



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] MI [REDACTED]

Date Mailed: April 25, 2019  
MOAHR Docket No.: 19-002991  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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 April 25, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Candice Benns, Hearings Facilitator.

### **ISSUE**

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits based upon excess income?

Did the Department properly close Petitioner's Medical Assistance (MA) Program benefits based upon excess income?

### **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 February 26, 2019, the Department issued a New Hire Client Notice to Petitioner.
2. On March 11, 2019, the Department received Petitioner's completed New Hire Client Notice form in addition to paystubs for pay dates February 2, 2019; February 9, 2019; February 23, 2019; and March 2, 2019.

3. On March 13, 2019, the Department issued a Notice of Case Action to Petitioner notifying him that his FAP benefits would close effective April 1, 2019 because his gross income was over the gross income limit.
4. On the same day, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner informing him that his MA Healthy Michigan Plan (HMP) benefits would close effective April 1, 2019 because his income was over the income limit, and he was not eligible for any other MA programs.
5. On March 20, 2019, the Department received Petitioner's request for hearing disputing the Department's decision to close his FAP and MA benefits due to excess income.

### **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 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 this case, Petitioner's FAP case was closed for excess gross income after he began new employment. The gross income limit for a group size of one household member is \$1,316.00. RFT 250 (October 2018), p. 1. Clients who are not categorically eligible and those groups that do not have a senior, disabled, or disabled, veteran in the home must meet the gross income limit. BEM 550 (January 2017), p. 1. 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), 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. To determine a standardized income, income received on a weekly basis is multiplied by

4.3, income received every two weeks is multiplied by 2.15, and income received twice per month is added together. BEM 505, p. 8.

Petitioner had the following wages which were considered by the Department in determining his eligibility:

February 2, 2019	\$	██████████
February 9, 2019	\$	██████████
February 16, 2019	\$	██████████
February 23, 2019	\$	██████████
March 2, 2019	\$	██████████

When Petitioner's income is averaged for 30 days of income, February 2<sup>nd</sup> through March 2<sup>nd</sup>, Petitioner's average income is \$██████████ (dropping the cents) which is then multiplied by 4.3 because he receives a weekly wage. Petitioner's standardized income for FAP purposes is \$██████████ (dropping the cents). Petitioner's gross income is over the gross income limit; therefore, although the Department improperly calculated Petitioner's gross income, he is still over the gross income limit, and closure of his FAP benefits was appropriate.

#### Medical Assistance (MA) Program

The 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, Petitioner's MA application was denied due to excess income. 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. BEM 105 (April 2017), p. 1. HMP 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 (April 2018), p. 1; MPM, Healthy Michigan Plan, § 1.1.

Since Petitioner is not under 21 or over 64, nor is he pregnant, or blind, Petitioner does not qualify for any of programs listed above involving these eligibility factors. If Petitioner is eligible for benefits, he may qualify for MA under the HMP program as he meets all non-financial eligibility factors or under a deductible program based upon a possibility disability. Petitioner listed on his application several medical conditions, but

the Department never made a finding regarding Petitioner's disability. Department policy provides that persons may qualify under more than one MA category at any given time and Federal law gives them the right to choose the most beneficial category. BEM 105 (April 2017), p. 2. Yet clients are not expected to know all of the nuances of each category. *Id.* Therefore, the Department is required to consider all MA category options in order for the client to have a meaningful choice. *Id.* Furthermore, an ex parte review is required before MA closures occur when there is an actual or anticipated change, unless the change would result in closure due to ineligibility for all MA coverage. BAM 210 (January 2018), p. 2. An ex parte review is a determination made by the Department without the involvement of the recipient, the recipient's parents, spouse, authorized representative, guardian, or other members of the recipient's household of all materials available to the specialist in the client's current MA eligibility case file. BPG Glossary (July 2018), p. 26. When possible, an ex parte review should begin at least 90 calendar days before the anticipated change is expected to result in case closure. BAM 210, p. 2. Since the Department did not evaluate Petitioner's potential disability status, the Department did not follow policy in denying his MA application.

Despite, the Department's failure to evaluate Petitioner's potential disability, an evaluation of the Department's determination of eligibility for HMP follows below.

HMP requires a determination of group size under the MAGI methodology with consideration of the client's tax status and dependents. The household for a tax filer, who is not claimed as a tax dependent includes the individual, their spouse, and tax dependents. BEM 211 (January 2016), pp. 1-2. Therefore, Petitioner's MA group size is one; Petitioner is not married or did not claim his son as a dependent this year. 133% of the FPL for a group size of one is \$16,611.70 as of January 11, 2019. See <https://aspe.hhs.gov/poverty-guidelines>; see also <https://aspe.hhs.gov/2018-poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's annual income cannot exceed \$16,611.70 for a group size of one or \$1,384.30 per month.

To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500 (July 2017), p. 3. 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, the Department bases financial eligibility on current monthly household income. MAGI is calculated by reviewing the client's adjusted gross income (AGI) and adding it to any tax-exempt foreign income, tax-exempt 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. *Id.* 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, child care, or retirement savings. *Id.* See <https://www.healthcare.gov/income-and-household-information/how-to-report/>. In situations where income is difficult to predict because of unemployment, self-

employment, commissions, or a work schedule that changes regularly, income should be estimated based upon past experiences, recent trends, possible changes in the workplace, and similar information. *Id.*

Petitioner's wages are as listed above. HMP eligibility is determined based upon a current month's income. The only full month of income the Department received or was aware of at the time of its decision was income in February 2019. Therefore, Petitioner's wages must be added together from February 2019 to determine his HMP eligibility. Petitioner's February 2019 MAGI was \$ [REDACTED] or \$ [REDACTED] (annual). Based upon the above paychecks and calculations, Petitioner is not eligible for MA under the HMP because he has income greater than the income limit.

The Department calculated Petitioner's Annual Income as \$ [REDACTED] a slightly more favorable number, although still greater than the HMP income limit of \$16,611.70 per year.

At the hearing, there was considerable testimony regarding Petitioner's wages as a commission-based employee with no hourly rate. While this is important to note in determining HMP eligibility, Petitioner does not have a long enough work history to show trends or unusual commissions. Therefore, the wages presented are the wages considered to determine his eligibility.

An exception exists to the income limit rule. If an individual has group income which is close enough to the FPL, a disregard can be applied. The disregard is 5% of the FPL or \$624.50 for a group size of one. In looking at Petitioner's income, even after the 5% disregard is applied, Petitioner is still not eligible for MA under the HMP. The Department acted in accordance with Department policy in denying Petitioner MA benefits based upon the income limit.

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 acted in accordance with Department policy when it closed Petitioner's FAP case and his HMP case; the Department did not act in accordance with Department policy when it failed to determine Petitioner's disability status as it relates to MA eligibility.

### **DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the closure of FAP and MA HMP benefits and **REVERSED IN PART** with respect to the Department's failure to determine Petitioner's eligibility for MA benefits based upon a disability.

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 eligibility for MA benefits based upon a disability effective April 1, 2019;
2. If Petitioner is otherwise eligible, issue supplements to Petitioner or on his behalf for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.



AMTM/jaf

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**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 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**

Deborah Little  
MDHHS-Wayne-49-Hearings

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

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