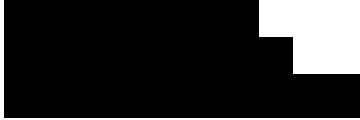




GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS  
DIRECTOR



Date Mailed: May 28, 2019  
MOAHR Docket No.: 19-004180  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Landis Lain

### **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 21, 2019, from Lansing, Michigan. Petitioner was represented by Petitioner [REDACTED]. His daughter, [REDACTED] (date of birth March 4, 1994) appeared as a witness and translator for Petitioner. The Department of Health and Human Services (Department) was represented by Morgan Hafler, Hearings Facilitator.

Respondent's Exhibit 1-7 were admitted as evidence.

### **ISSUES**

1. Did the Department properly reduce Petitioner's Food Assistance Program (FAP) benefits?
2. Did the Department properly cancel Petitioner's Medical Assistance (MA) Program benefits?

### **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 was a Food Assistance Program and Medical Assistance benefit recipient.
2. The Department sent Petitioner a Wage Match Notice for household member AI with an original due date of May 21, 2018.

3. On May 18, 2018, Petitioner returned the Wage Match document, but it was blank.
4. On March 11, 2019, Petitioner received notice that due to failure to return the Wage Match, Food Assistance Program benefits were closing.
5. Petitioner then submitted the Wage Match Notice and attached earnings statements for AI on March 28, 2019.
6. The income was budgeted for AI and her Food Assistance Program benefits were decreased to \$25 per month.
7. The Department determined that the income for AI also put her over the income limit for Medical Assistance eligibility.
8. On April 5, 2019, the Department notified Petitioner that the group Food Assistance Program benefits amount would be reduced to \$25 per month.
9. On April 5, 2019, the Department sent Petitioner Health Care Coverage Determination Notice indicating that AI was not eligible to receive Medical Assistance effective May 1, 2019, based upon the fact that her countable income exceeds the income limit for her group size. The income determined for healthcare coverage for AI was \$12,792.00.
10. On April 17, 2019, Petitioner filed a request for hearing to contest the Department's negative action.
11. On May 3, 2019, the Michigan Office of Administrative Hearings and Rules received a copy of the hearing summary and attached documents.

### **CONCLUSIONS OF LAW**

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 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.

Income means a benefit or payment received by an individual which is measured in money. It includes money an individual owns even if not paid directly such as income paid to a representative. Income remaining after applying the policy in the income related items is called countable. This is the amount used to determine eligibility and benefit levels. Count all income that is not specifically excluded. BEM 500, page 1

Gross income is the amount of income before any deductions such as taxes or garnishments. This may be more than the actual amount an individual receives. BEM 500, pages 4-5

Fluctuating income: Income received on a regular schedule but that varies from check to check, such as a waitress' income whose hours vary each week. BEM 505, page 2

Prospect income using a best estimate of income expected to be received during the month (or already received). Seek input from the client to establish an estimate, whenever possible. To prospect income, you will need to know:

- The type of income and the frequency it is received (such as, weekly).
- The day(s) of the week paid.
- The date(s) paid.
- The gross income amount received or expected to be received on each pay date.  
BEM 505, page 4

A standard monthly amount must be determined for each income source used in the budget.

### ***Stable and Fluctuating Income***

Convert stable and fluctuating income that is received more often than monthly to a standard monthly amount. Use one of the following methods:

- Multiply weekly income by 4.3.
- **Multiply amounts received every two weeks by 2.15. (Emphasis added)**
- Add amounts received twice a month.

This conversion takes into account fluctuations due to the number of scheduled pays in a month.

Use only available, countable income to determine eligibility. The Bridges Eligibility Manual (BEM) 500 series defines countable income. BEM 505 defines available income and income change processing. This item describes income budgeting policy.

Always calculate income on a calendar month basis to determine eligibility and benefit amounts. Use income from a month specified in this item for the benefit month being considered. Budget the entire amount of earned and unearned countable income. Every case is allowed the standard deduction shown in Reference Tables Manual (RFT) 255. Document income budgeting on either a manually calculated or an automated FAP worksheet. (BEM 550, page 1)

**In the instant case, Petitioner was working and had earned income. Her spouse had RSDI income. The Department counted \$1,059.00 + \$953.00 in unearned income for a total of \$2,012.00 (income for the month).**

**Petitioner was given an earned income deduction of \$212.00 and a standard deduction of \$158.00 for a total monthly adjusted income of \$1,642.00.**

**Petitioner was given an excess shelter deduction of \$45.00.**

**\$1,642.00 in adjusted gross income - \$45.00 in excess housing deduction = \$1,597.00 in net income.**

**\$1,597.00 in net income x .30 (net income) = \$480.00.**

**The maximum monthly FAP benefit for a three-person group = \$505.00.**

**\$505.00 maximum benefit - \$480.00 (30% of net income) = \$25.00 in monthly FAP benefit allotment.**

The Department's calculations for Food Assistance Program benefits was correct based upon the amount of countable income used in making the calculations.

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 Health Care Coverage Determination Notice indicates that Petitioner has excess income for purposes of the Healthy Michigan Plan. The Department determined that Petitioner has an annual income of \$12,792.00.

Petitioner submitted a request for hearing disputing the Department's decision to close his wife's MA benefit case. Petitioner's wife was an ongoing MA recipient under the HMP program.

Pertinent Department Policy dictates:

The Healthy Michigan Plan (HMP) is based on Modified Adjusted Gross Income (MAGI) methodology. The Healthy Michigan Plan 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.

The Healthy Michigan Plan (HMP) provides health care coverage for individuals who:

- Are 19-64 years of age.
- Do not qualify for or are not enrolled in Medicare.
- Do not qualify for or are not enrolled in other Medicaid programs.
- Are not pregnant at the time of application.
- Meet Michigan residency requirements.
- Meet Medicaid citizenship requirements.
- Have income at or below 133% Federal Poverty Level (FPL) Cost Sharing.

The Healthy Michigan Plan has beneficiary cost sharing obligations. Cost sharing includes copays and contributions based on income, when applicable. Copayments for services may apply to HMP beneficiaries. Prior to enrollment in a health plan, beneficiaries are eligible to receive Healthy Michigan Plan services through the Fee-for-Service system. Copays are collected at the point of service, with the exception of chronic conditions and preventive services. Modified adjusted gross income must be at or below 133 percent of the Federal Poverty Level (FPL). BEM 137, pages 1-3

Department policy requires the department to count and budget all income received that is not specifically excluded. There are 3 main types of income: countable earned, countable unearned, and excluded. Earned income means income received from another person or organization or from self-employment for duties that were performed for remuneration or profit. Unearned income is any income that is not earned. The amount of income counted maybe more than the amount a person actually receives, because it is the amount before deductions are taken including the deductions for taxes and garnishments. The amount before any deductions are taken is called a gross amount. BEM, item 500, p. 1.

HMP uses a Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (October 2016), p. 1. An individual is eligible for HMP if his/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 and his wife are counted in the income group. The household for a tax filer, who is not claimed as a tax dependent consists of: (i) the individual; (ii) the individual's spouse; and (iii) the individual's tax dependents. BEM 211 (January 2016), pp. 1-2. Therefore, in determining Petitioner's MA status, the Department properly considered Petitioner's wife as having a group size of two people.

133% of the annual FPL in 2018 for a household with two members ages 19-64 is \$21,891.80. See <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's and Petitioner's wife's annual income cannot exceed \$21,891.80. 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.

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133% of the annual FPL in 2018 for a household with two members ages 19-64 is \$21,891.80. See <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's and Petitioner's wife's annual income cannot exceed \$21,891.80. If Petitioner has Ad-Care, his wife's income cannot exceed \$16, 611,70 for the year. 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.

The Department's calculations for Medical Assistance do not make sense to this Administrative Law Judge. It is unclear how the Department made its determination of income in this case. There was no Medical Assistance budget attached to the evidence packet.

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 has established by the necessary competent, material and substantial evidence on the record that it was acting in accordance with Department policy when it determined that Petitioner was eligible for a \$25.00 per month in Food Assistance Program benefits. If Petitioner's income has changed, he may reapply for FAP. The Department did not establish that it properly determined that Petitioner had excess income for purposes of Healthy Michigan Medical Assistance using the income calculated.

**DECISION AND ORDER**

Accordingly, the Department's decision in reference to Petitioner's Medical Assistance benefits 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. Initiate reinstatement of Petitioner's Medical Assistance benefits to the date of closure;
2. Redetermine eligibility for Medical Assistance benefits; in accordance with Department policy;
3. If Petitioner is otherwise eligible, pay to Petitioner any MA benefits to which she is entitled from the date of case closure (May 1, 2019) forward.

LL/hb

  
\_\_\_\_\_  
**Landis Lain**  
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

**DHHS**

Keisha Koger-Roper  
12140 Joseph Campau  
Hamtramck, MI 48212

Wayne County (District 55), DHHS

BSC4 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

**Petitioner**

[REDACTED]