



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: January 14, 2020  
MOAHR Docket No.: 19-011813  
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 December 9, 2019, from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Kathy Vasold, Eligibility Specialist.

### **ISSUE**

Did the Department properly close Petitioner's Medical Assistance (MA) for the Healthy Michigan Plan (HMP)?

### **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 MA recipient under the HMP program.
2. On [REDACTED], 2019 the Petitioner completed an on-line Redetermination for her [REDACTED] 2019 food assistance review and provided some pay stubs. Exhibit A, pp.1-5.
3. Based upon the pay stubs provided on July 19, 2019 and the Work Number the Department determined Petitioner's income was over the HMP income limit.
4. On September 26, 2019 the Department issued a Health Care Coverage Determination Notice closing the Petitioner's HMP effective November 1, 2019. The Notice determined that Petitioner's household income was \$17,895.40. Exhibit C, p. 12.

5. The Petitioner had income from her employment with [REDACTED]. Exhibit A, pp. 1-5 and Exhibit B, pp. 6-9.
6. The Petitioner had a flexible spending account as shown on her paystub which was a pre-tax deduction from her pay in the amount of \$9.62 per pay. Petitioner is paid weekly. In addition, the Petitioner also had a pre-tax deduction for short term disability in the amount of \$5.04. See Exhibit A, pp. 1-5.
7. In her hearing request, the Petitioner advised the Department that she had fluctuating income and usually works 19-25 hours and that 40 hours work week for the last three pays were not normal.
8. The Petitioner contributed to a flexible spending account in the amount of \$9.62 a pay for check date June 7, 2019. Exhibit A, p. 1. The pay stub for pay date June 29, 2019 also indicates that Petitioner pays for a student loan in the amount of \$48.62 for that pay period. Exhibit A, p.3. A student loan amount was also deducted from her pay check dated July 12, 2019 in the amount of \$51.01. For check pay date July 19, 2019 the Petitioner paid \$31.31 toward her student loan. Exhibit A, p. 4.
9. On October 21, 2019 the Petitioner requested a timely hearing protesting the closure of her HMP medical assistance.

### **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, the Petitioner was an ongoing recipient of HMP. During a redetermination for Food Assistance in August 2019, the Department determined that Petitioner's earnings from employment caused her income to exceed the HMP limit. The Department sent the Petitioner a Health Care Coverage Determination Notice on September 26, 2019 closing her HMP medical assistance benefits effective November 1, 2019.

HMP uses a Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (October 2016), p. 1. An individual is eligible for HMP if their household's income does not exceed 133% of the Federal Poverty Level (FPL) applicable to the individual's group size. BEM 137, p. 1. Additionally, for MAGI-related MA programs, the Department allows a 5 percent disregard in the amount equal to five percent of the FPL level for the applicable family size. BEM 500 (July 2017), p. 5. It is not a flat 5 percent disregard from the income. BEM 500, p. 5. The 5 percent disregard is applied to the highest income threshold. BEM 500, p. 5. The 5 percent disregard shall be applied only if it is required to make someone eligible for MA benefits. BEM 500, p. 5.

An individual's group size for MAGI-related purposes requires consideration of the client's tax filing status. In this case, Petitioner was a household of one person. Therefore, for HMP purposes, Petitioner has a household size of one. BEM 211 (January 2016), pp. 1-2.

138% of the annual FPL in 2019, (applying the 5% disregard), for a household of one member is \$17,236.20. See <https://aspe.hhs.gov/poverty-guidelines>. The monthly income limit for a group size of one based upon 138% of the FPL is \$1,436.35. Therefore, to be income eligible for HMP, Petitioner's household income cannot exceed \$17,236.20 annually or \$1,436.35 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, childcare, or retirement savings and student loan interest. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>. For MAGI MA benefits, if an individual receives RSDI benefits and is a tax filer, all RSDI income is countable. BEM 503 (January 2019), p. 29. Emphasis supplied

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

In this case, the Department provided an Employment Budget Summary which demonstrated that the MA budget amount it used for July 2019 was \$1465.77 and for August 2019 it used \$1462.88. Exhibit G. In addition, a review of the pay stubs

Petitioner provided the Department indicate that the Petitioner has pre-tax deductions deducted from her pay including a Flexible Spending amount of \$9.62 which is generally considered as payment for health care or possibly child care. If if used for either expense, it must be deducted from the monthly gross income amount. Thus taking the income for July 2019 of \$1465.77 and deducting \$38.48 (4 weeks of flexible spending) as required by HMP policy, the Petitioner's monthly income of \$1,427.29 which is under the HMP income limit for a household size of one person which is \$1,436.35. In addition, the Department should also determine based upon the pay stubs whether the short term disability participation is for health insurance which also must be deducted from gross income and whether the Petitioner pays student loan interest which is also a deduction which is allowed.

In conclusion it is determined that the Department incorrectly determined the Petitioner's eligibility for HMP at the time of the redetermination. Pay stubs when available should be reviewed to determine if any pre-tax deductions should be allowed when determining monthly income. The Work Number just reports the gross income figure without reporting possible pre-tax deductions which must be deducted from gross income to get adjusted gross income. In addition, the Department did not consider whether the 5% disregard would effect the Petitioner's eligibility which in this case it did.

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 the Petitioner's HMP benefits due to her income exceeding the HMP income limit.

### **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 MA eligibility for November 1,2019, ongoing;
2. If Petitioner is eligible for MA benefits, provide her with coverage she is entitled to receive; and

3. Notify Petitioner of its decision in writing.

LMF/tlf



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**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:**

MDHHS-Gratiot-Hearings  
BSC2 Hearing Decisions  
EQAD  
D. Smith  
MOAHR

**Petitioner – Via First-Class Mail:**

[REDACTED]