



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
MI

Date Mailed: March 12, 2020  
MOAHR Docket No.: 20-000718  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

### **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 March 5, 2020, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Kevin Lowe, specialist.

### **ISSUE**

The issue is whether MDHHS properly terminated Petitioner's Medicaid eligibility under 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. As of December 2019, Petitioner was an ongoing recipient of Medicaid under the Healthy Michigan Plan (HMP). Petitioner was not disabled, aged between [REDACTED] and [REDACTED] years, not pregnant, not a Medicare recipient, and not a caretaker to minor children.
2. On January 3, 2020, Petitioner received gross employment income of [REDACTED] from [REDACTED] (hereinafter "Employer").
3. On January 14, 2020, MDHHS initiated termination of Petitioner's Medicaid eligibility under HMP, effective February 2020, due to excess income.
4. On January 17, 2020 Petitioner received gross employment income of [REDACTED] from Employer.

5. On January 17, 2020, MDHHS possessed documentation that Petitioner lost her employment with Employer.
6. On January 21, 2020, Petitioner requested a hearing to dispute the termination of Medicaid.

### **CONCLUSIONS OF LAW**

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a termination of Medicaid beginning February 2020. A Health Care Coverage Determination Notice dated January 14, 2020, stated that Petitioner's Medicaid eligibility would end February 2020. An evaluation of whether the termination was proper requires a consideration of Medicaid categories.

Medicaid is also known as Medical Assistance (MA). BEM 105 (April 2017), p. 1. The Medicaid program includes several sub-programs or categories. *Id.* To receive MA under a Supplemental Security Income (SSI)-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Medicaid eligibility for children under 19, parents or caretakers of children, pregnant or recently pregnant women, former foster children, MOMS, MICHild and Healthy Michigan Plan is based on Modified Adjusted Gross Income (MAGI) methodology. *Id.*

Persons may qualify under more than one MA category. *Id.*, p. 2. Federal law gives them the right to the most beneficial category. *Id.* The most beneficial category is the one that results in eligibility, the least amount of excess income or the lowest cost share. *Id.*

As of the hearing date, Petitioner was not disabled, aged between ■ and ■ years, not pregnant, not a Medicare recipient, and not a caretaker to minor children. Petitioner's circumstances render her ineligible for all Medicaid categories other than HMP. The termination notice dated January 14, 2020, stated that Petitioner was ineligible for HMP due to excess income. Exhibit A, p. 5.

HMP is a health care program administered by the Michigan Department of Community Health, Medical Services Administration. The program is authorized under the Affordable Care Act of 2010 as codified under 1902(a)(10)(A)(i)(VIII) of the Social Security Act and in compliance with the Michigan Public Act 107 of 2013.

For individuals who have been determined financially-eligible for MA using the MAGI-based methods set forth in this section, a State may elect in its State plan to base financial eligibility either on current monthly household income and family size or income based on projected annual household income and family size for the remainder of the current calendar year. 42 CFR 435.603 (h)(2). In determining current monthly or projected annual household income and family size under paragraphs (h)(1) or (h)(2) of this section, the agency may adopt a reasonable method to include a prorated portion of reasonably predictable future income, to account for a reasonably predictable increase or decrease in future income, or both, as evidenced by a signed contract for employment, a clear history of predictable fluctuations in income, or other clear indicia of such future changes in income. 42 CFR 435.603 (h)(3).

Petitioner began receiving biweekly employment income on January 3, 2020. During the hearing, MDHHS could not state with any certainty which of Petitioner's pays were factored in concluding that Petitioner's income exceeded the income limit for HMP. The notice of Medicaid closure stated that Petitioner's countable annual income was \$26,496. Exhibit A, p. 5. As of the date of termination notice, the only gross pay received by Petitioner from her employment was on January 3, 2020, for [REDACTED]; this was a biweekly pay. Presumably, MDHHS multiplied Petitioner's biweekly pay from January 3, 2020, by 26 to convert the amount into an annual income; this would result in an annual income of [REDACTED], which is near the annual income listed in the termination notice. MDHHS presumed method was questionable as Petitioner testified that her January 3, 2020 pay, included extra hours which she was not expected to work in the future. Nevertheless, for purposes of this decision, it will be accepted that MDHHS properly calculated Petitioner's income as of January 14, 2020.

HMP income limits are based on 133% of the federal poverty level. RFT 246 (April 2014), p. 1. The 2019 federal poverty level is \$12,490 for a 1-person group.<sup>1</sup> For Petitioner to be eligible for HMP, countable income would have to fall at or below \$16,611.70. Petitioner's group's income exceeded the income limit for HMP.

Given the evidence, MDHHS might have properly started the closure of Petitioner's HMP eligibility on January 14, 2020, due to excess income. It is more uncertain that MDHHS allowed Petitioner's benefits to close at the end of January 2020.

There are two types of written notice: adequate and timely. BAM 220 (April 2019), p. 2. An adequate notice is a written notice sent to the client at the same time an action takes effect (not pending). *Id.* A timely notice is mailed at least 11 days before the intended negative action takes effect. The action on a timely notice is pending to provide the client a chance to react to the proposed action. *Id.*, p. 4. The negative action date is the date when a timely notice becomes effective. Bridges, the MDHHS database, automatically calculates the negative action date. *Id.*, p. 12. The negative action date on Bridges is the day after the timely hearing request date on the Bridges notice of case action. *Id.*

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<sup>1</sup> <https://aspe.hhs.gov/2019-poverty-guidelines>

The HMP closure notice dated January 14, 2020, was a timely notice of benefit closure. Thus, Petitioner's case remained open through January 2020. Until Petitioner's case officially closed at the end of January 2020, MDHHS had a responsibility to process any changes to Petitioner's circumstances.

As part of its hearing packet, MDHHS included worknumber.com documentation dated January 17, 2020, concerning Petitioner's employment. Exhibit A, pp. 8-9. The documentation stated that Petitioner lost her employment on January 6, 2020. Petitioner also testified that she reported her job loss to MDHHS through emails and phone messages.

Given the evidence, MDHHS should have been aware of Petitioner's loss of employment income as of [REDACTED] 2020. The loss of employment directly impacted the basis for closure. As Petitioner's case had not yet been closed on January 17, 2020, MDHHS should have redetermined Petitioner's HMP eligibility based on her loss of employment. The failure of MDHHS to do so is reversible error.

MDHHS' error entitles Petitioner to a remedy of a reprocessing of her case based on her job loss. Petitioner should be aware that her loss of employment does not guarantee her income-eligibility under HMP. Petitioner testified that she started new employment shortly after her job loss. Thus, MDHHS may consider Petitioner's updated employment income in reprocessing Petitioner's HMP eligibility.


### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's HMP eligibility. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Reprocess Petitioner's HMP eligibility for February 2020 subject to the finding that MDHHS failed to factor Petitioner's loss of employment with Employer, and
- (2) Initiate a supplement of any benefits improperly not issued.

The actions taken by MDHHS are **REVERSED**.

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**Christian Gardocki**  
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-Wayne-31-Hearings  
D. Smith  
EQAD  
BSC4- Hearing Decisions  
MOAHR

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

