



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: August 28, 2019
MOAHR Docket No.: 19-007939
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 22, 2019, from Detroit, Michigan. Petitioner's wife, a member of Petitioner's household, appeared and represented the household. The Department of Health and Human Services (Department) was represented by [REDACTED] Family Independence Manager.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefit amount for April 1, 2019 ongoing?

Did the Department properly close Petitioner's wife's Medical Assistance (MA) benefit case effective June 1, 2019?

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 FAP recipients. Petitioner's wife was an ongoing MA recipient under the Healthy Michigan Plan (HMP) program.
2. In March 2019, Petitioner completed a redetermination.
3. Petitioner has income from employment.

4. On April 29, 2019, the Department sent Petitioner (i) a Notice of Case Action informing him that he was eligible for FAP benefits in the monthly amount of \$■■■■ effective April 1, 2019, ongoing and (ii) a Health Care Coverage Determination Notice (HCCDN) informing him that his wife's MA benefit case was closing effective June 1, 2019, ongoing .
5. On May 23, 2019, Petitioner submitted a request for hearing disputing the Department's actions.
6. On July 1, 2019, a hearing was held under MOAHR docket no. 19-005817.
7. On July 3, 2019, ALJ McLemore issued a hearing decision finding that the Department had failed to show how it calculated Petitioner's FAP eligibility and determined that his wife was not eligible for MA. ALJ McLemore ordered the Department to redetermine Petitioner's FAP eligibility for April 1, 2019 ongoing and issue FAP supplements if eligible; redetermine Petitioner's wife's MA eligibility for June 1, 2019 ongoing and provide coverage if eligible; and notify Petitioner of its FAP and MA decision in writing. (Exhibit A, pp. 6-11.)
8. On July 3, 2019, the Department sent Petitioner (1) a Notice of Case Action notifying him that his household was eligible for \$54 in monthly FAP benefits for August 1, 2019 ongoing and (2) a Health Care Coverage Determination Notice notifying him that his wife was not eligible for MA.
9. On July 26, 2019, the Department received Petitioner's hearing request disputing the Department's actions concerning his FAP and MA cases and contending that the Department did not properly implement ALJ McLemore's hearing decision (Exhibit A, pp. 4-5).

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).

In the July 3, 2019 hearing decision, ALJ McLemore ordered the Department to recalculate Petitioner's FAP benefit amount for April 1, 2019 ongoing, redetermine his wife's MA coverage for June 1, 2019 ongoing, and notify Petitioner of the outcome. The Department asserted that Petitioner was not eligible for a FAP supplement, but the Notice of Case Action it issued on July 3, 2019 notified Petitioner only of a FAP decrease to ■■■■ monthly for August 1, 2019 ongoing and did not notify him of the outcome of the recalculation of FAP benefits for April 1, 2019 to July 31, 2019. The Department also issued a July 3, 2019 Health Care Coverage Determination Notice

notifying him that his wife was not eligible for MA. This hearing decision addresses: (1) Petitioner's wife's MA eligibility for MA for June 1, 2019 ongoing and (2) the household's FAP benefit amount for April 1, 2019 to July 31, 2019 and for August 1, 2019 ongoing.

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.

At the hearing, Petitioner confirmed that she was not blind, disabled, over age 65, under age 19, pregnant, or the parent of a minor child. Therefore, Petitioner was potentially eligible for MA under only HMP. BEM 137 (April 2018), p. 1; BEM 105 (April 2017), p. 2. 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, p. 1.

An individual is income-eligible for HMP if his 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 purposes requires consideration of the client's tax filing status or, if not a tax filer, the individual's household. 42 CFR 435.603(f)(1). If the individual is not claimed as a tax dependent and expects to file a tax return for the taxable year in which an eligibility determination is made, the household consists of the taxpayer and all persons the individual expects to claim as a tax dependent. 42 CFR 435.603(f)(1). If the individual does not file taxes, an individual's group consists of the individual and, if living with the individual, the spouse and children up to age 21, if full-time students. 42 CFR 435.603(f)(3).

Petitioner's wife testified that she and her husband filed taxes. Thus, the MAGI group size for Petitioner is two. BEM 211 (July 2019), pp. 1-2. For a two-person group, the income limit for HMP eligibility in 2019 was \$22,490.30. <https://www.federalregister.gov/documents/2019/02/01/2019-00621/annual-update-of-the-hhs-poverty-guidelines>. Therefore, to be income-eligible for HMP, Petitioner's annual income cannot exceed \$ [REDACTED] (or \$ [REDACTED] monthly). A 5% disregard, which may be applied to make someone MA eligible, raises the applicable FPL limit by 5%. BEM 500, p. 5. This would raise the income limit for HMP eligibility to [REDACTED] (or \$ [REDACTED] monthly). Effective November 1, 2017, when determining eligibility for on-

going recipients of MAGI related MA, the State of Michigan has elected to base financial eligibility on currently monthly income and family size. https://www.michigan.gov/documents/mdhhs/MAGI-Based_Income_Methodologies_SPA_17-0100_-_Submission_615009_7.pdf

To determine financial eligibility for MAGI-related MA programs, income must be calculated in accordance with MAGI under federal tax law. BEM 500 (July 2017), pp. 3-4. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500, p. 4. In order to determine earned 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. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>

At the hearing, the Department acknowledged that the only income in Petitioner's household was his earned income from [REDACTED] (Employer). Although there was reference to previous monthly self-employment income of [REDACTED], Petitioner's wife testified that that income had ended in 2018, and the Department acknowledged that there was no self-employment income in the household and that any such income, if considered in the budgeting of Petitioner's FAP or MA eligibility, was erroneous.

In calculating Petitioner's household's income, the Department testified that it relied on information in the Work Number, the Department-accessible database in which employers report employee income information (Exhibit E). On the record, the Department identified the gross income Petitioner received from April 26, 2019 to May 31, 2019. The Department did not establish that the income used was MAGI-based, taking into consideration any health care expenses or retirement savings. However, even if the gross income is used, it results in average monthly income of [REDACTED], considerably less than the income limit for HMP eligibility. Even averaging all of the gross income showing on the Work Number as paid to Petitioner through June 26, 2019 does not result in monthly income in excess of the HMP limit. Therefore, the Department has failed to satisfy its burden of showing that Petitioner's wife was not income eligible for HMP.

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 the July 3, 2019, ALJ McLemore ordered the Department to recalculate Petitioner's FAP benefits beginning April 1, 2019 and, if eligible, issue a FAP supplement to the [REDACTED] that was issued to Petitioner per the April 29, 2019 Notice of Case Action. At the hearing, the Department contended that Petitioner was not eligible for a FAP supplement for benefits issued from April 1, 2019 through July 31, 2019, but the only notice it provided to Petitioner was the July 3, 2019 Notice of Case Action advising him that effective August 1, 2019, the household was eligible for only [REDACTED] in monthly FAP benefits.

In support of its FAP calculations, the Department provided the FAP net income budgets for April 2019 and August 2019. The budgets were based on a household size of two, Petitioner and his wife. Petitioner's wife contended that income was being improperly calculated but acknowledged that all the information other than income was accurately considered. The Department's budgets showed that it calculated [REDACTED] for Petitioner's employment income for April to July 2019 and [REDACTED] for August 2019 ongoing.

The information from the Work Numbers shows that for the months of May 2019 and June 2019, Petitioner received income in excess of [REDACTED]. Therefore, the household was not eligible for a FAP supplement. The Work Number showed that Petitioner received a single paycheck from Employer in April 2019 in the amount of [REDACTED], and only a single paycheck from Employer was showing for July 2019. The Department was unable to explain what income information was used to calculate the [REDACTED] in monthly FAP benefits for August 2019 ongoing. Therefore, the Department has failed to satisfy its burden of showing how it calculated Petitioner's FAP allotment for April 2019, July 2019 or August 2019 ongoing.

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 calculated Petitioner's FAP allotment for April 2019, July 2019, and August 2019 ongoing and did not act in accordance with Department policy when it determined that Petitioner's wife was not income-eligible for HMP.

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. Redetermine Petitioner's wife's eligibility for HMP coverage for criteria other than income and, if eligible, provide Petitioner's wife with HMP coverage from June 1, 2019 ongoing;
2. Recalculate Petitioner's FAP benefits for April 2019, July 2019, and August 2019 ongoing and if eligible, issue a supplement to Petitioner;
3. Notify Petitioner in writing of its decision with respect to Petitioner's HMP coverage for June 1, 2019 ongoing and FAP for April 2019, July 2019, and August 2019 ongoing.



AE/tm

Alice C. Elkin

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]
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[REDACTED]
[REDACTED]

CC:

[REDACTED]
[REDACTED]
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