



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: October 4, 2019  
MOAHR Docket No.: 19-008359  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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 September 11, 2019, from Detroit, Michigan. Petitioner appeared for the hearing with her husband, [REDACTED] and represented herself. The Department of Health and Human Services (Department) was represented by Haysem Hosny, Hearing Facilitator.

**ISSUE**

Did the Department properly close Petitioner's Medical Assistance (MA) case under the Healthy Michigan Plan (HMP)?

**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 recipient of MA benefits under the HMP category.
2. In or around July 2019, Petitioner's husband submitted to the Department a Verification of Employment verifying his employment as a concrete laborer. Attached to the Verification of Employment were pay stubs detailing his earnings. (Exhibit A, pp. 9-12)
3. On July 11, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice informing her that effective August 1, 2019, she and her

husband would be ineligible for MA under the HMP because their countable income exceeds the income limit for their group size. (Exhibit A, pp. 5-8)

4. Petitioner's household consists of herself, her husband, one ■■■■■-year-old child, and two minor children.
5. On July 31, 2019, Petitioner requested a hearing disputing the Department's actions with respect to the closure of the HMP case. Petitioner's hearing request indicates that her husband is a seasonal employee and the income relied upon by the Department is not accurate. (Exhibit A, pp. 3-4)

### **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.

Petitioner and her husband were previously approved for and receiving MA benefits under the HMP. At the hearing, the Department testified that as of the hearing date, Petitioner and her husband's eligibility for MA under the Group 2 Caretaker (G2C) category with a monthly deductible of \$1724 was in pending status, as verification of assets was needed. The Department testified a Health Care Coverage Determination Notice had not been issued as of the hearing date. Therefore, the hearing proceeded only with respect to the Department's finding that Petitioner and her husband were ineligible for MA under the HMP effective August 1, 2019.

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 and her husband, who are both under age 64, not enrolled in Medicare, and have not been determined disabled, are 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 herself, her husband, and three children who are claimed as tax dependents. Petitioner testified that she and her husband would be filing a joint tax return in 2019.

At the hearing, the Department testified that it applied an income limit associated with a household size of four. However, the Department stated that an income limit applicable to a household size of five should have been applied in this case. 133% of the annual FPL in 2019 for a household with five members is \$40,126.10. Therefore, to be income eligible for HMP with a five-person household, Petitioner's annual MAGI cannot exceed \$40,126.10, or \$3,443.84 monthly, as she and her husband are current MA beneficiaries. <https://aspe.hhs.gov/poverty-guidelines>. Additionally, Department policy provides that if an individual's group's income is within 5% of the FPL for the applicable group size, a disregard is applied, making the person eligible for MA. MREM, § 7.2; BEM 500, pp. 3-5.

The Department testified that after processing the income verifications received, it determined that Petitioner's household had excess income for MA under the HMP category and initiated the closure of her and her husband's cases effective August 1, 2019. The Department stated that based on the information obtained from the pay stubs, specifically that Petitioner's husband receives \$████ in gross weekly income, it concluded that Petitioner's household had total countable monthly MAGI of \$████.

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)

At the hearing, Petitioner’s husband did not dispute that he is employed as a concrete laborer and confirmed that the income information reflected on the pay stubs was accurate. However, Petitioner’s husband testified that he is a seasonal employee who works from May to November each year and is laid off at the end of the season. He testified that from January to April, he will receive unemployment compensation benefits in the amount of \$█ weekly.

Based on the evidence presented, the Department failed to establish that Petitioner’s household income exceeded the limit for HMP. There was no evidence that the Department took into consideration the reasonably predictable decrease in the income for Petitioner’s household based on his seasonal employment status. Additionally, as referenced above, the Department acknowledged applying an incorrect income limit and household size to Petitioner’s case. Furthermore, there was no evidence that the Department considered Petitioner and her husband’s potential eligibility for HMP by applying the 5% disregard applicable to the household size of five.

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 because of the errors identified above, the Department did not act in accordance with Department policy when it determined that Petitioner’s household had excess income and was ineligible for HMP effective August 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 and her husband’s MA case effective August 1, 2019, and determine their HMP eligibility from August 1, 2019, ongoing;

2. Provide Petitioner and her husband with MA coverage under the most beneficial category from August 1, 2019, ongoing, if otherwise eligible in accordance with Department policy;
3. Supplement Petitioner and her husband and/or their providers for any eligible missed MA benefits from August 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-Macomb-36-Hearings  
BSC4 Hearing Decisions  
EQAD  
D. Smith  
MOAHR

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

[REDACTED]