



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: April 11, 2019
MAHS Docket No.: 19-001746
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 April 8, 2019, from [REDACTED] Michigan. Petitioner was represented by Nick Gable. The Department of Health and Human Services (Department) was represented by Kyle Bruckner. Participating as witnesses on behalf of the Department was Chukwuma Oguejiofor, Eligibility Specialist, and Maia Elvine-Fair, Assistance Payments Supervisor.

ISSUE

Did the Department properly close Petitioner's Medical Assistance (MA) benefit 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 Food Assistance Program (FAP) and MA benefit recipient.
2. In January 2019, Petitioner completed a redetermination related to her FAP benefit case (Exhibit A, pp. 6-13).
3. Petitioner had income from employment.
4. On February 6, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice (HCCDN) informing her that her MA benefit case was closing, effective March 1, 2019 (Exhibit A, pp. 14-16).

5. On February 15, 2019, Petitioner submitted pay statements from her income from employment (Exhibit A, pp. 19-21).
6. On February 26, 2019, the Department sent Petitioner a HCCDN informing her that her MA benefit case was closing, effective April 1, 2019 (Exhibit A, pp. 25-28).
7. Petitioner submitted a request for hearing disputing the Department's actions regarding her MA and FAP benefit cases.

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.

The hearing was requested, in part, to dispute the Department's action taken with respect to Petitioner's FAP benefits. Shortly after commencement of the hearing, Petitioner's representative stated that Petitioner did not wish to proceed with the hearing with respect to her FAP benefit case. The Request for Hearing was withdrawn.

Pursuant to the withdrawal of the hearing request filed in this matter, the Request for Hearing regarding the FAP benefit case is, hereby, **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.

In this case, Petitioner was an ongoing MA recipient under the Health Michigan Plan (HMP) program. In January 2019, Petitioner completed a redetermination related to her FAP benefit case. The Department discovered Petitioner had an increase in her earned income from employment. As a result, the Department redetermined Petitioner's MA eligibility.

The Department concluded that Petitioner was not eligible for HMP because her income exceeded the applicable income limit for her group size. HMP uses a Modified Adjusted Gross Income (MAGI) methodology. 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. In this case, Petitioner filed taxes, was not married and did not claim any dependents. Therefore, for HMP purposes, she has a household size of one. BEM 211 (January 2016), pp. 1-2.

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 income cannot exceed \$16,146.20 annually or \$1,345.52 monthly. 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, 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/how-to-report/>

For MAGI-related MA programs, the Department allows a 5% disregard in the amount equal to 5% of the FPL level for the applicable family size. BEM 500 (July 2017), p. 5. It is not a flat 5% disregard from the income. BEM 500, p. 5. The 5% disregard is applied to the highest income threshold. BEM 500, p. 5. The 5% disregard shall be applied only if required to make someone eligible for MA benefits. BEM 500, p. 5.

Effective November 1, 2017, when determining eligibility for ongoing recipients of MAGI related MA, the State of Michigan has elected to base financial eligibility on currently monthly income and family size. See:

https://www.michigan.gov/documents/mdhhs/MAGI-Based_Income_Methodologies_SPA_17-0100_-_Submission_615009_7.pdf

The Department testified that it initially based Petitioner's MA eligibility on the self-reported income in Petitioner's redetermination. Petitioner reported that she works [REDACTED] hours per week and earns \$[REDACTED] per hour. However, after receiving pay statements from Petitioner, the Department redetermined Petitioner's MA eligibility utilizing the pay statements.

The Department determined Petitioner's monthly income was \$[REDACTED]. The Department presented the pay statements used to determine Petitioner's eligibility (Exhibit A, p 19). The pay statements show that Petitioner received a payment on January 15, 2019, in the gross amount of \$[REDACTED] and on January 31, 2019, in the gross amount of \$[REDACTED]. The Department testified that to determine Petitioner's income, they added the payments together and multiplied by the 2.15 multiplier.

For FAP program benefits, among others, 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.

The policy regarding the use of multipliers is not utilized in calculating income for purposes of MA benefits. MA benefit programs use income budgeting methods set forth in BEM 530. However, it appears the Department did not actually use the multiplier, as Petitioner's two gross income payments in January 2019 equal \$[REDACTED]. The Department multiplied the \$[REDACTED] monthly income amount and determined Petitioner had a yearly income of \$[REDACTED] which exceeded the income limit under the HMP program for Petitioner's group size.

Petitioner's representative argued that first, the Department erred when it annualized Petitioner's January 2019 income over the entire year. Additionally, Petitioner's representative contended the Department did not take into consideration the 5% income disregard.

As stated above, effective November 1, 2017, the Department is to base a client's MAGI-related MA eligibility on current monthly income and family size. The monthly income limit for an individual of Petitioner's group size is \$1,345.52. Additionally, the Department may disregard a client's income by 5% of the FPL, if it would make that individual eligible for MA benefits. 5% of the FPL in 2018 for a group size of one is \$607 per year or \$50.58 per month. Therefore, Petitioner's current monthly income cannot

exceed \$1,396.10. see: <https://www.federalregister.gov/documents/2018/01/18/2018-00814/annual-update-of-the-hhs-poverty-guidelines>.

Petitioner's representative presented Petitioner's pay statements from February and March 2019 (Exhibit 1, pp. 19-21). Petitioner was paid on February 15, 2019, in the gross amount of \$[REDACTED] on February 28, 2019, in the gross amount of \$[REDACTED] on March 15, 2019, in the gross amount of \$[REDACTED] and on March 31, 2019, in the gross amount of \$[REDACTED]. Petitioner testified that her income in January 2019 was much higher than usual, as she was covering shifts for a coworker that was out of the office. Petitioner stated her coworker is not generally out of the office as much as she was in January 2019.

When calculating MAGI in situations where income is difficult to predict because of unemployment, self-employment, commissions, or a work schedule that changes regularly, income should be estimated based upon past experiences, recent trends, possible changes in the workplace, and similar information. See: <https://www.healthcare.gov/income-and-household-information/how-to-report/>.

Included in the pay statements submitted by the Department, is Petitioner's pay statement from February 15, 2019. Therefore, the Department was on notice that Petitioner's income fluctuates. Looking at the entirety of Petitioner's pay statements, it appears that her January 2019 income was irregular. Therefore, when calculating Petitioner's MAGI-based income, the Department should have considered additional income information, such as Petitioner's income from February 2019. Thus, the Department failed to establish that it properly followed policy when it closed Petitioner's MA benefit case.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's MA benefit case.

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

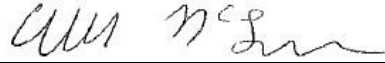
Petitioner's hearing request with respect to her FAP benefit case is **DISMISSED**.

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. Redetermine Petitioner's MA benefit eligibility as of March 1, 2019, ongoing;

2. If Petitioner is eligible for MA benefits, provide her with MA coverage she is entitled to receive as of March 1, 2019, ongoing; and
3. Notify Petitioner of its decision in writing.

EM/jaf



Ellen McLemore

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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