



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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████████████████████  
██████████, MI 48210

Date Mailed: August 16, 2019  
MOAHR Docket No.: 19-006606  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Alice C. Elkin**

**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 August 7, 2019, from Detroit, Michigan. Petitioner and her husband, ██████████ appeared and represented themselves. The Department of Health and Human Services (Department) was represented by Janita Munoz, Hearing Facilitator. ██████████ served as translator (Arabic).

**ISSUE**

Did the Department properly close Petitioner and her husband's Medicaid (MA) cases?

**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 and her husband were ongoing recipients of Medicaid under the Healthy Michigan Plan (HMP).
2. Petitioner and her husband are the parents of a minor child (K), who lives in the home.
3. Petitioner and her husband file taxes and claim their two children, K and a twenty-year-old adult (S), as dependents on their federal tax form.
4. Pursuant to a wage match with other state databases available to the Department, the Department became aware that Petitioner's husband had employment income

from [REDACTED]. (Employer) and sought verification (Exhibit A, pp. 10-11).

5. On May 3, 2019, Employer provided the Department with the requested verification, showing income paid to Petitioner's husband through May 3, 2019 (Exhibit A, pp. 20-21).
6. The verification from Employer showed that Petitioner's husband was paid weekly and received the following pay for the 30 days prior to May 3, 2019: [REDACTED] on May 3, 2019; \$[REDACTED] on April 26, 2019; \$[REDACTED] on April 19, 2019; [REDACTED] on April 12, 2019; and [REDACTED] on April 5, 2019 (Exhibit A, p. 21).
7. On May 6, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice notifying her that, effective June 1, 2019, her and her husband's MA cases would close because they had excess income for Healthy Michigan Plan eligibility and did not meet any of the other criteria for MA eligibility. The notice showed that the determination was based on the household having annual income of [REDACTED] (Exhibit A, pp. 6-9).
8. On [REDACTED], 2019, the Department received Petitioner's request for hearing, disputing the closure of her and her husband's MA cases.

### **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.

Petitioner requested a hearing to dispute the closure of her and her husband's MA cases. The Department explained that Petitioner and her husband had MA coverage under the Healthy Michigan Plan (HMP) and that their cases closed because the household's income exceeded the income limit for HMP eligibility.

HMP is a Modified Adjusted Gross Income (MAGI)-related MA category that 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 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 (January 2019), p. 1.

An individual is income eligible for HMP if his 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 purposes requires consideration of the client's tax filing status or, if not a tax filer, the individual's household. 42 CFR 435.603(f)(1); BEM 211 (July 2019), p. 1. If the individual is not claimed as a tax dependent and expects to file a tax return for the taxable year in which an eligibility determination is made, the household consists of the taxpayer and all persons the individual expects to claim as a tax dependent. 42 CFR 435.603(f)(1). If the individual does not file taxes, an individual's group consists of the individual and, if living with the individual, the spouse and children up to age 21, if full-time students. 42 CFR 435.603(f)(3).

The Department testified that it determined that Petitioner's group size for MAGI purposes was four. Petitioner and her husband testified that they filed taxes and claimed their two children, nine-year-old S and 20-year-old K as tax dependents. Thus, the MAGI group size for the household was properly determined to be four. BEM 211 (July 2019), pp. 1-2. For a four-person group, the income limit for HMP eligibility in 2018 was \$33,383. <https://www.federalregister.gov/documents/2019/02/01/2019-00621/annual-update-of-the-hhs-poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's annual income cannot exceed \$34,274.50 (or \$2,856.21). A 5% disregard, which may be applied to make someone MA eligible, raises the applicable FPL limit by 5%. BEM 500, p. 5. This would raise the income limit for HMP eligibility to \$35,535 (or \$2,961.25 monthly).

To determine financial eligibility for MAGI-related MA programs, income must be calculated in accordance with MAGI under federal tax law. BEM 500 (July 2017), pp. 3-4. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500, p. 4. Effective November 1, 2017, when determining eligibility for ongoing recipients of MAGI related MA, the State of Michigan has elected to base financial eligibility on current monthly income and family size. [https://www.michigan.gov/documents/mdhhs/MAGI-Based\\_Income\\_Methodologies\\_SPA\\_17-0100\\_-\\_Submission\\_615009\\_7.pdf](https://www.michigan.gov/documents/mdhhs/MAGI-Based_Income_Methodologies_SPA_17-0100_-_Submission_615009_7.pdf)

In order to determine earned 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. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>

In calculating Petitioner's household's income, the Department testified that it considered Petitioner's gross income from April 5, 2019 to May 3, 2019 as shown on the employee earnings documents provided by Employer 1 (Exhibit A, p. 21). Based on the income during this period, Petitioner's household received \$[REDACTED] in gross monthly earned income. Although Petitioner's husband asserted that his income had decreased, he could not identify when his income had decreased or whether he had advised the Department of this decrease prior to his case closure. While Petitioner's household's gross monthly income exceeds the HMP limit, even when the 5% disregard is applied, income eligibility is based on a client's AGI. Here, there was no evidence presented that the Department sought any further verification of income in order to determine the household's AGI in determining HMP income eligibility. Because the Department did not show that Petitioner's household's AGI exceeded the HMP monthly income limit, the Department failed to establish that it properly closed Petitioner and her husband's HMP cases.

Furthermore, before closing a client's MA program, the Department must conduct an ex parte review to consider the individual's eligibility for other MA categories. BAM 220 (April 2019), pp. 18-19; BAM 210 (April 2019), p. 2. When the ex parte review shows that an MA recipient is eligible for MA under another category, the Department must change the coverage. BAM 220, p. 17. Here, Petitioner and her husband have a minor child that lives in the home with them. Therefore, they are potentially eligible for MA under a group 2 caretaker-relative (G2C) program. BEM 135 (October 2015), pp. 1-4. The Department conceded that they had not considered Petitioner and her husband's eligibility for MA under any other program. Accordingly, the Department failed to show that it properly closed Petitioner and her husband's MA case even if they are ineligible for MA coverage under HMP.

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 did not in accordance with Department policy when it closed Petitioner and her husband's MA cases.

### **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 Petitioner and her husband's MA cases as of June 1, 2019 and redetermine their MA eligibility;
2. Provide Petitioner and her husband with the most beneficial MA program they are eligible for, if any; and

3. Notify Petitioner in writing of its decision.

AE/



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**Alice C. Elkin**

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**

Jeanette Cowens  
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**Petitioner**

[REDACTED]  
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cc: MA- Deanna Smith; EQADHShearings  
AP Specialist-Wayne County