



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: February 27, 2019
MAHS Docket No.: 18-013299
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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, an in-person hearing was held on February 26, 2019, from Detroit, Michigan. The Petitioner was represented by her husband, FAP group member, and MA group member ██████████. The Department of Health and Human Services (Department) was represented by Richkelle Curney, Hearings Facilitator. Translation services were provided by Huda Qandah, a Department Translator.

ISSUE

Did the Department properly close the Food Assistance Program (FAP) case?

Did the Department properly determine Medical Assistance (MA) Program eligibility for Ms. ██████████ (Wife) and her husband, ██████████ (Husband)?

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's group was an ongoing FAP recipient.
2. On September 19, 2018, the Department received paystubs for Husband from ██████████, (Employer 1) for pay dates August 21, 2018; August 28, 2018; September 4, 2018; and September 11, 2018.
3. On October 4, 2018, an application for MA coverage was submitted for Husband and Wife.

4. On October 15, 2018, the Department issued a Verification Checklist (VCL) requesting proof of Wife's wages as well as Husband's checking account by October 25, 2018.
5. On October 23, 2018, the Department received a completed Verification of Employment for Wife's employment with [REDACTED] (Employer 2) indicating she receives \$[REDACTED] per hour and works about [REDACTED] hours per week.
6. Husband works for another employer, [REDACTED] (Employer 3), but the Department was unable to locate any verifications of income.
7. Around this time, the Department closed the FAP case effective November 1, 2018, due to excess income.
8. On November 5, 2018, the Department received a copy of Wife's paystub from October 31, 2018, as well as proof of their mortgage obligation totaling \$[REDACTED] per month.
9. Around this time, a request for hearing was submitted disputing the Department's actions.
10. On November 8, 2018, the Department issued a Health Care Coverage Determination Notice (HCCDN) informing Husband and Wife that they each had a deductible of \$[REDACTED]
11. On the same day, the hearing request was withdrawn based upon a promise of their caseworker to review the case and correct income for the household.
12. On December 7, 2018, Husband submitted a hearing request disputing the Department's consideration of household income, the closure of the FAP case, and the MA deductibles for Husband and Wife.
13. On December 13, 2018, the caseworker reviewed and recertified the FAP closure, but reduced the MA deductible to \$[REDACTED] each for Husband and Wife; no HCCDN was issued informing them of the reduction in the MA deductible.

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).

Food Assistance Program (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.

A hearing request was submitted to dispute the Department's consideration of income and closure of the FAP case. Based upon the budget submitted by the Department, it appears that the Department determined that the household had net income greater than the net income limit.

To begin the review of the FAP group's budget, 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 group's eligibility for program benefits based on the group's actual gross income and/or prospective income. BEM 505 (October 2017), p. 1; BEM 500, p. 2. Prospective income is income not yet received, but expected. BEM 505, p. 1. 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. 5-7. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. Income received on a weekly basis is averaged and multiplied by 4.3. BEM 505, p. 8. Income that is received every two weeks is averaged and multiplied by 2.15. *Id.* Finally, income that is received twice per month is added together. *Id.*

The Verification of Employment for Wife from Employer 2 indicates that she receives \$[REDACTED] per hour, works an estimated [REDACTED] hours per week, and is paid twice per month. The form further states that for the pay date September 30, 2018, she received \$[REDACTED] and for pay date October 15, 2018, she received \$[REDACTED]. A paycheck received after the closure was implemented but before the review and recertification of the closure shows that Wife's paycheck for pay date October 31, 2018, was \$[REDACTED]. Wife's pay from September 30, 2018, is almost four times the amount that she received on October 31, 2018, and almost three times more than she received on October 15, 2018. Wife's pay from October 31, 2018, is consistent with the first statements within the Verification of Employment that indicated she would earn \$[REDACTED] per hour and work [REDACTED] hours per week. Based on this schedule, she would earn \$[REDACTED] per week or \$[REDACTED] every two weeks. Therefore, the pay received from September 30, 2018, and October 15, 2018, does not appear to accurately represent Wife's regular and expected wages and should not be considered in the calculation of her FAP benefits. Since Wife is paid \$[REDACTED] per hour, works [REDACTED] hours per week, and receives wages twice per month (not biweekly according to the verification of employment), her standardized income should be \$[REDACTED]. *Id.*

Husband's earnings from Employer 1 for the weeks from August 21, 2018, through September 11, 2018, were \$ [REDACTED] per week, each week. Therefore, his standardized prospected income is \$ [REDACTED]

Husband also works for Employer 3; however, the Department was unable to locate any verifications of earnings from Employer 3. It is possible that the income was based on information from a previous application, but the Department was uncertain during the hearing how it was calculated. The Department is required to verify all non-excluded income in all programs at application, at redetermination, or when a change is reported. BEM 500 (July 2017), pp. 13-14. The Department cannot use values listed in applications, redeterminations, or from reported changes unless that item is supported by acceptable verification sources including pay stubs, payroll records, letters from the employer, a consolidated inquiry, or other reliable source. BEM 500, p. 15. Therefore, the Department did not act in accordance with policy in considering the group's income or calculating its FAP budget. It should be noted that Husband credibly testified that he submitted proofs of his earnings from Employer 3 to the Department; however, because the Department has no record of those proofs and did not provide any policy driven method for determining income, the Department has not met its burden of proof.

In addition, Husband testified that he earned \$ [REDACTED] per hour from Employer 3 and worked 20 hours per week for weekly earnings of \$ [REDACTED]. Husband's standardized prospected income with Employer 3 would then be \$ [REDACTED]. Adding Wife's and Husband's incomes together, the total household income is \$ [REDACTED] which is significantly less than the \$ [REDACTED] calculated by the Department.

Therefore, the Department has not met its burden of proof in establishing that it properly calculated the household income or denied the group FAP benefits based upon excess net income. Since the Department has not shown that it properly considered the group's income, no further evaluation of the net income budget will be made because determination of a proper budget is contingent upon the proper calculation of income.

Medical Assistance (MA) Program

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 Department initially calculated Husband and Wife to each have an MA deductible of more than \$ [REDACTED] each, then recalculated the deductible to be \$ [REDACTED] for each. Again, the Department based the calculation of income on unverified earned income for Employer 3. As discussed above, the Department is required to verify income for all programs at application before determining eligibility. BEM 500, p. 13.

Since the Department is unable to locate any source of verification for Employer 3, any consideration of the employment income from Employer 3 is not in accordance with policy and the Department's determination of MA eligibility for Husband and Wife is not in accordance with policy. Depending on the type of program under consideration, determining eligibility based upon income may be handled differently between different members of the household and different programs. BEM 530 (July 2017); BEM 211 (January 2016); BEM 105 (April 2017).

Since the Department did not properly consider household income, it is impossible to determine eligibility in MA programs for Husband and Wife. Medicaid is available (i) under Supplemental Security Income (SSI)-related categories to individuals who are aged (65 or older), blind or disabled, (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. BEM 105 (April 2017), p. 1. Each of these criteria has financial and non-financial eligibility factors which must be met to be eligible for a MA category.

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 closed the FAP group case and determined Wife's and Husband's MA eligibility.

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. Reinstate the FAP case effective November 1, 2018;
2. Redetermine eligibility for the FAP effective November 1, 2018;
3. Redetermine eligibility for MA benefits for Husband and Wife effective November 1, 2018;
4. If otherwise eligible, issue FAP and MA supplements to Husband and Wife or on their behalf in accordance with Department policy;

5. Notify Petitioner in writing of the Department's decisions in the FAP and MA cases, including but not limited to circumstances where Husband and/or Wife have a reduced deductible.



AMTM/jaf

Amanda M. T. Marler

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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Tara Roland 82-17
MDHHS-Wayne-17-Hearings

Petitioner

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M Holden
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