: John Markey

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 December 20, 2018, from Lansing, Michigan. Petitioner appeared and represented herself. Also appearing on Petitioner's behalf was witness ██████████ ██████████. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearings Facilitator. During the hearing, a 22-page packet of documents was offered and admitted as Exhibit A, pp. 1-22.

ISSUE

Did the Department properly reduce Petitioner's monthly Food Assistance Program (FAP) benefits, effective December 1, 2018?

Did the Department properly close Petitioner's Medicaid (MA) benefits case, effective December 1, 2018?

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.
2. Petitioner was an ongoing beneficiary of MA benefits under the Healthy Michigan Plan (HMP).

3. On October 1, 2018, the Department issued to Petitioner a Semi-Annual Contact Report to gather relevant information regarding Petitioner's ongoing eligibility for benefits. Exhibit A, pp. 7-9.
4. On [REDACTED] [REDACTED] 2018, Petitioner submitted to the Department the completed Semi-Annual Contact Report. On the form, Petitioner reported that she obtained a new job and attached two paystubs. The first paystub was dated October 5, 2018, and showed gross earnings of [REDACTED] for two weeks of work. The second paystub was dated October 19, 2018, and showed gross earnings of [REDACTED] for two weeks. Exhibit A, pp. 7-11.
5. On November 7, 2018, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her monthly FAP benefits were being reduced to \$15, effective December 1, 2018. Exhibit A, pp. 16-17.
6. On November 7, 2018, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that her MA case was closing effective December 1, 2018 because she had excessive income for HMP eligibility and did not qualify for any other MA programs. Exhibit A, pp. 12-15.
7. On November 15, 2018, Petitioner submitted to the Department a hearing request objecting to the closure of her MA case and reduction of her monthly FAP benefits.

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).

In this case, the Department redetermined Petitioner's eligibility for FAP and MA benefits after Petitioner reported a substantial increase in income. As a result of the increased income, the Department closed Petitioner's MA case and substantially reduced Petitioner's monthly FAP benefits. Petitioner objected to the Department's actions.

FAP REDUCTION

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's position is that the Department improperly calculated her monthly FAP benefits amount. 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), pp. 1-2. 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. 5-6. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 7-8. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. BEM 505, pp. 7-9. Income received weekly is multiplied by a 4.3 multiplier. BEM 505, pp. 7-9. Income received twice per month is added together. BEM 505, pp. 7-9. An employee's wages include salaries, tips, commissions, bonuses, severance pay, and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (July 2017), pp. 6-7.

The Department determined Petitioner's monthly earned income amount was [REDACTED] Exhibit A, p. 17. In reviewing the Department's calculation of Petitioner's monthly earned income, it is found that the Department underestimated Petitioner's prospective income slightly. As the error was in Petitioner's favor (and does not impact the final calculation anyways), it will be left undisturbed.

The Department will reduce the gross countable earned income by 20 percent using what is known as the earned income deduction. BEM 550 (January 2017), p.1. The Department correctly determined Petitioner is entitled to an earned income deduction of \$386. Petitioner's FAP benefit group size of one justifies a standard deduction of \$158. RFT 255 (October 2018), p. 1. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support expenses. Therefore, the budget properly excluded any deduction for dependent care or child support expenses. Accordingly, Petitioner's adjusted gross income was [REDACTED].

Petitioner was eligible for the excess shelter deduction. Petitioner had verified housing expenses of [REDACTED] and was eligible for the heat/utility standard of \$543. BEM 554, p. 23. Thus, Petitioner's total housing expenses were [REDACTED]. The excess shelter deduction is calculated by subtracting from the total shelter expenses ([REDACTED]) one half of the adjusted gross income ([REDACTED]). The remaining amount, if greater than \$0, is the excess shelter deduction. In this case, the excess shelter deduction is \$326.

The FAP benefit group's net income is determined by taking the group's adjusted gross income ([REDACTED]) and subtracting the allowable excess shelter expense (\$326). The Department properly found that Petitioner's net income was [REDACTED]. A chart listed in RFT 250 is used to determine whether a FAP group is net income eligible. RFT 260 shows a monthly FAP benefit amount of \$15 for a group size of one with [REDACTED] in net

income. RFT 260 (October 2018), p. 15. Based on Petitioner's net income and group size, Petitioner was eligible for \$15 in monthly FAP benefits. Therefore, the Department properly determined Petitioner's monthly FAP benefits.

MA CLOSURE

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.

After processing Petitioner's newly reported income, the Department concluded that Petitioner's income exceeded the limit for MA eligibility under the HMP and closed Petitioner's MA case, effective December 1, 2018.

Income is calculated differently with respect to MA under the HMP. HMP is a Modified Adjusted Gross Income (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 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.

133% of the annual FPL in 2018 for a household with one member is \$16,146.20. See <https://aspe.hhs.gov/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 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, a client's adjusted gross income (AGI) is added 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. This figure is multiplied by the number of paychecks the client expects in 2018 to estimate income for the year. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>.

Petitioner acknowledged that the earnings shown on her two paystubs were reflective of the income she was receiving and expected to continue receiving as of the month of October 2018, ongoing. In four weeks, Petitioner earned over [REDACTED]. No matter what approach the Department took with respect to calculating Petitioner's income for the HMP, Petitioner exceeded the eligibility threshold by a substantial measure. Therefore, the Department acted in accordance with policy when it determined Petitioner was not eligible for HMP coverage.

That conclusion, however, does not end the inquiry. An *ex parte* review is required before Medicaid closures when there is an actual or anticipated change. BAM 210 (January 2018), p. 2. The review includes consideration of the client's eligibility under all MA categories. BAM 210, p. 2.

Petitioner's coverage under the HMP was closed effective December 1, 2018. Prior to closure, the Department failed to do a thorough *ex parte* review as required by policy. During the hearing, the Department witness testified that the Department erred in failing to take into consideration Petitioner's claim on previous applications that she is disabled. The Department did not make record of that claim despite it being made very clearly. The failure to take that into consideration caused the Department to neglect to analyze Petitioner's MA eligibility under disability related MA categories. As the Department did not consider Petitioner's eligibility under other possible MA categories, the Department did not follow policy concerning *ex parte* reviews prior to MA closure. The Department witness conceded that the Department erred by not reviewing Petitioner's potential eligibility under those programs. The witness further testified that the appropriate course of action would be to conduct the *ex parte* review, including making a determination as to whether Petitioner is disabled as alleged in Petitioner's application for benefits and then thereafter analyze Petitioner's eligibility under all MA programs.

DECISION AND ORDER

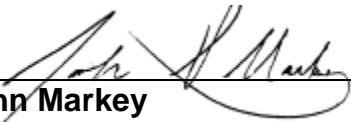
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with policy when it determined Petitioner's monthly FAP benefit amount, effective December 1, 2018. Accordingly, the Department's decision with respect to Petitioner's FAP benefits case is **AFFIRMED**.

However, the ALJ finds that the Department failed to show that it acted in accordance with Department policy when it closed Petitioner's MA case without assessing Petitioner's eligibility under any of the disability related MA programs. Accordingly, the Department's decision to close Petitioner's MA benefits case 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's MA case under, effective December 1, 2018;
2. Conduct an ex parte review of Petitioner's MA eligibility, including, if necessary, making a determination whether Petitioner is disabled;
3. Notify Petitioner of its MA decision in writing.

JM/dh



John Markey
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

