



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

██████████
██████████
██████████ MI ██████████

Date Mailed: October 31, 2019
MOAHR Docket No.: 19-008483
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, a telephone hearing was held on October 7, 2019, from ██████████ Michigan. The Petitioner was represented by Attorney Julia Aromatorio of Lakeshore Legal Aid. ██████████ also appeared as a witness on her own behalf at the hearing. The Department of Health and Human Services (Department) was represented by Chantal Fennessey, Assistant Attorney General. Brenda Drewnicki, Hearing Facilitator, appeared as a witness.

ISSUE

Did the Department properly close the Petitioner's Healthy Michigan Plan (HMP) medical assistance due to her income exceeding the HMP income limit?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. At the hearing, the Petitioner's Attorney consented to a withdrawal of Petitioner's hearing request dated July 29, 2019, regarding her Food Assistance Program (FAP) benefits.
2. The Petitioner was an ongoing recipient of medical assistance (MA) benefits for the Healthy Michigan Program (HMP) program.
3. On July 10, 2019, the Department issued a Health Care Coverage Determination Notice closing the Petitioner's HMP effective August 1, 2019, due to Petitioner's countable income exceeding the HMP income limit for a group size of one person

which was stated in the notice as \$ [REDACTED]. The Notice found the Petitioner's annual income to be \$ [REDACTED]. Exhibit 2.

4. The Petitioner who provides home care services to her clients was paid directly by some of her clients and was providing home help assistance.
5. On July 24, 2019, the Petitioner provided the Department a statement signed by one of her clients, Client [REDACTED] stating that she pays Petitioner \$ [REDACTED] per week. Exhibit 3A, p. 8.
6. On June 26, 2019, the Petitioner provided the Department a statement signed by Client [REDACTED] indicating that she pays Petitioner [REDACTED] per week. Exhibit 3, p. 9. Client [REDACTED] advised the Department on July 24, 2019 that she had reduced the Petitioner's pay and hours to \$ [REDACTED] per week. Exhibit 3A, p. 9 and 10.
7. On July 24, 2019, the Petitioner provided the Department a statement signed by her client, Client [REDACTED] who advised the Department that she pays Petitioner \$ [REDACTED] per week. Exhibit 3A, p. 11.
8. On July 24, 2019, the Petitioner provided the Department a statement regarding her weekly income from her three remaining clients, Client [REDACTED] Client [REDACTED] and Client [REDACTED] and stated her monthly gross income to be \$ [REDACTED] per month. Exhibit 3A, p. 10a.
9. On September 9, 2019, the Department issued a Health Care Coverage Determination Notice (dated after Petitioner's July 29, 2019, hearing request) to demonstrate that she did not meet the HMP income limit based upon wages verified on July 24, 2019, by Petitioner. This action taken by the Department is not the subject of Petitioner's hearing request as it is effective for October 1, 2019; Petitioner was protesting the Department's August 1, 2019, determination which found her ineligible for HMP.
10. On July 29, 2019, the Petitioner requested a timely hearing protesting the closure of her HMP and her food assistance benefits.

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 Department reviewed the Petitioner's HMP benefits and closed her HMP effective August 1, 2019, due to Petitioner's income exceeding the HMP income limit for a group of one person. Exhibit 2. The Department issued a Health Care Coverage Determination Notice on July 9, 2019, effective August 1, 2019. In its Hearing Summary, the Department states that it closed the HMP benefits for August 1, 2019, and then restored benefits after the income budget was reevaluated, citing Exhibit 1 and Exhibit 3A.

For reasons explained hereafter, the Department did not meet its burden to demonstrate that it properly closed the Petitioner's HMP due to excess income based upon the information and evidence provided at the hearing.

Exhibit 3A contains three income sources for Petitioner, who is a care provider to individuals and is paid either directly by the client or through an agency who pays Petitioner on behalf of the client. The Department's Exhibit 3A contains the following income entered by the Department: Client ██████ MA budget amount for July 2019, \$█████ Client ██████ MA budget amount for July 2019, \$█████ and Client ██████ MA budget amount for July 2019, \$█████. Exhibit 3, p. 7. These three incomes total \$█████ per month of income for July 2019. The MA income amounts are from a Department-generated document titled Employment Budget Summary for July 2019. Exhibit 3A, p. 7. The Department closed the Petitioner's HMP August 1, 2019; and the above income was the income entered as MA budget amounts for July 2019.

In addition, the Department presented a July 24, 2019, income statement from Petitioner and separate signed statements from Petitioner's three clients referenced above who reported the following income: Client ██████ - \$█████ per week, \$█████ per month; Client ██████ - ██████ per week (reduced from June 2019), ██████ per month; and Client ██████ - ██████ per month, \$█████ per month. Exhibit 3 A, p. 10A. The statement also noted that Client ██████ was no longer Petitioner's client as of March 11, 2019. The July 24, 2019, income reported for Petitioner received from her clients totaled \$█████ per month. The Department testified that it was this income it used to determine Petitioner's HMP eligibility. These MA income budget amounts are contained in the Employment Budget Summary for income for August 2019 and total \$█████ Exhibit 3A, p. 7.

In addition, the Department testified that it used "corrected wages" (earned income) as shown in Exhibit 1B, p. 1b, to correct a previous error. Due to an apparent error, the Department had included an additional \$1,200.00 in earned income as self-employment income. Exhibit 1A. The MAGI-Eligibility Determination lists the following "corrected wages" after correction of the error: \$█████, \$█████0 and \$█████. The MAGI-Eligibility Determination is undated. The wages total \$█████ per month. The Department used these wages to determine the Petitioner was not HMP eligible. Based

upon this income, the annual income totals \$[REDACTED] per year. These wages do not coincide with the July 24, 2019, submission made by Petitioner referenced above. The wages used are higher in dollar amount than those reported by Petitioner, even though the Department testified it used the July 24, 2019, reported income to determine HMP income eligibility.

The discrepancy in the numbers (July 24, 2019 income reported and “corrected wages”) was not explained other than to state “the income provided by the Petitioner was input to the Bridges system and those numbers go into the Medicaid hub, which runs (interfaces) with the IRS hub and returns results to the Department which the Department referred to as the Magi Determination Results.” Exhibit 1B. The actual process that the Department used to determine the above three “corrected wages” income figures was not explained to verify their accuracy or why they were adjusted from what the Petitioner reported and verified as her income on July 24, 2019. The undersigned cannot accept the explanation given by the Department without understanding what calculation was used to determine the income figures. Simply saying the Bridges System made the calculation does not meet the Department’s burden to demonstrate compliance with Department policy. These corrected wages were not used to disqualify the Petitioner from HMP due to excess income in August 2019, based upon the July 9, 2019, Health Care Coverage Determination Notice, but were used subsequently to disqualify her for HMP in October 2019 and to apparently demonstrate belatedly that the July 2019 income provided by Petitioner would make her ineligible for HMP.

HMP uses a Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (October 2016), p. 1. An individual is eligible for HMP if 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. Therefore, for HMP purposes, she has a household size of one. BEM 211 (January 2016), pp. 1-2.

133% of the annual FPL in 2019 for a household with one member is \$16,611.70. See <https://aspe.hhs.gov/poverty-guidelines>. The monthly income limit for a group size of one is \$1,384.00. Therefore, to be income eligible for HMP, Petitioner’s income cannot exceed \$16,611.70 annually or \$1,384.00 monthly. 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.

In order to determine income in accordance with MAGI, a client’s adjusted gross income (AGI) is added to any tax-exempt foreign income, 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, childcare, or retirement savings. See

<https://www.healthcare.gov/income-and-household-information/how-to-report/>. For MAGI MA benefits, if an individual receives RSDI benefits and is a tax filer, all RSDI income is countable. BEM 503 (January 2019), p. 29. In this case the Petitioner did not report health coverage expense, childcare expense or retirement savings thus the gross income presented must be used. Unlike calculation utilized for computing FAP benefits the policy regarding the use of multipliers is not utilized in calculating income for purposes of MA benefits. MA benefit programs use income budgeting methods set forth in BEM 530.

Effective January 1, 2014, when determining eligibility for new applicants of MAGI-related MA, the State of Michigan has elected to base financial eligibility on current monthly income and family size. See:

http://www.michigan.gov/documents/mdch/SPA_13_0110_MM3_MAGI-Based_Income_Meth_446554_7.pdf

As stated above, effective November 1, 2017, the Department is to consider a client's MAGI-related MA eligibility on current monthly income and family size. The monthly income limit for an individual of Petitioner's group size is \$1,348.30. Additionally, the Department may disregard a client's income by 5% of the FPL, if it would make that individual eligible for MA benefits.

Based upon the monthly income the Department testified it relied upon as provided by the Petitioner in the signed statements verifying what Petitioner's clients paid her, Petitioner's income is \$██████████ per month. Based upon the Department's Bridges System calculated figures, the Petitioner's income is \$██████████ per month. The discrepancy was not explained. In addition, the Department could not provide information regarding the result of applying the 5% disregard to the higher income amount to determine eligibility for HMP based upon the \$██████████ income it calculated.

The Petitioner also testified that her income was variable due to the nature of her services and that her client's, due to illness, are sometimes not available or in need of services. The Department is required to be mindful of the requirement that when calculating MAGI 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/>. The information provided by the Petitioner in her July 24, 2019 verification of her then-income was her best prediction. However, if the income continues to fluctuate due to a loss or gain of a client, these changes should be reported; and the Department must discuss with the Petitioner what income is predicted.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed the Petitioner's HMP due to her income exceeding the HMP income limit.

DECISION AND ORDER

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

The Petitioner's hearing request dated July 29, 2019, regarding her Food Assistance is Withdrawn and is Dismissed. IT IS SO ORDERED.

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. The Department shall reinstate the Petitioner's HMP benefits effective the date of closure and redetermine her eligibility.
2. The Department shall provide Petitioner and Petitioner's Attorney written notice of its determination.

LMF/jaf



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

Counsel for Respondent

(via electronic mail)

Chantal B. Fennessey, AAG

AG-HEFS-MOHR

DHHS (via electronic mail)

Vivian Worden

MDHHS-██████████-Hearings

BSC4

D Smith

EQAD

Petitioner (via first class mail)

██████████

██████████

██████████ MI ██████████

Counsel for Petitioner

(via first class mail)

Julia Aromatorio

Lakeshore Legal Aid

32 Market St Ste 2

Mt Clemens MI 48043