



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

Date Mailed: February 1, 2019  
MAHS Docket No.: 18-013327  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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 January 24, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Armetrus Carter-Quinn, Eligibility Specialist, and Elsie Colbert, Family Independence Manager. During the hearing, a 52-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-52.

### **ISSUE**

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

Did the Department properly close Petitioner's Medicaid (MA) benefits case, effective January 1, 2019?

Did the Department properly deny Petitioner's application for State Emergency Relief (SER) 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 an ongoing recipient of FAP and MA benefits from the Department.
2. On December 10, 2018, Petitioner submitted to the Department an application for SER benefits. On the application, Petitioner indicated that she was working 40

hours per week at an hourly rate of \$■■■ at an employer named ■■■. (Exhibit A, pp. 5-9.)

3. On December 11, 2018, the Department issued to Petitioner a State Emergency Relief Decision Notice informing Petitioner that her SER application was denied because her countable income was higher than the maximum amount allowed for the program. (Exhibit A, pp. 16-18.)
4. On December 11, 2018, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her FAP benefits case was closing, effective December 1, 2018, because Petitioner's monthly gross income exceeded the limit for FAP eligibility for a group size of two. (Exhibit A, pp. 41-44.)
5. On December 11, 2018, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that her MA case was closing, effective January 1, 2019, because Petitioner's income exceeded the limit for MA eligibility. (Exhibit A, pp. 48-51.)
6. On December 13, 2018, Petitioner submitted to the Department a request for hearing objecting to the closure of her FAP and MA cases and the denial of her SER application.

### **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).

Petitioner was an active recipient of FAP and MA benefits from the Department. On December 10, 2018, Petitioner submitted to the Department an application for SER benefits. When processing Petitioner's SER application, the Department ran a report to gather wage information provided by employers. According to the report the Department received, Petitioner's income was much higher than what the Department had previously budgeted. Based on the new information provided, the Department determined that Petitioner was ineligible for all three programs and issued notices closing Petitioner's FAP and MA cases and denying Petitioner's SER application.

### **FAP CLOSURE**

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.

Timely notice must be given when the Department reduces a client's FAP benefits or takes certain other negative action with respect to the client's case. BAM 220 (July 2018), pp. 1, 4-5. A timely notice is mailed at least 11 days before the intended negative action takes effect. The action is pended to provide the client a chance to react to the proposed action. BAM 220, p. 5.

Petitioner's additional wages were reported to the Department in an application dated [REDACTED] 2018. The following day, the Department confirmed that Petitioner had greater income than what it had previously budgeted. That same day, the Department issued to Petitioner a Notice of Case Action closing Petitioner's FAP case, effective December 1, 2018.

Petitioner's reported change in income should not have had any impact on Petitioner's December 2018 FAP benefits. As this was a reduction in FAP benefits due to a reported change, Petitioner was entitled to timely notice, which requires that the notice be mailed at least 11 days before the intended negative action takes effect.

The Department did not follow Department policy in processing Petitioner's increase in income as it should not have had any impact until after the timely notice period expired, which was certainly not 10 days before the report was even made. Accordingly, the Department's closure of Petitioner's FAP benefits case, effective December 1, 2018, is reversed.

### **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.

Income is calculated differently with respect to MA under the Healthy Michigan Plan (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/>.

According to both the statements provided by Petitioner on the [REDACTED] 2018, SER application and the information provided in the Work Number report, Petitioner's earnings exceeded the eligibility limit for HMP. Petitioner stated on the application that she earned \$[REDACTED] per hour and worked 40 hours per week. Annualized, that comes out to an income of \$[REDACTED]. The Work Number information showed that Petitioner's income estimates were substantially lower than the amount Petitioner actually earned. Thus, Petitioner was ineligible whether one looks at the amount Petitioner submitted on the application or the amount Petitioner actually was earning. Thus, the Department properly concluded that Petitioner's income exceeded the limit for MA eligibility. Unlike the action taken with respect to the FAP benefits, the Department provided timely notice on December 11, 2018, that Petitioner's MA benefits were closing on January 1, 2019. Accordingly, the Department's closure of Petitioner's MA case was in compliance with law and policy and is hereby affirmed.

### **SER DENIAL**

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

There are no income copayments for SER energy services. With respect to income, clients are either eligible or they are not. For a group to be eligible for energy services, the combined monthly net income that is received or expected to be received by all group members in the 30-day countable income period cannot exceed the standard for SER energy/LIHEAP services for the number of group members. If the income exceeds the limit, the request must be denied. Emergency Relief Manual (ERM) 208 (October 2018), p 1.

Petitioner applied for SER assistance with her energy utilities. Petitioner receives monthly child support in the gross monthly amount of \$[REDACTED]. Petitioner also receives at

least \$ [REDACTED] in earned income per month, according to Petitioner's SER application.<sup>1</sup> Combined, Petitioner had monthly income of at least \$ [REDACTED]. This amount exceeds 150% of the federal poverty level and the Department denied Petitioner's application based on this income for a household of one or two. See ERM 208, p 6.

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 denied Petitioner's State Emergency Relief (SER) application.


### **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 did not act in accordance with Department policy when it closed Petitioner's FAP benefits case effective December 1, 2018. Accordingly, the Department's decision in that respect is **REVERSED**. However, the Department did act in accordance with Department policy when it denied Petitioner's SER application and closed Petitioner's MA benefits case, 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 Petitioner's FAP case, effective December 1, 2018;
2. Redetermine Petitioner's FAP benefits, effective January 1, 2019, taking into account Petitioner's reported change in income;
3. If Petitioner is entitled to one, issue Petitioner a FAP supplement for December 2018;
4. Notify Petitioner of its decision in writing.

JM/jaf

  
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**John Markey**  
Administrative Law Judge  
for Robert Gordon, Director  
Department of Health and Human Services

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<sup>1</sup> In fact, Petitioner earned substantially more than that as she regularly worked more than 40 hours per week.

**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**

Kimberly Kornoelje  
MDHHS-Kent-Hearings

**Petitioner**

[REDACTED]  
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BSC4  
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