



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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Date Mailed: July 2, 2019  
MOAHR Docket No.: 19-005872  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris**

**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 July 1, 2019, from ██████████ Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by Heather Hembree, Assistance Payments Supervisor, and Eleanor Anderson, Eligibility Specialist.

**ISSUE**

Did the Department properly close the Petitioner's spouse's Healthy Michigan Plan (HMP) due to 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. The Petitioner's wife sought HMP medical assistance; and pursuant to a hearing decision issued In October 2018, the Department was ordered to redetermine its denial of HMP for Petitioner's wife. Exhibit C, p. 1. Throughout the several months of review the Petitioner was determined eligible for HMP based upon the Department's eligibility summary.
2. The Department issued a manual Benefit Notice on April 25, 2019 which was not addressed by the Department to the correct address due to the apartment number in the address being omitted. Petitioner did not receive the manual notice. The Department denied the Petitioner's wife, ██████████ HMP due to excess income of the household as of March 1, 2019. Exhibit B.

3. The Petitioner's household consists of three persons; Petitioner, his daughter and his wife. He and his wife filed a federal tax return jointly, and Petitioner claims his daughter, age [REDACTED] as a dependent. Exhibits F and G.
4. The Department used the following paystubs to determine Petitioner's wife's income: February 15, 2019, \$[REDACTED]; February 22, 2019, \$[REDACTED]; March 1, 2019, \$[REDACTED]; and March 8, 2019, \$[REDACTED]; for total monthly income of \$[REDACTED] attributed to Petitioner's wife's income from [REDACTED] Exhibit G.
5. The Petitioner also provided four paystubs for March 2019 and April 2019 as follows: March 22, 2019, \$[REDACTED]; March 29, 2019, \$[REDACTED] April 5, 2019, \$[REDACTED]; and April 12, 2019, \$[REDACTED] for total monthly income of \$[REDACTED]. Exhibit C.
6. The Petitioner's wife's employer deducts \$8.12 weekly from her paycheck for 401k savings. The amount of the 401k deduction varies but was not considered by the Department when determining monthly income. See Exhibit C, pp. 34-39, and Exhibit H, p. 125.
7. The Petitioner is retired and receives unearned income from Social Security of \$791.00 monthly; and his daughter, age [REDACTED], receives \$395 monthly from Social Security.
8. Petitioner also has income from employment in the amount of \$[REDACTED] from driving a taxi as represented in his 2017 tax return. The 2017 income amount of \$[REDACTED] was used in calculating eligibility for HMP for March 2019. Exhibit E.
9. The Petitioner's federal tax return for 2018 results a slightly higher number for Petitioner's employment income from driving a taxi, based upon the Schedule C income after expenses of \$3,335.00 which results in 2018 monthly income of \$277.91. Exhibit F.
10. The Petitioner's monthly income using the March and April paystubs in the amount of \$[REDACTED] and Social Security household income and earned income (taxi) totals [REDACTED] in monthly income. The annual income for Petitioner's household is \$[REDACTED].
11. The Petitioner's monthly income using the paystubs used by the Department of \$[REDACTED] results in monthly income of \$[REDACTED]. The annual income for Petitioner's household is \$[REDACTED].
12. The 2018 Federal Poverty Limit (FPL) Income limit used by the Department which is 133% poverty level for a household of three members is \$27,637.40.
13. The 2019 Federal Poverty Limit (FPL) Income limit for a household of three members is \$28,368.90.

14. The Petitioner requested a Hearing on May 10, 2019 requesting that the Department advise him regarding his wife, [REDACTED] eligibility for HMP as he did not receive a Notice advising him of her eligibility.

### **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).

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 Petitioner has sought review of the Department's denial of HMP for his wife based on the household's income exceeding the HMP income limit for a household of three persons.

MA is available (i) to individuals who are aged (65 or older), blind or disabled under Supplemental Security Income (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.

The Department denied Petitioner's wife, [REDACTED] MA HMP because the household had excess income for HMP purposes. No evidence was presented that Petitioner or his wife were disabled, Petitioner receives Social Security; and he and his wife claim one dependent, their [REDACTED]-year-old daughter, on their tax return. His wife, who is working and is not disabled nor over 65, does not qualify for any other programs except possibly the HMP.

To determine eligibility for HMP, a determination of group size using the MAGI methodology, considering the client's tax status and dependents, is required. The household for a tax filer, who is not claimed as a tax dependent, includes the individual, his/her spouse, and tax dependents. BEM 211 (January 2016), pp. 1-2. Therefore,

Petitioner's MA group size is three as he is married and has one dependent for tax purposes.

In March of 2019, the Department used 2018 federal poverty guidelines when determining eligibility based on household income and used the 2018 133% FPL of \$27,637.40. However, the FPL changed as of January 11, 2019; and therefore, the 2019 FPL should have been used when determining Petitioner's wife's HMP eligibility for March 2019. The FPL as of March 1, 2019 applicable to Petitioner's household which should have been used is \$28,368.90. See <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's household income which includes Petitioner's, his wife's and their daughter's monthly incomes cannot exceed \$28,368.90 for a group size of three or \$2,364.07 monthly. Exhibit C, pp. 44.

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, childcare, or retirement savings. *Id.* 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. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>. Effective October 1, 2018, all RSDI income is countable for tax-filers and adults not claimed as dependents. BEM 503 (October 2018), p. 30.

Petitioner receives \$791.00 per month as a Social Security recipient due to retirement; his daughter, age ■■■, also receives Social Security of \$395.00 a month. These monthly amounts were budgeted by the Department. Exhibit G.

Petitioner's wife has earned income and is paid weekly. The Petitioner provided pay stubs to the Department as part of a verification for March 2019 and April 2019, which resulted in a gross monthly amount of \$■■■■■■■■■■. See finding of Fact, paragraph 5. No deductions were made by the Department for health coverage or childcare. After the hearing, it was noted that Petitioner's wife does have a 401k savings account and \$8.12 weekly is deducted. The amount of the 401k weekly deduction varies by several dollars; however, based upon the exhibits, the undersigned used \$8.12 weekly as a deduction. Therefore, Petitioner's wife's income must be reduced by that amount. The Petitioner's wife's gross wages must be used to calculate her MAGI income.

Petitioner's wife's monthly MAGI income is based upon her monthly income (using the March 2019 and April 2019 paystubs is \$[REDACTED]). Based upon the 401k contribution, the monthly income must be reduced by \$8.12 per pay or \$32.48 (\$8.12 X 4 pays), resulting in monthly income of [REDACTED]. The annual income, after the 401k deduction for Petitioner's wife is \$[REDACTED]. Their combined monthly MAGI income for Petitioner's wife \$[REDACTED], plus Social Security received by Petitioner of \$791.00 and their daughter's Social Security \$395.00 and earned income from Petitioner's employment from his taxi service \$[REDACTED] totals \$[REDACTED]. The monthly income multiplied by 12 months results in annual gross income of \$[REDACTED]. Therefore, based upon the FPL HMP income household limit of \$[REDACTED] Petitioner's wife, based upon the household income, has excess income for HMP purposes and is not eligible for HMP benefits. The Department used different paystubs and came up with a higher monthly income for Petitioner's wife which would also result in household income which exceeds the annual HMP income limit. The undersigned used the lower paystub amounts presented by Petitioner which still resulted in the household having income in excess of the HMP annual income limit.

An exception exists to the income limit rule if an individual's group income is within 5% of the FPL for the applicable group size, a disregard is applied in order to make the person eligible for MA. MREM, § 7.2. After consideration of the 5% disregard, the income limit is \$29,435.40 or \$2,452.95 per month. Petitioner's household income of \$[REDACTED] is still greater than the income limit, even after the 5% disregard. Therefore, his wife is still not eligible for HMP.

At the hearing, the Petitioner specifically raised the question regarding why the federal tax return income for 2018 was not used to determine eligibility rather than paystubs to determine his wife's income. The Petitioner questioned the discrepancy between using weekly paystubs by the Department (current income) rather than his tax return. Based upon a change in the Michigan State Plan for Medicaid, effective November 1, 2017, the Center for Medicare and Medicaid Services (CMS) has approved the state of Michigan's requested change in the manner in which it calculates an MA recipient's ongoing financial eligibility for MAGI-related Medical Assistance coverage. Specifically, effective November 1, 2017 ongoing it provides as follows:

#### B. Household income

Financial eligibility is determined consistent with the following provisions:

1. When determining eligibility for new applications financial eligibility is based on current monthly income and family size.
2. When determining eligibility for current beneficiaries, financial eligibility is based upon current monthly household income and family size.

Thus, based upon the amendment to the State plan, the Department correctly determined monthly income for March 2019 using current income based upon paystubs for Petitioner's wife. The State Medicaid amendments are available at: .


It is noted, even with the Department errors due to not including 401k deductions from Petitioner's wife's employment income and using the 2018 FPL rather than the 2019 FPL, based upon the above analysis, notwithstanding these errors, the Department's determination that the Petitioner's wife is not eligible for HMP is correct due to having excess income.

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 the Petitioner's wife's HMP due to the group household income exceeding the income limit for HMP.

### **DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED**.

LMF/jaf



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**Lynn M. Ferris**

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**

Linda Gooden  
MDHHS-Oakland-6306-Hearings

**Petitioner**

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[REDACTED] MI [REDACTED]

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