



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: June 18, 2020
MOAHR Docket No.: 20-002862
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 June 11, 2020, from Detroit, Michigan. Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by Sylvester Williams, Assistance Payments Supervisor.

ISSUE

Did the Department properly deny Petitioner's application for Food Assistance Program (FAP) benefits because his household income exceeded the limit?

Did the Department properly deny Petitioner's Medical Assistance (MA) application for full coverage Healthy Michigan Plan (HMP) benefits and determine that he and his wife were eligible for MA under the Group 2 Caretaker Relative (G2C) with a monthly deductible?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On or around [REDACTED], 2020, Petitioner submitted an application for FAP and MA benefits.
2. Petitioner's household consists of himself, his wife, and three minor children.
3. On or around February 28, 2020, the Department sent Petitioner a Verification Checklist (VCL), instructing him to submit proof of his assets by March 9, 2020.

4. On March 17, 2020, the Department sent Petitioner a VCL, instructing him to submit proof of income by March 27, 2020.
5. On March 18, 2020, the Department sent Petitioner a Notice of Case Action informing him that his FAP application was denied due to excess income.
6. It was unclear whether the Department determined that Petitioner's household had excess gross income or excess net income for the FAP.
7. The Department denied Petitioner's FAP application prior to the due date identified on the VCL requesting income verifications.
8. There was no evidence that the Department instructed Petitioner to submit proof of his housing/shelter expenses.
9. On March 18, 2020, the Department sent Petitioner a Health Care Coverage Determination Notice informing him that he and his wife were ineligible for MA under the HMP category because their countable income exceeds the income limit for their group size. The notice further informs Petitioner that he and his wife were approved for MA with a monthly deductible of \$1,642.
10. On March 25, 2020, Petitioner requested a hearing disputing the Department's actions with respect to his FAP and MA 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 hearing was requested to dispute the denial of Petitioner's FAP application and the finding that he and his wife had excess income for MA benefits under the HMP category.

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.

FAP groups must have income below the applicable gross and/or net income limits based on their group size. BEM 550 (January 2017); BEM 213 (January 2020); BEM

212 (January 2019); (RFT 250 (October 2019). At the hearing, the Department testified that Petitioner's household had income in excess of the FAP income limit based on their group size and thus, was ineligible for assistance. The Department could not clearly identify whether the household was found to have excess gross income or excess net income however, and conceded that the FAP application was improperly denied with a Notice of Case Action sent on March 18, 2020, prior to the March 27, 2020 due date identified on the VCL for the requested income verifications. See BAM 130 (April 2017).

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 (July 2017), 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 (October 2017), pp. 1-2. 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. 5-6. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 7-8. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. BEM 505, pp. 7-9. An employee's wages include salaries, tips, commissions, bonuses, severance pay, and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (January 2020), pp. 6-7.

A FAP EDG Net Income Results Budget presented for review shows that the Department concluded Petitioner's household had earned income of \$4,213. While Petitioner's monthly income of \$1,875 was undisputed, the Department was unable to fully explain the exact income amounts relied upon in calculating Petitioner's wife's biweekly earned income. Thus, the Department failed to establish that it properly calculated the total earned income.

Although as indicated above it was unclear whether Petitioner's application was denied due to excess gross or net income, the deductions to income on the net income budget were also reviewed. There was no evidence that Petitioner's FAP group included a senior/disabled/veteran (SDV) member. BEM 550 (January 2017), pp. 1-2. Thus, the household 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.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (April 2019), p. 1; BEM 556 (April 2018), p. 3.

The Department did not establish that the earned income deduction was properly determined based on the discrepancies in Petitioner's wife's earnings. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support expenses; therefore, the budget properly did not include any deduction for dependent care or child support. The Department properly applied a standard deduction of \$203 which was based on Petitioner's confirmed group size of five. RFT 255 (January 2020). The budget shows an excess shelter deduction of \$0, which Petitioner disputed as he is responsible for a monthly mortgage expense and housing utilities. The Hearing Summary indicates that Petitioner failed to provide verification of his housing/shelter expenses for consideration; however, there was no evidence that the Department requested verification of Petitioner's mortgage or other shelter expenses in either VCL that was sent. Thus, the Department improperly determined that the excess shelter deduction was \$0, as it failed to consider Petitioner's shelter and utility expenses.

After further review and based on the above discussion, the Department failed to establish that it acted in accordance with Department policy when it denied Petitioner's FAP application on the basis that the household income exceeded the limit for their five person group size.

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.

MA is available (i) to individuals who are aged (65 or older), blind or disabled under 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, which provides health care coverage for a category of eligibility authorized under the Patient Protection and Affordable Care Act and Michigan Public Act 107 of 2013 effective April 1, 2014. BEM 105 (January 2020), p. 1; BEM 137 (January 2020), p. 1. Individuals are eligible for Group 1 coverage, with no deductible, if their income falls below the income limit, and eligible for Group 2 coverage, with a deductible that must be satisfied before MA is activated, when their income exceeds the income limit. BEM 105, p. 1

At the hearing, the Department testified that Petitioner and his wife were ineligible for full coverage MA under the HMP due to excess income and that they were determined eligible for MA under the G2C category with a monthly deductible of \$1,642. Petitioner disputed that he and his wife had excess income for HMP.

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 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, p. 1-4.

Petitioner and his wife, who are both under age 64, not enrolled in Medicare, and have not been determined disabled are potentially eligible for MA under the HMP category. An individual is eligible for HMP if her household's income does not exceed 133% of the FPL applicable to the individual's group size. A determination of group size under the MAGI methodology requires consideration of the client's tax status and dependents. Petitioner's testimony at the hearing was such that his household consisted of himself, his wife and three children who are claimed as tax dependents. Petitioner testified that he and his wife file a joint tax return. Thus, evidence suggested that Petitioner's household size for MAGI purposes is five. 133% of the annual FPL for the month being tested for a household with five members is \$40,126.10. Therefore, to be income eligible for HMP with a five-person household, Petitioner's annual MAGI cannot exceed \$40,126.10, or \$3,343.84 monthly, as he and his wife were new applicants of MA. <https://aspe.hhs.gov/poverty-guidelines>. Additionally, Department policy provides that if an individual's group's income is within 5% of the FPL for the applicable group size, a disregard is applied, making the person eligible for MA. MREM, § 7.2; BEM 500, pp. 3-5.

To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. MAGI, for purposes of Medicaid eligibility is a methodology which state agencies and the federally facilitated marketplace (FFM) must use to determine financial eligibility. It is based on Internal Revenue Service rules and relies on federal tax information to determine adjusted gross income, eliminating the asset test and special deductions or disregards. BEM 500 (July 2017), pp. 3-4. 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, 42 CFR 435.603(h)(1) provides that "[f]inancial eligibility for Medicaid for applicants, and other individuals not receiving Medicaid benefits at the point at which eligibility for Medicaid is being determined, must be based on current monthly household income and family size."

When determining financial eligibility of new applicants for MAGI-related MA, the State of Michigan has elected to base eligibility on current monthly household income and family size. The State has also elected to use reasonable methods to include a prorated portion of a reasonably predictable increase in future income and/or family size and to account for a reasonably predictable decrease in future income and/or family size. (Medicaid State Plan Amendment Transmittal No.: MI-17-0100)

The Health Care Coverage Determination Notice indicates that the Department determined Petitioner's annual income was \$22,500 and that Petitioner's wife had

income of \$28,188. (Exhibit A, p.30). Upon review of its case system, the Department testified that it considered monthly income for Petitioner of \$1,875 and monthly income for Petitioner's wife of \$2,462. The Department conceded that the income for Petitioner's wife was possibly incorrect, as it was higher than the paystubs on file and presented for review during the hearing.

Although it is possible that Petitioner and his wife may be ineligible for full coverage MA under the HMP and may only be eligible for MA under the G2C category with a monthly deductible, based on the evidence presented during the hearing, the Department failed to establish that Petitioner's household income exceeded the limit 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 because of the errors identified above, the Department did not act in accordance with Department policy when it determined that Petitioner's household had excess income and was ineligible for HMP.

DECISION AND ORDER

Accordingly, the Department's FAP and MA decisions are **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. Register and process Petitioner's [REDACTED], 2020 application to determine his eligibility for FAP benefits from the application date, ongoing;
2. If Petitioner is eligible for FAP benefits, issue FAP supplements to Petitioner for any FAP benefits he was eligible to receive but did not, in accordance with Department policy;
3. Redetermine Petitioner and his wife's MA eligibility for all MA categories from the application date, ongoing;
4. Provide Petitioner and his wife with MA coverage under the most beneficial category from the application date, ongoing, if otherwise eligible, in accordance with Department policy;
5. Supplement Petitioner and his provider for any eligible missed MA benefits; and

6. Notify Petitioner in writing of its decisions.

ZB/tm



Zainab A. Baydoun
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

Linda Gooden
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Petitioner



cc: FAP: M. Holden; D. Sweeney
MA- Deanna Smith; EQADHShearings
Oakland County AP Specialist