



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: September 5, 2019  
MOAHR Docket No.: 19-006642  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun**

**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 8, 2019, from ██████████ Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearing Facilitator.

**ISSUE**

Did the Department properly close Petitioner's Medical Assistance (MA) case?

**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 an ongoing recipient of MA benefits under the Healthy Michigan Plan (HMP).
2. In or around June 2018, Petitioner's nephew, Child A, was placed in her care as a foster child. Also living in Petitioner's household are her two ██████-year-old daughters.
3. In connection with a redetermination/renewal, Petitioner's eligibility to receive MA was reviewed. Petitioner reported that she is employed, that she receives additional income from child support, and that she is filing a federal tax return and claiming the children as tax dependents. (Exhibit A)
4. On June 11, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice (Notice) informing her that effective July 1, 2019, her MA case under the HMP category would be closed because her countable income

exceeded the income limit for her group size. The household total countable annual income identified on the Notice was \$ [REDACTED] and the health care household size was identified to be one. The Notice further indicated that Petitioner was ineligible for MA because she was not the parent or caretaker relative of a minor child.

5. Petitioner confirmed: that she is [REDACTED] years old; that she has not been determined disabled; that she is not enrolled in Medicare; that she is the caretaker of her nephew; and that she filed a tax return in 2018, on which she claimed her two daughters as dependents. Petitioner asserted that on her 2019 tax return, she may also be claiming her nephew as a dependent.
6. On June 24, 2019, Petitioner requested a hearing disputing the Department's actions with respect to the closure of her MA case.

### **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.

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, which 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. BEM 105 (April 2017), p. 1; BEM 137 (January 2019), p. 1.

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 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, p. 1-4.

Petitioner, who is under age [REDACTED] not enrolled in Medicare, and has not been determined disabled is potentially eligible for MA under the HMP category. An individual is eligible for HMP if her household's income does not exceed 133% of the FPL applicable to the individual's group size. A determination of group size under the MAGI methodology requires consideration of the client's tax status and dependents. Petitioner's testimony at the hearing was such that her household consisted of two adult daughters whom she claimed as tax dependents, and her foster child nephew whom she would also be claiming as a tax dependent. 133% of the annual FPL in 2019 for a household with three members is \$28,368.90. Therefore, to be income eligible for HMP with a three-person household, Petitioner's annual MAGI cannot exceed \$28,368.90, or \$2,364.08 monthly, as she is a current MA beneficiary. To be income eligible for HMP as a household with four members, her annual income cannot exceed \$34,247.50, or \$2,853.96 monthly. <https://aspe.hhs.gov/poverty-guidelines>.

At the hearing, the Department testified that after processing Petitioner's redetermination, the Department determined that Petitioner had excess income for MA under the HMP category and initiated the closure of her case effective July 1, 2019. A review of the June 11, 2019 Notice indicates that the Department concluded that Petitioner's total countable annual income was \$[REDACTED] and thus, when taken monthly, results in monthly MAGI of \$[REDACTED]. The Department could not identify what it considered as Petitioner's household size, however, the Notice indicates that the Department applied a health care household size of one, which as referenced above is incorrect, as Petitioner's tax filing status is greater than one.

To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. MAGI, for purposes of Medicaid eligibility is a methodology which state agencies and the federally facilitated marketplace (FFM) must use to determine financial eligibility. It is based on Internal Revenue Service rules and relies on federal tax information to determine adjusted gross income, eliminating the asset test and special deductions or disregards. BEM 500 (July 2017), pp. 3-4. 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, 42 CFR 435.603(h)(2) provides that for current beneficiaries and "for individuals who have been determined financially-eligible for Medicaid using the MAGI-based methods . . . , a State may elect in its State plan to base financial eligibility either on current monthly household income . . . or income based on projected annual household income . . . for the remainder of the current calendar year."

When determining financial eligibility of current beneficiaries for MAGI-related MA, the State of Michigan has elected to base eligibility on current monthly household income and family size. The State has also elected to use reasonable methods to include a prorated portion of a reasonably predictable increase in future income and/or family size and to account for a reasonably predictable decrease in future income and/or family size. (Medicaid State Plan Amendment Transmittal No.: MI-17-0100)

The Department was unable to explain exactly how it determined that Petitioner had monthly income of \$[REDACTED] but stated that it relied on information obtained from the Work Number report. The Department initially testified that it considered Petitioner's biweekly earnings, specifically gross earnings of \$[REDACTED] paid on May 31, 2019, [REDACTED]3 paid on May 17, 2019, and \$[REDACTED] paid on May 3, 2019. However, the Department representative later stated that it's possible the \$[REDACTED] paycheck was not considered because it was unusually large.

A review of the Work Number report shows that \$[REDACTED] are withheld from Petitioner's pay for her retirement/401(k). However, it does not appear that the Department took this deduction into consideration when it calculated Petitioner's monthly MAGI, as retirement contributions are to be deducted or excluded from the calculation of gross income when determining MAGI. Additionally, the Department testified that Petitioner reported receiving child support on the redetermination, but it was unclear if the Department included the child support earnings in the calculation of her monthly income. Petitioner confirmed that she receives \$[REDACTED] every two months for two adult children who do not reside in her household.

Based on the evidence presented by the Department at the hearing, the Department failed to establish that Petitioner's income exceeded the limit for HMP, as the Department failed to show that it properly determine her household size, and that it took into consideration the applicable deductions to her gross income as required by MAGI policy.

Furthermore, the Department did not establish that it conducted a thorough ex parte review to determine Petitioner's eligibility for all MA categories prior to the closure of her HMP case effective July 1, 2019. See BAM 210 (April 2019), p. 1; BEM 105, pp. 1-2. It was established at the hearing that Petitioner is the caretaker relative of her minor nephew who was placed in her care as a foster child in June 2018. Although the hearing summary indicates that Petitioner would be ineligible for MA under the Group 2 Caretaker Relatives (G2C) category because she is a foster parent, Department policy indicates that Petitioner is considered a core relative who is acting as parent of the dependent child. The aunt/nephew relationship is one qualified as a core relative. See BEM 135 (October 2015), pp. 1-5. There was no evidence presented that the Department adequately considered Petitioner's eligibility for all MA categories, including non-MAGI MA categories such as G2C prior to closing her case.

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 act in accordance with Department policy when it closed Petitioner's MA case effective July 1, 2019.


**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's MA case effective July 1, 2019 and redetermine her eligibility for all MA categories for July 1, 2019, ongoing;
2. Provide Petitioner with MA coverage under the most beneficial category from July 1, 2019, ongoing, if otherwise eligible in accordance with Department policy;
3. Supplement Petitioner and her provider for any eligible missed MA benefits from July 1, 2019, ongoing; and
4. Notify Petitioner in writing of its decision.

ZB/tlf

  
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**Zainab A. Baydoun**  
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

**Via Email:**

MDHHS-Wayne-19-Hearings  
BSC4 Hearing Decisions  
EQAD  
D. Smith  
MOAHR

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

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