



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

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

Date Mailed: May 21, 2019
MOAHR Docket No.: 19-003977
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 May 20, 2019, from Detroit, Michigan. The Petitioner was self-represented and appeared with his son, [REDACTED]. The Department of Health and Human Services (Department) was represented by Gina Harrington, Eligibility Specialist, and Rosalynn Boyle, Assistance Payments Supervisor. Translation services were provided by [REDACTED].

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) case due to excess net income?

Did the Department properly close Petitioner's Medical Assistance (MA) Program benefits due to excess assets?

Did the Department properly place [REDACTED] (Petitioner's son, hereinafter Son) in an MA deductible program?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On March 5, 2019, the Department received Petitioner's completed Redetermination for the FAP and MA program listing six members of his household, and income from employment for Petitioner and Son.

2. On March 28, 2019, the Department received the following items: proof of closure of a [REDACTED] account, proof of a February 2019 balance in a [REDACTED] checking account of \$[REDACTED] proof of rental income in the amount of \$[REDACTED] per month, proof of closure of a [REDACTED] account, Verification of Employment form for Son showing variable wages with a pay check every two weeks from [REDACTED] (Employer 1), and Petitioner's paystubs and pay history from [REDACTED] (Employer 2).
3. On April 3, 2019, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner informing him that his daughter was eligible for full coverage MA under the MiChild program effective May 1, 2019; that Son was eligible for MA benefits with a \$[REDACTED] deductible per month effective April 1, 2019; and that Petitioner and his wife were ineligible for MA benefits due to excess assets effective May 1, 2019.
4. On the same day, the Department issued a Notice of Case Action to Petitioner informing him that his FAP case was closing effective April 1, 2019, because his net income exceeds the limit and because he did not provide proof of requested items to the local office.
5. On April 8, 2019, the Department received Petitioner's request for hearing disputing the Department's closure of his FAP case, closure of MA benefits, and change in Son's MA coverage.

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 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.

In this case, Petitioner disputed the Department's closure of his FAP benefits due to excess net income. The parties agree that Petitioner has a group size of four. 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. The Department is required to consider income from the past 30 days if it appears to accurately represent what is expected to be received in the benefit month. BEM 505, p. 6. The Department is required to discard pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. *Id.* Income that is received every week is averaged and multiplied by 4.3. BEM 505, pp. 8-9. Income that is received every two weeks is averaged and multiplied by 2.15. *Id.* Finally, income that is received twice per month is added together. *Id.*

Petitioner had employment income from Employer 2 in the following amounts:

February 12, 2019	\$	
February 19, 2019	\$	
February 26, 2019	\$	
March 5, 2019	\$	

Therefore, Petitioner's standardized income from Employer 2 is \$ Son had the following employment income:

February 11, 2019	\$	
February 25, 2019	\$	
March 11, 2019	\$	
March 25, 2019	\$	

After exclusion of the \$ payment because it is significantly greater and appears to be outside of the norm, Son's standardized income is \$ Therefore, household income from employment was \$ (dropping the cents). The Department calculated this income to be \$ however, based upon the evidence presented, the calculations used for the Department reach this figure are unclear.

Petitioner also had income from a rental property of \$ per month. Some types of rental or room-and-board income are counted as unearned income and some as earned or self-employment income. BEM 504 (January 2018), p. 1. Farmland rental income is considered unearned income. *Id.* An in-home rental, when a landlord rents out part of his own dwelling to another individual, is considered earned income from self-employment. BEM 504, pp. 1-2. Room-and-board income is when an individual provides for another individual's food and place to live. BEM 504, p. 2. Other rental income, such as when an individual rents their non-homestead house to another individual, is treated as earned or unearned income based upon the time the landlord actively engages in the management of the rental property. *Id.* If the time spent is under 20 hours per week, it is considered unearned income; if the time spent is 20 hours or

more per week, then it is earned income. *Id.* The Department considered Petitioner's rental income to be unearned income, and Petitioner did not dispute that he worked less than 20 hours per week on the rental property. The Department considers the gross rental payment minus any allowable expenses as income. BEM 504, p. 3. The Department will allow expenses of 65% of the rental payment or the actual rental expenses if the landlord chooses to report and verify the expenses, whichever is higher. *Id.* Therefore, the Department properly considered an unearned rental income of \$ [REDACTED] per month.

After a review of all household income, the total household gross income is \$ [REDACTED]

After income is calculated, the Department is required to review expenses and other deductions. The parties agree that there are no Senior/Disabled/Disabled Veteran (SDV) household members; therefore, Petitioner's group is entitled to consideration of expenses including:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 550 (January 2017); BEM 554 (August 2017), p. 1; BEM 556 (April 2018), pp. 3-4.

At the hearing, the Department presented a Net Income Budget for April 2019 in support of its case.

No evidence was presented that Petitioner has any dependent care or child support expenses, and zero expenses were budgeted for each item. The Department afforded Petitioner the proper standard deduction of \$168.00 based upon a group size of four. BEM 556, p. 3; RFT 255 (October 2018), p. 1. In addition to the standard deduction, an earned income deduction of 20% or \$740.00 is applied. After consideration of all appropriate deductions, the Adjusted Gross Income (AGI) for Petitioner's group is \$2,818.00. BEM 556, p. 4.

After calculation of the AGI, the Department must calculate the excess shelter deduction. Petitioner did not dispute the Department's determination of his housing expense at \$ [REDACTED] or the application of the Heat and Utility Standard Deduction (H/U) of \$ [REDACTED]. Once the rental expense and the H/U are added together for the total housing obligation, it is reduced by half of the AGI to achieve the Excess Shelter Deduction. BEM 556, pp. 4-5. Petitioner's total housing expense of \$ [REDACTED] reduced by half of the AGI or \$ [REDACTED] totals an Excess Shelter Deduction of \$34.00. *Id.*

Once the Excess Shelter Deduction is calculated, it is subtracted from the AGI to achieve household net income. BEM 556, p. 5. Petitioner's net income is \$ [REDACTED]

The net income limit for a group size of four is \$ [REDACTED] RFT 250 (October 2018), p. 1; BEM 550 (January 2017), p. 1. Therefore, the Department properly determined, despite inaccurate calculations, that the Petitioner had excess net income and was ineligible for FAP benefits effective April 2019.

It should also be noted that Petitioner's FAP case was closed based upon a failure to verify requested information. At the hearing, the parties agreed that Petitioner submitted all requested information and that this must have been an error by Bridges. Since Petitioner's case was properly closed based upon excess net income, this results in a harmless error and is not evaluated further by this decision.

Medical Assistance (MA) Program

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.

Turning to the issue of household MA coverage, Petitioner and his wife were denied MA because of excess assets, and Son was placed in a deductible MA program. At the hearing, the Department could not identify the reasons for which Son was placed in the MA deductible program or even which category in which he was enrolled. Since the Department presented no evidence to support Son's placement in an MA deductible category, the Department has not met its burden of proof and is reversed as it relates to Son's MA coverage.

Petitioner and his wife were denied MA coverage based upon excess assets effective May 1, 2019. Assets must be considered in determining eligibility for Supplemental Security Income (SSI)-related MA categories, but not for Modified Adjusted Gross Income (MAGI) categories. BEM 400 (April 2019), p. 1. All SSI-related MA categories, except the Medicare Savings Program (MSP), have an asset limit of \$3,000 for a group size of two. BEM 400 (April 2019), p. 8. For MA purposes, Petitioner and his wife are in the same group; but his children are not. BEM 211 (February 2019), p. 5. Assets include cash, personal property, and real property (land and objects affixed to the land). BEM 400, pp. 1-2. Petitioner and his wife had one open bank account with a balance of \$4,898.70 for February 2019. This asset alone puts Petitioner and his wife over the general SSI-related MA asset limit. No evidence was presented that either Petitioner or his wife was eligible for Medicare; therefore, no asset evaluation is necessary for purposes of the MSP. The Department properly denied Petitioner and his wife SSI-related MA benefits effective May 2019 based upon excess assets.

However, because no evidence was presented that Petitioner or his wife were disabled, or that they were Medicare beneficiaries, or that they were not eligible for some other

program, the Department has not met its burden of proof that Petitioner and his wife were ineligible for all MA programs, only those programs considered to be SSI-related. Since the Healthy Michigan Plan (HMP) is a program available to individuals who are not Medicare recipients and there is no asset limit, it is entirely possible that Petitioner and his wife might still be eligible for MA despite their assets.

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 closed Petitioner's FAP case based upon excess net income, closed Petitioner's and his wife's SSI-related MA case based upon excess assets; but failed to satisfy its burden of showing that it acted in accordance with Department policy when it placed Son in an MA deductible program or when it failed to consider non-SSI-related MA categories for Petitioner and his wife.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the closure of the FAP case and **REVERSED IN PART** with respect to the placement of Son in an MA deductible program and with respect to the denial of MA for Petitioner and his wife.

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 Son's MA eligibility effective April 1, 2019;
2. Redetermine Petitioner's and his wife's MA eligibility effective May 1, 2019;
3. If eligible for greater coverage than previously provided, issue supplements to Petitioner for benefits not previously received for Petitioner, his wife, and Son; and,
4. Notify Petitioner in writing of the Department's 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Lori Duda
MDHHS-Oakland-2-Hearings

Petitioner

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

BSC4
M Holden
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EQAD