



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: September 20, 2019  
MOAHR Docket No.: 19-008938  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: John Markey**

### **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 12, 2019 from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Artia Barnes, Eligibility Specialist, and Janika Ashwood, Eligibility Specialist. During the hearing, a 15-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-15.

### **ISSUE**

Did the Department properly deny Petitioner's application for Food Assistance Program (FAP) benefits?

Did the Department properly deny Petitioner's application for Child Development and Care (CDC) benefits?

Did the Department properly deny Petitioner's application for Medicaid (MA) benefits?

### **FINDINGS OF FACT**

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

1. In March 2019, Roger Smith, Petitioner's husband and father to her children, moved out of Petitioner's household. As of the date of the hearing in this matter, [REDACTED] had continuously lived outside Petitioner's home since moving out in March 2019.

2. Since [REDACTED] moved out of the house, Petitioner has lived in the home with her six children.
3. On [REDACTED] 2019, Mr. Smith submitted to the Department an application for benefits from the Department.
4. On [REDACTED] 2019, Petitioner submitted to the Department an application for MA, FAP, and CDC benefits from the Department for her household.
5. On June 3, 2019, the Department issued to Petitioner an Appointment Notice informing Petitioner that she would receive a phone call on June 11, 2019 at 9:30 am. The purpose of the call was to conduct an interview to gather relevant information regarding Petitioner's eligibility for benefits from the Department. Exhibit A, p. 11.
6. On June 3, 2019, the Department issued to Petitioner a Verification Checklist directing Petitioner to provide documentation concerning eligibility-related factors. The documentation was due back to the Department by June 13, 2019. Exhibit A, pp. 12-13.
7. On June 6, 2019, the Department issued to Petitioner another Verification Checklist directed Petitioner to provide documentation concerning eligibility-related factors. The documentation was due back to the Department by June 17, 2019. Exhibit A, pp. 14-15.
8. On or about June 6, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice allegedly informing Petitioner that her MA application was denied based on the Department's determination that Petitioner's income exceeded the limit for program eligibility. That notice was not included in the record.
9. On June 11, 2019, [REDACTED] called Petitioner at about 9:30 am for the interview. Petitioner did not answer. However, Petitioner called back [REDACTED] that same day and left her a voicemail.
10. On June 11, 2019, the Department issued to Petitioner a Notice of Missed Interview informing Petitioner that she missed the June 11, 2019 interview and needed to reschedule it before June 30, 2019 in order to avoid adverse action. Petitioner was given instructions for rescheduling. Exhibit A, p. 7.
11. On June 13, 2019, [REDACTED] called Petitioner back. Petitioner did not answer. However, Petitioner called back that same day and again was unable to reach [REDACTED].
12. On [REDACTED] 2019 and again in the next couple of days, Petitioner provided to the Department most of what was requested in the Verification Checklist documents sent June 3, 2019 and June 6, 2019.

13. On July 1, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her CDC and FAP application was denied. The reasons given for the CDC denial were (1) “[i]ndividual is not eligible because he/she does not meet Child Day Care requirements;” (2) Petitioner’s “gross income exceeds the entry limit for the CDC program;” and (3) “[a]t application, [Petitioner’s] gross income exceeded the limit for the CDC program.” Petitioner was informed that her FAP application was “denied for failure to complete the interview requirement.” Exhibit A, pp. 8-10.
14. On ██████, 2019, Petitioner submitted to the Department a request for hearing objecting to the Department’s determinations with respect to Petitioner’s eligibility for MA, CDC, and FAP 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).

In this case, Petitioner applied for CDC, FAP, and MA benefits for her household, which included herself and her six minor children. On or about June 6, 2019, the Department allegedly issued a Health Care Coverage Determination Notice informing Petitioner that she was ineligible for MA benefits as a result of the Department’s determination that Petitioner’s income exceeded the limit for program eligibility. On July 1, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her CDC application was denied based upon Petitioner’s income exceeding the limit for program eligibility. The Notice of Case Action further informed Petitioner that her application for FAP benefits was denied because of Petitioner’s failure to complete the interview requirement. On ██████, 2019, Petitioner submitted to the Department a request for hearing objecting to the Department’s determination of Petitioner’s eligibility for CDC, MA, and FAP benefits. Notably, Petitioner stated “[i]ncome was not correct when this decision was made. Interview was never conducted and worker never returned my phone call.”

### **FAP DENIAL**

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

Petitioner’s FAP application was denied because Petitioner failed to complete the interview requirement. Petitioner was notified of the June 11, 2019 interview via a

June 3, 2019 Appointment Notice. On June 11, 2019, Petitioner was unable to answer the incoming phone call from the Department. However, Petitioner called back shortly afterwards and left a message. Because Petitioner missed the June 11, 2019 phone call, the Department issued to Petitioner a June 11, 2019 Notice of Missed Interview. The Notice of Missed Interview informed Petitioner that her application would be denied if she failed to reschedule the interview by June 30, 2019. Petitioner followed the directions on the Notice of Missed Interview by calling the number therein to reschedule. Again, Petitioner's call was not answered, and she left another message. Petitioner did not receive a call back after that. On July 1, 2019, the interview having not been completed, the Department issued a Notice of Case Action informing Petitioner that her FAP application was denied for failing to complete the interview requirement.

After receiving an application for FAP benefits, the Department, in most cases, must conduct an interview with the applicant. BAM 115 (April 2019), p. 1. The purpose of the interview is to explain program requirements to the applicant and to gather information for determining the group's eligibility. BAM 115, p. 17. If an applicant misses an interview appointment, the Department sends out a Notice of Missed Interview advising the applicant that it is the applicant's responsibility to request another interview. BAM 115, p. 24. If the applicant calls to reschedule, the interview must be scheduled before the 30th day after the application date, if possible. BAM 115, p. 24. If the applicant fails to reschedule or misses the rescheduled interview, the Department denies the application on the 30th day after the application date. BAM 115, p. 24.

While it is true that Petitioner missed the scheduled interview and had not completed the interview by the 30th day after the date of application, Petitioner is not at fault. Petitioner's failure to participate in the interview prior to the deadline was not for lack of effort on her part. Petitioner was ready for the interview but credibly testified that she never received a call. She then called back later that same day and left a message. Two days later, Petitioner again called to reschedule the interview. Neither of those calls were answered, and Petitioner's June 13, 2019 phone call was seemingly never returned. Petitioner attempted to reschedule the interview by repeatedly reaching out to her worker in the exact manner she was directed to in the Notice of Missed Interview. Petitioner made a reasonable effort to finish the process by calling the number provided on the Notice of Missed Interview repeatedly and leaving multiple.

Petitioner's applied for FAP benefits, so the Department timely initiated the process, which includes scheduling and completing an interview. Petitioner was clearly informed of the interview, the consequences for missing the interview, and how to avoid those consequences in a timely manner. Petitioner followed those instructions and took reasonable action within the time limits communicated to her. The failure to complete the process is attributable to the fact that the Department failed to assist Petitioner in rescheduling the interview when Petitioner sought out assistance. In denying Petitioner's FAP application, the Department failed to act according to Department policy.

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 denied Petitioner's FAP benefits application for failing to complete the interview requirement.

## **MA DENIAL**

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's application for MA benefits was denied as a result of the Department's determination that Petitioner's household income exceeded the limit for program eligibility. When determining Petitioner's household income, the Department used income from both Petitioner and [REDACTED] despite [REDACTED] not living in the home at any point during the relevant time period. Petitioner filed a timely hearing request disputing the Department's action.

The Healthy Michigan Program (HMP) is a 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 (January 2019), p. 1.

Petitioner is under age 64, not disabled, and not enrolled in Medicare. Thus, she is potentially eligible for MA under the HMP if the household's income does not exceed 133% of the FPL applicable to the individual's group size. In this case, Petitioner's household consists of herself and her six minor children, all of whom are Petitioner's dependents. Thus, the evidence suggests that Petitioner's household size for MAGI purposes is seven. 42 CFR 435.603(f).

133% of the annual FPL for a household with one member is \$51,883.30. <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's household annual MAGI cannot exceed \$51,883.30. This figure breaks down a monthly income threshold of \$4,323.61.<sup>1</sup>

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), pp. 3-4. Income is verified via electronic federal data sources in compliance with MAGI methodology. MREM, § 1.

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<sup>1</sup> \$51,883.30 divided by twelve.

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). However, in determining current monthly income, the Department must account for reasonably predicable decreases in income. *Id.*

In this case, the Department determined Petitioner's eligibility for MA benefits based on the inclusion into the equation of [REDACTED] and his income. However, because [REDACTED]. [REDACTED] was not living with Petitioner, that was erroneous and resulted in the inflation of Petitioner's household income, which compels the reversal of the Department's determination.

Additionally, the Department did not provide any of the documentation it relied upon for coming to its determination nor the actual determination itself. Clients have the right to contest a Department decision affecting eligibility or benefit levels, including termination of program benefits when the client believes the decision is incorrect. BAM 600 (October 2018), pp. 1, 5. When a hearing request is filed, the matter is transferred to the Michigan Office of Administrative Hearings and Rules (MOAHR) for a hearing before an Administrative Law Judge. BAM 600, p. 1. In preparation for the hearing, the Department is required to send to MOAHR and the client a hearing summary. BAM 600, pp. 9-10, 24. The hearing summary is required to include a clear, concise statement of the case action taken, a chronological summary of events, and citations to relevant law and policy, amongst other things. BAM 600, p. 10. Additionally, a hearing packet must be prepared to send along with the hearing summary. BAM 600, p. 10. **The completed hearing packet must include, at a minimum, the relevant Notice of Case Action and a copy of all documents the Department intends to offer to support its action.** BAM 600, p. 10.

At the hearing, the Department representative and client are tasked with presenting their respective cases with reference to the documents provided in the hearing packet or otherwise properly served under the Michigan Administrative Rules. BAM 600, p. 37. After hearing the evidence, the Administrative Law Judge has the duty to review the evidence presented and based on that evidence, determine whether the Department met its burden of proving that the challenged actions were taken in compliance with law and Department policy. BAM 600, p. 39.

In the hearing packet prepared by the Department and presented at the hearing, there is no notice concerning Petitioner's MA benefits determination. The Department must, at a bare minimum, include in the file a copy of the notice that was the subject of the hearing request. As the Department failed to do so, it is impossible for the undersigned Administrative Law Judge to determine whether that document was appropriately issued.

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 denied Petitioner's MA benefits application.

## **CDC DENIAL**

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

Petitioner's application for CDC benefits was denied as a result of the Department's determination that Petitioner's household income exceeded the limit for program eligibility. When determining Petitioner's household income, the Department used income from both Petitioner and [REDACTED] despite [REDACTED] not living in the home at any point during the relevant time period. Petitioner filed a timely hearing request disputing the Department's action.

Eligibility for CDC benefits is based on program group size and non-excluded income received by any member of the group. BEM 703 (March 2019), p. 16. To be eligible for the CDC program at application, a family's gross monthly income must not exceed the maximum monthly gross income limit by family size associated with the program entry limit (\$15 family contribution category). RFT 270 (March 2019), p. 1. After initial eligibility has been determined, a family's income must not exceed the maximum monthly gross income eligibility limit by family size associated with the \$90 family contribution category. RFT 270, p. 1.

Petitioner lived with her six children. Therefore, Petitioner has a group size of seven. BEM 205 (October 2017), pp. 1-2. The income limit at entry for a group size of seven is \$4,024. RFT 270, p. 1. The Department testified that it determined Petitioner's household income exceeded the limit. Thus, the Department denied the application.

When determining Petitioner's household income, the Department included income from [REDACTED] despite [REDACTED] not having lived in the home at any time during the relevant time period. However, because [REDACTED] was not living with Petitioner, that was erroneous and resulted in the inflation of Petitioner's household income, which compels the reversal of the Department's determination.

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 denied Petitioner's CDC benefits application for having excess income.

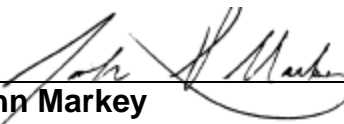
**DECISION AND ORDER**

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. Reprocess Petitioner's application for FAP, MA, and CDC benefits;
2. When determining Petitioner's household eligibility, do not include [REDACTED] in the household unless there is a change in circumstances that involve [REDACTED] moving back in with Petitioner;
3. If any eligibility-related factors remain unclear, inconsistent, incomplete, or contradictory, follow Department policy regarding verifications;
4. Determine Petitioner's eligibility for FAP, MA, and CDC benefits from the date of application, ongoing;
5. If Petitioner is eligible for additional benefits, ensure that supplements are issued where appropriate; and
6. Notify Petitioner in writing of its decisions.

JM/cg

  
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**John Markey**  
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-15-Heaings  
M. Holden  
D. Sweeney  
D. Smith  
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L. Brewer-Walraven  
BSC4- Hearing Decisions  
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**Petitioner – Via First-Class Mail:**

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