



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: July 26, 2019  
MOAHR Docket No.: 19-006249  
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 July 24, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by [REDACTED] Hearings Facilitator.

**ISSUE**

Did the Department properly close Petitioner's and his wife's Medical Assistance (MA) Program Healthy Michigan Plan (HMP) 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 and his wife were ongoing MA HMP recipients.
2. At some point, Petitioner provided the Department with his [REDACTED] self-employment tax filings in order to update his income records.
3. On May 15, 2019, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner informing him that both him and his wife's MA HMP coverage would end effective June 1, 2019 due to being over the income limit.
4. On June 10, 2019, the Department received Petitioner's request for hearing disputing the closure of their MA HMP 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).

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 disputes the closure of his and his wife's MA HMP benefits due to excess income. MA is available (i) to individuals who are aged (65 or older), blind or disabled under Supplemental Security Income (SSI)-related categories, (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.

Since Petitioner and his wife are not under 21 or over 64, nor is he pregnant, no evidence was presented that his wife was pregnant either, Petitioner and his wife do not qualify for any of programs listed above involving these eligibility factors. At the hearing, the Department conceded that Petitioner and/or his wife may be eligible for MA based upon disability status and that the question of their disability MA eligibility was pending as of June 21, 2019. Policy provides that the Department is required to "consider eligibility under all other MA-only categories before terminating benefits under a specific category." BEM 105 (April 2017), p. 5. Therefore, the Department's closure of their MA HMP benefits was premature. Closure should only have been completed when a final determination had been made regarding Petitioner's and his wife's eligibility for all other MA programs, including those programs which have a disability requirement. *Id.*

Regardless, of the Department's actions, a determination of Petitioner's and his wife's financial eligibility follows for the HMP because based upon all non-financial eligibility factors, they may be eligible.

A determination of group size under the MAGI methodology requires consideration of the client's tax status and dependents. The household for a tax filer, who is not claimed as a tax dependent includes the individual, their spouse, and tax dependents. BEM 211 (February 2019), pp. 1-2. Therefore, Petitioner's MA group size is five as he is married with three children. 133% of the FPL for a group size of five is \$40,126.10 as of January 11, 2019. See <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's annual income cannot exceed \$40,126.10 for a group size of five or \$3,343.84 per month.

In reviewing the Department's decision, the Department based Petitioner's group size on three rather than five. Therefore, the Department applied the wrong income limit in Petitioner's case.

To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500 (July 2017), p. 3. Income is verified via electronic federal data sources in compliance with MAGI methodology. MREM, § 1. In determining an individual's eligibility for MAGI-related MA, the Department bases financial eligibility on current monthly household income. 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 7, Form 1040 EZ at line 4, and Form 1040A at line 21. *Id.* 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, childcare, or retirement savings. *Id.* This figure is multiplied by the number of paychecks the client expects during the year to estimate income for the entire year. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>. In situations where income is difficult to predict because of self-employment income and expenses for the year, consideration is given to past experiences, realistic expectations, industry standards, and other information. See <https://www.healthcare.gov/self-employed/income/>.

Petitioner and his wife are both self-employed. According to Petitioner's and his wife's 2018 Form 1040, their combined AGI is [REDACTED]. During the hearing, Petitioner raised the concern that his self-employment tax should be deducted from his AGI to determine his MAGI for MA purposes. However, after reviewing the tax returns, Petitioner's self-employment tax was already deducted from his gross income in order to achieve his AGI. Petitioner's and his wife's gross income was [REDACTED] on line 6 of Form 1040. Line 7 is the AGI line which provides the instruction "If you have no adjustments to income, enter the amount from line 6; otherwise subtract Schedule 1, line 36, from line 6." Schedule 1 line 36 shows that Petitioner and his wife have a combined adjustment to income of [REDACTED] which includes line 27, the "deductible part of self-employment tax." Therefore, the self-employment tax has already been

deducted in order to calculate Petitioner's AGI and it would be inappropriate to deduct the same expense/tax again.

At some point, the Department became aware that Petitioner's wife closed her old business and began a new business with an estimated income of [REDACTED] per month. At the hearing, Petitioner noted that his estimation of her new self-employment income was inflated and now that he has more experience with it, he estimates the income to be closer to [REDACTED] per month. Since the Department was not aware of the more realistic figure, the newer figure cannot be considered by this decision. This hearing decision is used solely to review the Department's decision based upon information available to the Department at the time of its decision.

Since Petitioner's wife's original self-employment income ended sometime around January 2019, the Department should have deducted the income as listed in the tax filings for her income. A review of the Schedule C Profit or Loss From Business form shows that Petitioner's wife actually had a net loss from her old self-employment business. Therefore, no income should be deducted. However, her new self-employment income must be added to the MAGI income discussed above. The new MAGI income is [REDACTED]. After calculating their MAGI income, Petitioner and his wife are over the HMP income limit.

An exception exists to the income limit rule if an individual's group income is within 5% of the FPL for the applicable group size, a disregard is applied in order to make the person eligible for MA. MREM, § 7.2. After consideration of the 5% disregard, the income limit is \$[REDACTED] or \$[REDACTED] per month. Petitioner's income is greater than the income limit even after the 5% disregard. Therefore, the Department correctly determined that Petitioner and his wife were income ineligible for HMP.

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 MA HMP case without first completing an eligibility determination for all other forms of MA benefits.

### **DECISION AND ORDER**

Accordingly, the Department's decision 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 HMP benefit pending the Department's determination of MA based upon disability;

2. Issue supplements to Petitioner or on his behalf for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.



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**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**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**CC:**

[REDACTED]  
[REDACTED]