



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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[REDACTED]
[REDACTED]

Date Mailed: November 14, 2019
MOAHR Docket No.: 19-010893
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 November 6, 2019, from Detroit, Michigan. Petitioner was present and represented himself. The Department of Health and Human Services (Department) was represented by Heather Oleszkowicz, Assistance Payments Worker. Also present was Arabic interpreter, Arjwin Khadoori.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefit case?

Did the Department properly determine Petitioner's Medical Assistance (MA) eligibility?

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 FAP recipient.
2. Petitioner and his wife were ongoing MA recipients under the Healthy Michigan Plan (HMP) program.
3. Petitioner's household consisted of himself, his wife and his three children.
4. Petitioner's son had income from employment (Exhibit A, pp. 3-5).

5. Petitioner had income from employment (Exhibit A, pp. 7-10).
6. On August 5, 2019, the Department sent Petitioner a Notice of Case Action (NOCA) informing him that his FAP benefit case was closing effective September 1, 2019, ongoing (Exhibit A, pp. 16-17).
7. On August 5, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice (HCCDN) informing him that he and his wife were approved for MA benefits subject to a monthly deductible of \$921 effective September 1, 2019, ongoing (Exhibit A, p. 18).
8. On [REDACTED], 2019, Petitioner submitted a request for hearing disputing the Department's actions.

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).

FAP

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.

In this case, Petitioner was an ongoing FAP recipient. On August 5, 2019, Petitioner submitted a Wage Match Client Notice verifying his son's income. The Department testified that Petitioner's son was a mandatory group member, as he was residing with his parents and was under 22 years of age. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212 (July 2019), p. 1. Additionally, if a FAP group member is older than 18 and is not a full-time high school student, their income is countable. BEM 501 (July 2019), p. 1. The Department included the income in Petitioner's FAP budget. As a result, Petitioner exceeded the net income limit. A non-categorically eligible FAP group must have income below the net income limits. BEM 550 (January 2017), p.1. Net income limitations are based on group size and are set forth in RFT 250. The Department presented a net income budget to establish Petitioner's group exceeded the net income limit (Exhibit A, pp. 14-15).

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits and group composition policies

specify whose income is countable. BEM 500 (July 2017), pp. 1–5. The Department determines a client’s eligibility for program benefits based on the client’s actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (October 2017), pp. 1-2. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, pp. 5-6. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 7-8. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. BEM 505, pp. 7-9. Income received weekly is multiplied by a 4.3 multiplier. BEM 505, pp. 7-9. Income received twice per month is added together. BEM 505, pp. 7-9. An employee’s wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (July 2016), pp. 6-7.

Per the budget provided, the Department included \$4,028 in earned income in the FAP budget. The Department presented Petitioner’s Employment Budget Summary showing his income was calculated to be \$2,475. The Department presented pay statements showing Petitioner was paid \$490 in gross earnings on May 16, 2019; May 23, 2019; and May 30, 2019, as well as \$833 in gross earnings on June 6, 2019. Petitioner was paid weekly. When adding averaging the payment amounts and multiplying by the 4.3 multiplier, it equals a standard monthly income of \$2,475. Therefore, the Department properly calculated Petitioner’s earned income.

The remaining earned income of \$1,553 included in the budget was attributable to Petitioner’s son. The Department presented Petitioner’s son’s Wage Match Client Notice. The Department testified that it used the pay dates of July 12, 2019, in the gross amount of \$192; July 19, 2019, in the gross amount of \$366; July 26, 2019, in the gross amount of \$102; and August 2, 2019, in the gross amount of \$462. Petitioner’s son was paid weekly. When averaging the payments and multiplying by the 4.3 multiplier it results in a standard monthly income of \$1,122. Petitioner’s son was also paid on July 3, 2019, in the gross amount of \$534. When averaging the income from July 3, 2019; July 12, 2019; July 14, 2019; and July 26, 2019 and multiplying by the 4.3 multiplier, it results in a standard monthly income of \$1,283.55. It is unclear as to how the Department obtained the \$1,553 figure. Therefore, the Department failed to establish that it properly calculated Petitioner’s son’s earned income. As it follows, the Department failed to establish that it properly closed Petitioner’s FAP benefit case.

MA

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, Petitioner and his wife were ongoing MA recipients under the full-coverage HMP program. The Department included Petitioner's son's income in Petitioner's and Petitioner's wife's MA budget. The Department sent Petitioner a HCCDN informing him that he and his wife were eligible for MA benefits subject to a deductible.

The Department concluded that Petitioner and his wife were not eligible for HMP because their household income exceeded the applicable income limit for their group size. HMP uses a Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (October 2016), p. 1. An individual is eligible for HMP if their household's income does not exceed 133% of the Federal Poverty Level (FPL) applicable to the individual's group size. BEM 137, p. 1. Additionally, for MAGI-related MA programs, the Department allows a 5 percent disregard in the amount equal to five percent of the FPL level for the applicable family size. BEM 500 (July 2017), p. 5. It is not a flat 5 percent disregard from the income. BEM 500, p. 5. The 5 percent disregard is applied to the highest income threshold. BEM 500, p. 5. The 5 percent disregard shall be applied only if required to make someone eligible for MA benefits. BEM 500, p. 5.

An individual's group size for MAGI-related purposes requires consideration of the client's tax filing status. In this case, Petitioner filed taxes jointly with his wife and they claimed their three children. Therefore, for HMP purposes, they each have a household size of five. BEM 211 (January 2016), pp. 1-2.

138% of the annual FPL in 2019 for a household with five members is \$41,634.60. See <https://aspe.hhs.gov/poverty-guidelines>. The monthly income limit for a group size of three is \$3,469.55. Therefore, to be income eligible for HMP, Petitioner's and Petitioner's wife's income cannot exceed \$41,634.60 annually or \$3,469.55 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.

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 currently monthly income and family size. See:

https://www.michigan.gov/documents/mdhhs/MAGI-Based_Income_Methodologies_SPA_17-0100_-_Submission_615009_7.pdf

The Department testified that it included Petitioner's and Petitioner's son's income when determining Petitioner's and Petitioner's wife's income eligibility under the HMP program. Generally, MAGI based income includes the sum of the MAGI-based income of every individual in the individual's household. 42 CFR 435.603(d)(1). However, the MAGI-based income of an individual who is included in the household of their natural parent, and is not expected to be required to file a tax return for the taxable year in which eligibility for Medicaid is being determined, is not included in household income whether or not the individual files a tax return. 42 CFR 435.603(d)(2)(i). The tax filing threshold for 2018 for a single individual under 65 was \$12,000. See: <https://www.irs.gov/pub/irs-pdf/p501.pdf>.

Petitioner testified that his son did not work the entirety of 2019. Per the Wage Match Client Notice, Petitioner's son began working on May 28, 2019. It is evident from the income information that Petitioner's son's income fluctuates. Between May 31, 2019 and August 2, 2019, which is roughly a three-month period, Petitioner's son earned \$3,462. Petitioner's son's average income per month during that time period was \$1,154. Petitioner's son's income annualized over the remainder of 2019 is \$8,078. Petitioner's son's income is well below the tax filing threshold. Therefore, Petitioner's son's income should not have been included in Petitioner's and Petitioner's wife's household income under the HMP program.

DECISION AND ORDER

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 Petitioner's FAP benefit case. The Department did not act in accordance with policy when it determined Petitioner's and Petitioner's wife's MA eligibility.

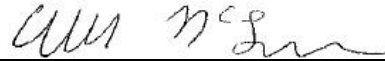
Accordingly, the Department's decisions are **REVERSED**.

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. Redetermine Petitioner's FAP eligibility as of September 1, 2019, ongoing;
2. If Petitioner is eligible for FAP benefits, issue supplements he is entitled to receive;

3. Redetermine Petitioner's and Petitioner's wife's MA eligibility as of September 1, 2019, ongoing;
4. Provide Petitioner and his wife MA coverage they are entitled to receive; and
5. Notify Petitioner of its MA and FAP decisions in writing.

EM/cg



Ellen McLemore

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-Oakland-2-Hearings
M. Holden
D. Sweeney
D. Smith
EQAD
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

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