



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
Date Mailed: August 15, 2019
MOAHR Docket No.: 19-006660
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 August 8, 2019, from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist.

ISSUE

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

Did the Department properly close the Petitioner's Healthy Michigan Plan (HMP), Medical Assistance benefits due to excess income?

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 HMP benefits. Petitioner has a FAP group size of one and an HMP group size of one.
2. The Department sent the Petitioner a New Hire Client Notice on May 14, 2019 requesting Petitioner completed a New Hire Employment Report by May 24, 2019. The Petitioner completed the New Hire Report and submitted pay stubs and sent it to the Department on May 23, 2019. Exhibits A, B, C and D.

3. Petitioner began employment with [REDACTED] on April 11, 2019 and received her first paycheck on April 25, 2019 and was paid biweekly. The New Hire Report completed by the employer advised the Petitioner was to be working 32 weekly.
4. The pay stubs used by the Department to determine Petitioner's employment income from [REDACTED] were based upon December pays of \$[REDACTED] and \$[REDACTED] for a total of \$[REDACTED].00 The Department also had additional pay stubs for [REDACTED] which it did not use in the amount of \$[REDACTED] for pay date January 11, 2019 and \$[REDACTED] for pay date January 25, 2019. The Petitioner began working for [REDACTED] on July 1, 2018. Exhibits B and D.
5. The Petitioner also provided a pay stub for [REDACTED] for pay date May 9, 2019, \$[REDACTED].00 which was the only pay stub provided by Petitioner for the new employer. Exhibit C
6. Petitioner's earned income from employment was as determined by the Department when calculating FAP benefits was \$[REDACTED]. Exhibit F.
7. On May 23, 2019 the Department issued a Notice of Case Action closing the Petitioner's FAP benefits effective July 1, 2019 due to her Net income exceeding the FAP net income limit. At the hearing the Petitioner confirmed that her rent was \$750 monthly and she paid heat and utility. The budget presented by the Department also demonstrated that Petitioner was given a heat and utility allowance of \$543 per month for total housing expenses of \$1293.00
8. On May 23, 2019 the Department issued a Health Care Coverage Determination Notice closing the Petitioner's HMP medical Assistance due to excess income alleging that her income exceeded the HMP limit. The Notice indicated that Petitioner's annual income was determined to be \$[REDACTED].00. Exhibit E
9. The Petitioner's net monthly income for FAP benefit calculation purposes was determined to be \$[REDACTED]. Exhibit F
10. The Petitioner was not disabled and was employed at the time of the Department determinations regarding her eligibility for FAP and HMP.
11. In 2019 the Petitioner was employed by [REDACTED] and [REDACTED] as of April 19, 2019.
12. The Petitioner requested a timely hearing on June 19, 2019 protesting the Department's closure of her HMP and FAP benefit programs.

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 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 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, the Department closed the Petitioner's FAP and HMP program benefits after she notified the Department that her income had changed when she began working for a second employer [REDACTED]. The Petitioner's FAP and HMP benefits were originally approved based on her employment with [REDACTED] and as such based upon that income she was determined eligible for FAP and HMP. Once the Department received the new additional earned income from employment, the Department was required to process the case based upon the changed income from employment. After processing the new income from her employment with [REDACTED], the new gross monthly income for both FAP and HMP changed and caused the Department to close both benefit cases due to excess income. The Petitioner's FAP case closed on July 1, 2019; and the HMP case closed effective July 1, 2019. Exhibit E

Food Assistance

The Department sent the Petitioner a New Hire Client Notice for employer [REDACTED] on May 14, 2019 and requested that she have her employer complete the Employment Report attached to the Notice. The Notice had to be returned by May 24, 2019. The Notice was returned to the Department on May 23, 2019 and indicated that Petitioner started employment on April 11, 2019 and received her first pay on April 25, 2019. One pay stub was provided for [REDACTED] for pay date May 9, 2019 for a gross pay of \$[REDACTED]. The pay stub indicates it included overtime pay of \$[REDACTED]. Exhibit C. The Petitioner was paid biweekly by [REDACTED].

In addition, the Department testified that it used two pay stubs from Petitioner's other employer [REDACTED]. The Department testified it used a pay stub for \$[REDACTED] and \$[REDACTED] for a total gross pay of \$[REDACTED]. Additional [REDACTED] pay stubs provided to the Department for January 2019 indicated that on January 11, 2019 she received gross pay of \$[REDACTED] and \$[REDACTED] for pay date January 25, 2019. Exhibit B. The January 2019 pay stubs totaled \$[REDACTED] and were apparently not used to redetermine the Petitioner's FAP eligibility.

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 (January 2016), 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 (April 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. Income received twice per month is added together. BEM 505, p. 8. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. Income received weekly is converted to a standard amount by multiplying the average of the weekly pay amounts by the 4.3 multiplier. BEM 505, pp. 7-9.

The Department testified that it used the pay stub received from [REDACTED] which totaled \$[REDACTED] for the pay stub dated May 9, 2019 when calculating Petitioner's FAP benefits. Petitioner is paid biweekly and the Department determined her gross biweekly pay to be \$[REDACTED] using the pay stub which was provided, \$[REDACTED] and multiplying it by 2.15 results in monthly gross income of \$[REDACTED] monthly. Exhibit C and G. In addition, the Department testified that it used Petitioner's December 2018 pay stubs for [REDACTED] and determined that her gross monthly income from [REDACTED] was \$[REDACTED]. The Department testified that it used pay stubs in the amount of \$[REDACTED] and \$[REDACTED] based upon her previously provided December 2018 pay stubs. When the average pay for [REDACTED] is multiplied by 2.15 the monthly gross pay for FAP benefit purposes is \$[REDACTED]. Exhibit G. The Petitioner's total monthly gross income from employment (earned income) as determined by the Department was \$[REDACTED] which is correct. (\$[REDACTED] = \$[REDACTED]). In addition the department included unearned income of \$[REDACTED].00 which was not disputed by the Petitioner for a total income amount of \$[REDACTED].

The deductions to income on the net income budget were also reviewed. There was no evidence presented that the Petitioner's group includes a SDV member. BEM 550. Thus, the group is eligible for the following deductions to income:

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

BEM 554 (January 2017), p. 1; BEM 556 (July 2013), p. 3.

The Department will reduce the gross countable earned income by 20 percent and 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 \$[REDACTED]. As

20% of \$[REDACTED] is \$[REDACTED]. Petitioner's FAP benefit group size of one, which is comprised of herself justifies a standard deduction of \$158. RFT 255 (October 2016), p. 1. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support expenses. The Department also included a medical deduction of \$[REDACTED].00 which was not discussed by the Department during the hearing to establish a basis for the deduction. Therefore, the budget properly excluded any deduction for dependent care or child support expenses.

The FAP budget was reviewed at the hearing and it was determined that the Department used FAP gross monthly income of \$[REDACTED] based upon \$[REDACTED] for [REDACTED] and \$[REDACTED] from [REDACTED]. The gross monthly amount based upon the pay stubs provided after the hearing by the Department for [REDACTED] for December 2018 were \$[REDACTED] and \$[REDACTED] which when added total \$[REDACTED]. Thus apparently the Department used less gross income from [REDACTED] when computing the Petitioner's FAP than was demonstrated based on the pay stubs for December 2018. Additional [REDACTED] pay stubs received in February 2019 were \$[REDACTED] gross pay for pay date January 11, 2019 and \$[REDACTED] for pay date January 25, 2019. The gross income based upon the pay stubs received for January 2019 was \$[REDACTED]. The Department offered no explanation why the higher income for [REDACTED] was not used to determine Petitioner's FAP eligibility. This omission worked to the advantage of Petitioner and does not change the outcome.

A review of the FAP Net EDG budget provided at the hearing used monthly gross pay of \$[REDACTED] for employment which is less monthly total gross pay if January 2019 pay stubs for [REDACTED] had been used. Notwithstanding the Department used a smaller gross monthly income for [REDACTED] of \$[REDACTED] versus \$[REDACTED], ultimately the Petitioner's income from both employers caused her to be ineligible for FAP due to her net income even using the lower gross pay for [REDACTED].

The Department properly deducted a Standard deduction of \$158 based upon Petitioner's group size of one and a medical deduction of \$511 which was not discussed at the hearing. See RFT 255, (October 2018), p. 1 The Department also properly deducted from the Petitioner's gross earned income the remaining earned income deduction of \$[REDACTED] resulting in Adjusted gross income of \$[REDACTED]. Exhibit F.

In calculating the excess shelter deduction of \$[REDACTED], the Department stated that it considered Petitioner's verified housing expense of \$750 for rent and that she was entitled to the heat/utility standard of \$543. BEM 554, pp. 14-15; RFT 255, p.1. The Department testified when calculating Petitioner's excess shelter amount they added the total shelter amount of \$1293 and subtracted 50% of the adjusted gross income, or \$[REDACTED] which resulted in a \$[REDACTED] excess shelter deduction. Therefore, the Department correctly determined the Petitioner's excess shelter deduction.

Once the excess shelter deduction of \$167 is deducted from the adjusted gross income of \$[REDACTED] the Net income remaining is \$[REDACTED]. The FAP net income limit for a FAP group of one person is \$[REDACTED] and thus the Petitioner's net income exceeded the net income limit. RFT 260 (October 2018), p. 29. The Department should review the

ongoing medical expense deduction of \$511 to determine if it is still appropriate as no evidence to support the deduction was presented at the hearing. In addition, the unearned income included in the budget of \$154 was also not explained. Neither of these expenses if they were not included would have changed the outcome of the Department's determination that the FAP net income limit was exceeded because the large medical deduction if not included would have caused the Petitioner's countable income to increase by that amount.

Based upon the forgoing review it is determined that the Department properly concluded that the Petitioner's income exceeded the FAP Net income limit and correctly closed her FAP benefits effective July 1, 2019 for that reason.

Healthy Michigan Plan

In this case, the Petitioner has sought review of the Department's closure of her Health Michigan Plan (HMP) benefits based upon on her income exceeding the HMP income limit for a household of 1 person.

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.

The Department denied Petitioner's HMP because the Petitioner had excess income for HMP purposes. No evidence was presented that Petitioner, was disabled, or over 65 and thus did not qualify for any other programs except possibly the HMP.

To determine eligibility for HMP, a determination of group size using the MAGI methodology, considering the client's tax status and dependents, is required. The household for a tax filer, who is not claimed as a tax dependent includes the individual, their spouse, and tax dependents. BEM 211 (January 2016), pp. 1-2. Therefore, Petitioner's MA group size is one.

In May of 2019 the Department correctly used 2019 federal poverty guidelines when determining eligibility based on household income and used the 2019 133% FPL of \$16,611.70. See <https://aspe.hhs.gov/poverty-guidelines>. Exhibit E. Therefore, to be income eligible for HMP, Petitioner's income cannot exceed \$16,611.70 for a group size of one or \$1,384.30 monthly. Exhibit E.

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 37, 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.* 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/>. Effective October 1, 2018, all RSDI income is countable for tax-filers and adults not claimed as dependents. BEM 503 (October 2018), p. 30.

The Department testified that it used \$[REDACTED] for [REDACTED] employment based upon the pay stub received by the department of \$[REDACTED] for a two week period and multiplied the pay by two. Based upon the information available the Department it correctly used this amount. See also Exhibit G Employment Budget Summary for [REDACTED] and [REDACTED]. In addition the Department testified that it used \$[REDACTED] as the monthly income received from [REDACTED]. These monthly amounts were budgeted by the Department. Exhibit G.

The pay stubs from both employers were reviewed and it was determined that no deductions were made by the employer for health care coverage, childcare or 401K savings/retirement plans therefore no reductions to the monthly incomes were made. The Petitioner's monthly MAGI income based upon her monthly income as referenced above when added together totals \$[REDACTED] a month. The monthly income multiplied by 12 months results in annual gross income of \$[REDACTED]. Therefore, based upon the FPL HMP income limit of \$16,611.70, Petitioner has excess income for HMP purposes and is not eligible for HMP benefits.

As discussed at the hearing the Petitioner is no longer employed by [REDACTED] and thus may wish to reapply for benefits based upon her reduced income.

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 the Petitioner's Food Assistance and Healthy Michigan Plan benefits due to excess income exceeding the applicable program income limits.

DECISION AND ORDER

Accordingly, the Department's decision is

AFFIRMED.

LMF/tlf



Lynn M. Ferris

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

Via Email:

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

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]