



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

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Date Mailed: September 25, 2018
MAHS Docket No.: 18-006596-RECON
Agency No.: [REDACTED]
Petitioner: [REDACTED]

SUPERVISING ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

ORDER GRANTING REQUEST FOR RECONSIDERATION
AND
DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Supervising Administrative Law Judge pursuant to the request for rehearing and/or reconsideration by the Department of Health and Human Services (Department) of the Hearing Decision issued by the assigned Administrative Law Judge (ALJ), Christian Gardocki, at the conclusion of the hearing conducted on August 1, 2018, and mailed on August 7, 2018, in the above-captioned matter. In the Hearing Decision, ALJ Gardocki found that the Department had improperly closed Petitioner [REDACTED] Food Assistance Program (FAP) case and erred in determining that Petitioner and her husband were eligible for Medicaid (MA) subject to a monthly \$2,852 deductible.

On August 17, 2018, the Department submitted a timely request for reconsideration. The rehearing and reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program that is the basis for the client's benefits application, and may be granted so long as the reasons for which the request is made comply with the policy and statutory requirements. A rehearing is a full hearing which may be granted if the original hearing record is inadequate for purposes of judicial review or there is newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision. A reconsideration is a paper review of the facts, law or legal arguments and any newly discovered evidence that existed at the time of the hearing and may be granted when the original hearing record is adequate for purposes of judicial review and a rehearing is not necessary, but one of the parties is able to demonstrate that the Administrative Law Judge misapplied manual policy or law in the hearing decision, which led to the wrong decision; issued a hearing decision with typographical errors, mathematical errors, or other obvious errors that affect the substantial rights of the petitioner; or failed to address other relevant issues in the hearing decision.

In its reconsideration request, the Department alleges that the ALJ misapplied manual policy or law in the Hearing Decision, which led to the wrong decision. Specifically, the Department alleges that the ALJ misapplied Bridges Eligibility Manual (BEM) 501 and 502 when he concluded that Petitioner's S corporation income was earned, rather than unearned. Because the Department alleges a misapplication of policy and has identified the policies at issue, a basis for reconsideration is established. Therefore, the Department's request for reconsideration is GRANTED.

The Decision and Order of Reconsideration follows a full review of the case file, all exhibits, the hearing record and applicable statutory and policy provisions.

DECISION AND ORDER OF RECONSIDERATION

ISSUE

Did the ALJ properly conclude that the Department improperly processed Petitioner's FAP and MA cases?

FINDINGS OF FACT

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

1. On August 1, 2018, a hearing was held in the above captioned matter.
2. On August 7, 2018, the ALJ issued a Hearing Decision in the matter.
3. The Findings of Fact numbers 1 through 5 in the Hearing Decision are incorporated by reference.
4. On August 17, 2018, the Michigan Administrative Hearing System (MAHS) received the Department's timely request for reconsideration, which is granted herein.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Reference Tables Manual (RFT), and Emergency Relief Manual (ERM).

FAP Case

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 May 8, 2018 Notice of Case Action, the Department notified Petitioner that her FAP case was closing effective June 1, 2018 because her household's net income exceeded the net income limit for her FAP group size. Petitioner has a FAP group with six individuals: her, her husband, and their four children. The monthly net income limit for FAP eligibility for a six-person FAP group is \$2,747.

In determining that Petitioner was not net income eligible for FAP, the Department divided Petitioner's annual income of \$44,345, as showing on her 2017 federal 1040 form, by 12 to conclude that her household had gross monthly income of \$3,695.44. (Exhibit A, pp. 24-25.) Because the Department concluded that this income was unearned, Petitioner was denied the 20% earned income deduction in the calculation of her household's monthly net income. See BEM 556 (April 2018), p. 3; Exhibit A, p. 24. After reducing Petitioner gross monthly income by the other available deductions, the Department determined that Petitioner was ineligible for FAP because her household's monthly net income exceeded the applicable \$2,747 monthly net income limit and closed her FAP case effective June 1, 2018.

In the August 7, 2017 Hearing Decision, the ALJ concluded that the Department had improperly characterized Petitioner's S corporation income as unearned income and, in doing so, improperly determined that Petitioner had excess net income for FAP eligibility because it failed to take into consideration deductions available to earned income in the calculation of Petitioner's FAP net income. The ALJ ordered the Department to recalculate Petitioner's FAP eligibility on the basis that her household's monthly household income was earned income.

In its request for reconsideration, the Department contends that the ALJ erred in concluding that Petitioner's S corporation income was earned income. S corporations are not self-employment. BEM 502 (July 2017), p. 1. BEM 503 (July 2017), pp. 25, 32, provides that all dividend or interest income a shareholder receives from an S corporation is unearned income and all wages a shareholder receives from an S corporation is earned income. BEM 501 (July 2017), p. 5, clarifies that, for all program types, all income a client receives from an S corporation is countable as wages, even if the client is the owner, unless dividend or interest is paid to the individual from the S corporation. This is consistent with the Internal Revenue Services' (IRS's) position that wages include any payments a corporate officer receives or is entitled to for performing a service for the corporation, even if the officer is a shareholder. See <https://www.irs.gov/businesses/small-businesses-self-employed/s-corporation-employees-shareholders-and-corporate-officers>.

In this case, Petitioner submitted her 2017 1040 U.S. individual income tax return along with her Schedule C-EZ, net profit from business form, to verify her household's income. Although Department policy provides that federal income tax forms and schedules are allowable verifications for MA determinations (BEM 501, p. 12), the Department also

used the information on the tax returns to determine Petitioner's FAP income eligibility. The 1040 showed the following income: \$15,000 for "business income" and \$29,345 for "rental real estate, royalties, partnerships, S corporations, trust, etc." Total income was listed on line 22 as \$44,345. Adjusted gross income was listed on line 37 as \$43,285.

The evidence in this case showed that Petitioner's husband owned the S corporation and the S corporation income was from his work as a truck driver. Although there was no income listed on line 7 of Petitioner's 1040 for "wages, salaries, tips, etc", the total income of \$44,345 was due to Petitioner's husband's activities in being a truck driver. The fact that line items 8 and 9 on the 1040 did not list any dividend or interest income supported the conclusion that Petitioner's husband's income from the S corporation was not investment income. Because Petitioner's husband's income from the S corporation was not dividend or interest income, the Department did not act in accordance with policy when it concluded that the income was unearned. Thus, the ALJ properly reversed the Department on the FAP issue and ordered the Department to recalculate Petitioner's FAP eligibility treating Petitioner's monthly gross income of \$3,695.44 as earned income rather than unearned income.

In the request for reconsideration, the Department includes comments from "FAP Policy Clarification" stating as follows:

income from an S Corp is not countable income for the client, so the judge is wrong that the S Corp income is earned income for the client. Only actual earning a [sic] receives from the S Corp would be countable earned income and/or dividends or interest a client receives from the S Corp would be unearned income.

There is no policy cited to support the position that Petitioner's husband's income from the S corporation was not countable.

Under the facts presented and based on the policy described above, the total annual income of \$44,345 on the 1040 was Petitioner's countable earned income for FAP purposes.

MA Case

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.

The June 11, 2018 Health Care Coverage Determination Notice notified Petitioner that she and her husband were not income-eligible for MA under the Healthy Michigan Plan (HMP) but were eligible for MA subject to a \$2,852 monthly deductible.

HMP is a Modified Adjusted Gross Income (MAGI)-related MA category that provides MA coverage to qualifying individuals who have income, determined in accordance with the MAGI methodology, at or below 133% of the federal poverty level (FPL) for the applicable group size. 42 CFR 435.119; BEM 137 (April 2018), pp. 1, 5. An individual's group size for MAGI purposes requires consideration of the client's tax filing status. 42 CFR 435.603(f); BEM 211 (January 2016), pp. 1-2. In this case, Petitioner is a tax filer and has a spouse and four tax dependents, as shown on the 1040. Thus, her household size for MAGI purposes is six. One hundred thirty-three percent of the FPL for a six-person group is \$44,874.20. <https://aspe.hhs.gov/poverty-guidelines>.

The determination of financial eligibility for MAGI-related MA is based on Internal Revenue Service rules and relies on federal income tax information to determine adjusted gross income (AGI). 42 CFR 603(e); BEM 500 (July 2017), pp. 3-4. MAGI-related MA eliminates asset tests and special deductions or disregards. BEM 500, p. 4. Thus, there is no distinction between earned and unearned income in determining a client's MAGI-related MA financial eligibility.

A client's MAGI-based income is calculated by adding the client's AGI to any tax-exempt foreign income, tax-exempt Social Security benefits, and tax-exempt interest. 26 CFR 1.36B-1(e)(2); 26 USC 36(d)(2)(B). AGI is found on IRS tax form 1040 at line 37, form 1040 EZ at line 4, and form 1040A at line 21. <https://www.healthcare.gov/income-and-household-information/how-to-report/>.

In this case, line 37 of Petitioner's 1040 showed adjusted gross income of \$43,285. Because there was no tax-exempt foreign interest, tax-exempt Social Security benefits, or tax-exempt interest showing on the 1040, Petitioner's household's MAGI-based income is \$43,285. Because this income is less than the \$44,874.20 limit for HMP eligibility for a six-person household, the Department did not act in accordance with Department policy when it concluded that Petitioner and her husband were ineligible for HMP due to excess income based on the evidence presented.

If Petitioner and her husband are not eligible for HMP, financially or otherwise, the Department would be required to consider their eligibility for other MA categories. BEM 105 (April 2017), p. 2. To the extent Petitioner and her husband may be eligible for any non-MAGI-related categories, then the Department should consider Petitioner's household's income as earned, for the same reasons described above, and budgeted in accordance with BEM 530 (July 2017), pp. 1-4 and BEM 536 (October 2017), pp. 1-7. BEM 105, p. 4.

Thus, although the ALJ properly reversed the Department's action in denying Petitioner and her husband's HMP eligibility on the basis of excess income, he improperly relied on a finding that the Department should consider Petitioner's household's income as earned. Rather, the Department was required to first consider the household's AGI and any adjustments permitted under federal law for purposes of determining financial eligibility for MAGI-related MA. If Petitioner and her husband were ineligible for HMP,

financially or otherwise, the Department would then be required to consider their eligibility considering Petitioner's husband's income as earned.

DECISION AND ORDER

Based on the above Findings of Fact and Conclusions of Law, the Department improperly relied on its conclusion that Petitioner had unearned income in assessing his FAP and MA eligibility. The ALJ properly required the Department to reassess Petitioner's FAP eligibility using the income as earned but improperly required the Department to reassess Petitioner's MA eligibility using the income as earned without first requiring the Department to apply the MAGI rules in determining income eligibility for MAGI-related MA policies.

Accordingly, the August 7, 20180 Hearing Decision is **AFFIRMED IN PART with respect to the FAP issue AND REVERSED IN PART with respect to the MA issue.**

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION ON RECONSIDERATION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Redetermine Petitioner and her husband's HMP income eligibility in accordance with MAGI rules for July 1, 2018 ongoing;
2. Provide Petitioner and her husband with the most favorable MA coverage they are eligible to receive for July 2018 ongoing; and
3. Notify Petitioner in writing of its decision.



AE/tm

Alice C. Elkin

Supervising Administrative Law Judge
for Nick Lyon, 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 Administrative Hearing System.

DHHS

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Petitioner

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cc: FAP: M. Holden; D. Sweeney
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AP Specialist-Macomb