



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]

Date Mailed: May 15, 2019  
MOAHR Docket No.: 19-003855  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

**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 May 13, 2019, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Amy Miller, Eligibility Specialist and Rolla Ley, Hearing Facilitator.

**ISSUE**

Did the Department properly determine Petitioner's Food Assistance Program (FAP) and Medical Assistance (MA) program eligibility?

**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, Petitioner submitted an application for FAP and MA.
2. Petitioner was the only member of her household.
3. Petitioner had income from employment.
4. On March 13, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice informing her that she was eligible for MA benefits subject to a monthly deductible of \$977 effective April 1, 2019, ongoing (Exhibit A).

5. On March 13, 2019, the Department sent Petitioner a Notice of Case Action informing her that she was approved for FAP benefits in the amount of \$15 per month (Exhibit F).
6. On [REDACTED], 2019, Petitioner submitted a request for hearing.

### **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).

#### **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.

In this case, Petitioner submitted an application for FAP benefits on February 26, 2019. The Department determined Petitioner was eligible for FAP benefits in the monthly amount of \$15. The Department presented a FAP budget to establish the calculation of Petitioner's FAP benefit amount (Exhibit B).

The Department determined Petitioner had \$[REDACTED] per month in earned income. 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. Income received weekly is multiplied by a 4.3 multiplier. BEM 505, pp. 7-9. Income received twice per month is added together. 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 (July 2016), pp. 6-7.

At the time of the application, Petitioner was employed by two employers. The Department presented two Verification of Employment forms that were used to calculate Petitioner's earned income (Exhibit C). The Department testified that Petitioner worked at [REDACTED] and was paid on a weekly basis. The Department testified that Petitioner had only received two payments at the time of application, as her employment at [REDACTED] was recently obtained. The Department used the payments issued on February 21, 2019, in the gross amount of \$[REDACTED] and on February 28, 2019, in the gross amount of \$2[REDACTED]. When averaging the figures and multiplying by the 4.3 multiplier, it results in a standard monthly amount of \$[REDACTED]. The Department testified for Petitioner's employment at [REDACTED], it used the gross pay amounts for February 2018 (Exhibit C, p.5). Petitioner was paid on February 8, 2019, in the gross amount of \$[REDACTED] and on February 22, 2019, in the gross amount of \$[REDACTED]. Petitioner was paid on a biweekly basis. When averaging the two figures and multiplying by the 2.15 multiplier, it results in a standard monthly amount of \$[REDACTED]. Petitioner's income from [REDACTED] and [REDACTED] results in a total monthly standard income of \$[REDACTED].

The Department could not provide an explanation as to how it reached the figure of \$[REDACTED]. Therefore, the Department failed to establish that it properly calculated Petitioner's income from employment. As it follows, the Department failed to establish it properly followed policy when it determined Petitioner's FAP benefit amount.

## **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.

In this case, Petitioner also submitted an application for MA benefits on February 26, 2019. The Department testified that Petitioner was eligible for MA benefits subject to a monthly deductible of \$977.

The Department concluded that Petitioner was not eligible for HMP because her income exceeded the applicable income limit for her group size. HMP uses a Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (October 2016), p. 1. An individual is eligible for HMP if her household's income does not exceed 133% of the Federal Poverty Level (FPL) applicable to the individual's group size. BEM 137, p. 1. An individual's group size for MAGI-related purposes requires consideration of the client's tax filing status. In this case, Petitioner filed taxes and did not claim any dependents. Therefore, for HMP purposes, she has a household size of one. BEM 211 (January 2016), pp. 1-2.

133% of the annual FPL in 2018 for a household with one member is \$16,146.20. See <https://aspe.hhs.gov/poverty-guidelines>. The monthly income limit for a group size of one is \$1,345.52. Therefore, to be income eligible for HMP, Petitioner's income cannot exceed \$16,146.20 annually or \$1,345.52 monthly. To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. BEM 500 (July 2017), p. 3. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500, p. 3. Income is verified via electronic federal data sources in compliance with MAGI methodology. MREM, § 1.

In order to determine income in accordance with MAGI, a client's adjusted gross income (AGI) is added 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. 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. This figure is multiplied by the number of paychecks the client expects in 2017 to estimate income for the year. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>.

Effective January 1, 2014, when determining eligibility for new applicants of MAGI-related MA, the State of Michigan has elected to base financial eligibility on current monthly income and family size. See:

[http://www.michigan.gov/documents/mdch/SPA\\_13\\_0110\\_MM3\\_MAGI-Based\\_Income\\_Meth\\_446554\\_7.pdf](http://www.michigan.gov/documents/mdch/SPA_13_0110_MM3_MAGI-Based_Income_Meth_446554_7.pdf)

For MA benefit cases, the Department does not utilize the multipliers. When averaging Petitioner's income at [REDACTED] and multiplying by 4 (as Petitioner had only received two pay statements), Petitioner's average monthly income is [REDACTED]. When adding together Petitioner's February 2019 pay statements from [REDACTED] the total monthly income for February 2019 was \$[REDACTED]. Petitioner's total current income at the time of the application was \$[REDACTED] which is below the income limit under the HMP program for Petitioner's group size. Therefore, the Department failed to establish it properly determined Petitioner's MA eligibility.

### **DECISION AND ORDER**

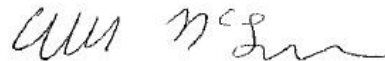
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's MA and FAP eligibility.

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 and reprocess Petitioner's February 26, 2019 MA and FAP application;
2. If Petitioner is entitled to additional FAP benefits, issue supplements she is entitled to receive;
3. If Petitioner is entitled to MA benefits, provide her with coverage she is entitled to receive in accordance with Department policy; and
4. Notify Petitioner of its MA and FAP decisions in writing.

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

**Via Email:**

MDHHS-Isabella-Hearings  
M. Holden  
D. Sweeney  
D. Smith  
EQAD  
BSC2- Hearing Decisions  
MOAHR

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

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