



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: January 28, 2020
MOAHR Docket No.: 19-013221
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 January 22, 2020 from Detroit, Michigan. The Petitioner appeared for the hearing and was represented by her ex-husband, [REDACTED]. She also had a friend, [REDACTED], attend the hearing to assist in translations if necessary. The Department of Health and Human Services (Department) was represented by Eileen Kott, Family Independence Manager, and Denise Newsom, Eligibility Specialist.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits due to income over the income limit?

Did the Department properly close Petitioner's Medical Assistance (MA) Program benefits due to being over the 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. Petitioner is not married.
2. Petitioner has a dependent child who is in college full time living in a dormitory.
3. Petitioner is age [REDACTED].
4. Effective October 1, 2019, Petitioner's FAP benefits were closed due to excess income.

5. Petitioner is employed with [REDACTED] (Employer 1) on a part-time basis.
6. On November 22, 2019, the Department received updated pay information for Petitioner's employment with [REDACTED] (Employer 2) where she works as a substitute teacher with traditional school breaks for scheduling purposes.
7. On the same day, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner informing her that her MA benefits were ending effective January 1, 2020 because she was not under age 21 or over age 64, not pregnant, not a parent or caretaker of a minor child, not in foster care at age 18, is not disabled, is not blind, and has excess income for the Healthy Michigan Plan (HMP).
8. On December 10, 2019, the Department received Petitioner's request for hearing disputing the closure of her MA and FAP benefits based upon her income.
9. The Department did not provide a Notice of Case Action regarding the closure of Petitioner's FAP benefits; it is assumed Petitioner submitted a timely hearing request because no objection was raised by the Department as to timeliness yet evidence was presented regarding Petitioner's eligibility for the period.

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).

Food Assistance Program (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's FAP benefits were closed based upon excess income effective October 1, 2019 and then later approved for \$16.00 effective January 1, 2020 when additional income information was received by the Department.

The first issue to address is Petitioner's group size. Prior to October 1, 2019, the Department had been including Petitioner's son as a group member. However, the Department believes that son's inclusion in the group was in error and effective October 1, 2019, he was removed because he was an ineligible student. Policy provides that a person who is in student status and does not meet the criteria set in BEM 245 is considered a non-group member. BEM 212 (July 2019), p. 9. A person is

considered to be in student status if they are between the ages of 18 and 49, enrolled at least half-time or more in a regular curriculum at a college or university offering degree programs regardless of whether a diploma is required. BEM 245 (January 2018), pp. 3-4. A person remains in student status while attending classes regularly and during official school vacations or periods of extended illness. BEM 245, p. 5. The status ends when the student is suspended or does not intend to register for the next school term excluding the summer term. *Id.* To be eligible for FAP, the person in student status must also meet one of the following criteria:

- A recipient of Family Independence Program (FIP) benefits
- Enrolled in an institution of higher education as a result of participation in:
 - A Job Training Partnership Act program
 - A program under section 236 of the Trade Readjustment Act of 1974
 - Another state or local government employment and training program
- Physically or mentally unfit for employment
- Employed for at least an average of 20 hours per week and paid for the employment
- Self-employment for at least an average of 20 hours per week earning an average weekly income equivalent to the federal minimum wage multiplied by 20 hours
- Participating in on the job training program
- Participating in a state or federally funded work study program

BEM 245, pp. 4-5.

Since Petitioner's son is enrolled full time and there was no evidence that he met any of the criteria to be considered part of the FAP group, Petitioner's FAP group is properly considered to be one, which includes herself and excludes her son.

The gross income limit for a group size of one is \$2,082.00 based upon categorical eligibility being conferred to all applicants due to the enhanced authorization for Domestic Violence Prevention Services (DVPS). BEM 213 (January 2019), pp. 1-2; RFT 250 (October 2019), p. 1. The Net Income Limit for a group size of one is \$1,041.00. BEM 550 (January 2017), p. 1; RFT 250, p. 1.

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), p. 1. 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. 5-7. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. To determine a standardized income, income received on a weekly basis

is multiplied by 4.3, income received every two weeks is multiplied by 2.15, and income received twice per month is added together. BEM 505, p. 8.

Petitioner had the following gross wages from Employer 1 which should have been considered by the Department in determining her eligibility:

August 2, 2019	\$51.60
August 9, 2019	\$41.16
August 16, 2019	\$36.00
August 23, 2019	\$120.84
August 30, 2019	\$72.96

A review of Petitioner's wage history from June through August shows that her wages varied from week to week, but each of the wages from August appears consistent with her wage history as she had wages in June and July 2019 ranging from \$29.16 to \$221.16. Therefore, Petitioner's wages from August are averaged and multiplied by 4.3 as she receives a weekly wage for a standardized monthly income from Employer 1 of \$277.40.

Petitioner had the following reported gross wages from Employer 2:

January 11, 2019	\$170.00
January 25, 2019	\$467.50
February 8, 2019	\$382.50
February 22, 2019	\$382.50
March 8, 2019	\$499.50
March 22, 2019	\$765.00
April 5, 2019	\$765.00
April 19, 2019	\$337.50
May 3, 2019	\$737.50
May 17, 2019	\$748.50
May 31, 2019	\$1,110.00
June 14, 2019	\$999.00

After Petitioner's June 14, 2019 paycheck, Petitioner began the summer vacation for school as she is a substitute teacher and did not receive any additional wages from Employer 2 until October 4, 2019. Since the Department evaluated Petitioner's eligibility for October 1, 2019, any wages from October 2019 would not yet have been received or available to the Department and, therefore, are not considered here. In addition, policy provides that the last 30 days of income prior to the determination of benefits should be used in the calculations. BEM 505, pp. 5-7. Since Petitioner had no income from Employer 2 in July, August, or September 2019, the Department should not have budgeted any income from Employer 2 in determining her eligibility for October 2019.

Therefore, given that Petitioner's standardized gross income total was \$277.40, she is well below both the gross and net income limits set by policy for a group size of one. The Department erred in closing Petitioner's FAP case effective October 1, 2019.

Medical Assistance (MA) Program

The 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.

With respect to Petitioner's MA benefits, Petitioner disputes the closure of her MA HMP benefits due to excess countable income. 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. BEM 105 (January 2020), p. 1. HMP 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 2020), p. 1; Modified Adjusted Gross Income (MAGI) Related Eligibility Manual, § 1.2.

Since Petitioner is not under 21 or over 64, nor is she pregnant, blind, or disabled, Petitioner does not qualify for any of programs listed above involving these eligibility factors. If Petitioner is eligible for benefits, she may qualify for MA under HMP as she meets all non-financial eligibility factors.

HMP requires a determination of group size under the MAGI methodology with consideration of the client's tax status and dependents. BEM 211 (July 2019), p. 1. The household for a tax filer, who is not claimed as a tax dependent includes the individual, their spouse, and tax dependents. *Id.* Therefore, Petitioner's MA group size is two as Petitioner is not married and claims her son as a dependent. 133% of the FPL for a group size of two is \$22,490.30 as of January 11, 2019 and \$22,929.20 as of January 15, 2020. U.S. Department of Health and Human Services Office of the Assistance Secretary for Planning and Evaluation, *2019 Poverty Guidelines* <<https://aspe.hhs.gov/2019-poverty-guidelines>> (accessed January 24, 2020); U.S. Department of Health and Human Services Office of the Assistance Secretary for Planning and Evaluation, *HHS Poverty Guidelines for 2020* <<https://aspe.hhs.gov/poverty-guidelines>> (accessed January 24, 2020). Therefore, to be income eligible for HMP as of January 1, 2020, Petitioner's annual income cannot exceed \$22,490.30 for a group size of two or \$1,874.19 per month.

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), p. 3. 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, the Department bases financial eligibility on current monthly household income. Centers for Medicare & Medicaid Services, *State Plan Amendment 17-0100 Approval Notice*, (March 19, 2018), p. 7. MAGI is calculated by reviewing the client's adjusted gross income (AGI) and adding it to any tax-exempt foreign income, tax-exempt Social Security benefits, and tax-exempt interest. HealthCare.gov, *Modified Adjusted Gross Income (MAGI)* < <https://www.healthcare.gov/glossary/modified-adjusted-gross-income-magi/>> (accessed January 24, 2020). AGI is found on IRS Tax Form 1040 at line 7, Form 1040 EZ at line 4, and Form 1040A at line 21. HealthCare.gov, *Adjusted Gross Income (AGI)* < <https://www.healthcare.gov/glossary/adjusted-gross-income-agi/>> (accessed January 24, 2020). 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, child care, or retirement savings. HealthCare.gov, *Modified Adjusted Gross Income (MAGI)* < <https://www.healthcare.gov/income-and-household-information/how-to-report/>> (accessed January 24, 2020). 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. *Id.*

Since the Department reevaluated Petitioner's HMP eligibility effective November 22, 2020 with updated figures, the income relied upon for HMP purposes should have been different than that relied upon for FAP eligibility effective October 1, 2020. Petitioner had the following reported wages from Employer 1 for purposes of HMP:

June 14, 2019	\$29.16
June 21, 2019	\$96.00
June 28, 2019	\$114.00
July 5, 2019	\$53.64
July 12, 2019	\$221.16
July 19, 2019	\$125.04
July 26, 2019	\$102.84
August 2, 2019	\$51.60
August 9, 2019	\$41.16
August 16, 2019	\$36.00
August 23, 2019	\$120.84
August 30, 2019	\$72.96
September 6, 2019	\$30.60
September 13, 2019	\$232.43

October 11, 2019	\$26.16

HMP eligibility is determined based upon a current month's income. However, as noted previously, when income is difficult to predict, past experiences, trends, and other related information should be considered. With respect to Employer 1, the Department was aware the Petitioner was a part-time employee with variable hours. The Department also had a wage history from June 2019 through October 2019 at the time of its decision. There was no indication that there was a change in Petitioner's employment with Employer 1. In addition, the Work Number Report relied upon by the Department reflected a Year-To-Date (YTD) income of \$3,342.18. No evidence was presented by either party of any health insurance premiums, retirement account contributions, or child care expenses. Therefore, to accurately reflect Petitioner's income, the Department could have taken several different approaches due to the variability of Petitioner's income. First, the Department could have added each month's income and then averaged the monthly income to determine a monthly amount. This calculation would result in an average monthly income of \$293.51. The Department also could have taken the YTD income and divided by the number of months where wages were earned resulting in a monthly income of \$668.43. The Department also could have looked at the most recent month with a full month's worth of wages (August 2019) and added them together to achieve a monthly income of \$332.56. Ultimately, the Department has no explanation for how the income was calculated other than to say they typed Petitioner's wages into the Bridges computer software which calculated her eligibility. Any of the methods discussed above would seem appropriate given the significant variability of Petitioner's income.

For Employer 2, Petitioner had reported the following gross wages:

January 11, 2019	\$170.00
January 25, 2019	\$467.50
February 8, 2019	\$382.50
February 22, 2019	\$382.50
March 8, 2019	\$499.50
March 22, 2019	\$765.00
April 5, 2019	\$765.00
April 19, 2019	\$337.50
May 3, 2019	\$737.50
May 17, 2019	\$748.50
May 31, 2019	\$1,110.00
June 14, 2019	\$999.00

October 4, 2019	\$212.50
October 18, 2019	\$765.99
November 1, 2019	\$880.00

In addition, Petitioner's YTD wages were \$9,222.00 and no evidence was presented of health care coverage, retirement contributions, or childcare expenses. Again, the

Department was aware of the variability of Petitioner's income because she is a substitute teacher. In addition, the Department had Petitioner's full wage history from January 2019 through November 4, 2019. Once again, the Department has no explanation for how Petitioner's income was actually calculated other than to say her wages were put into the computer system. Using the same methodologies discussed above due to the variability of her income, Petitioner's potential monthly wages are as follows: \$1,152.87, \$838.45, \$978.49 (most recent full month's wages October 2019).

Adding up the corresponding incomes, Petitioner's total monthly income would be as follows for each methodology: \$1,446.38, \$1,506.88, or \$1,311.05. If necessary, Petitioner's YTD income from both employers can be added together to determine that she has an annual income of \$12,564.18. Under any of the above calculations, Petitioner's monthly and annual income are well below the income limit for a group size of two.

The Department calculated Petitioner's Annual Income as \$28,716.00, but is unable to explain how it was calculated other than to say that they entered the numbers in Bridges. Given the thorough review of Petitioner's wages as discussed above as well as the applicable policies, laws, guidelines, and other resources, the Department has not met its burden of proof that Petitioner was over the income limit for HMP.

It should also be noted an exception exists to the income limit rule. If an individual has group income which is close enough to the FPL, a disregard can be applied. The disregard is 5% of the FPL making the annual income limit \$23,335.80 or \$1,944.65 monthly. Given that Petitioner's income was already well below the HMP income limit using multiple methodologies, the 5% disregard only adds to the probability that Petitioner is eligible for HMP benefits.

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 FAP case for being over the income limit and failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's MA HMP case for being over the income limit.

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. Redetermine Petitioner's FAP eligibility effective October 1, 2019;
2. If otherwise eligible, issue supplements to Petitioner for FAP benefits not previously received effective October 1, 2019;
3. Redetermine Petitioner's MA HMP eligibility effective January 1, 2020;
4. If otherwise eligible, issue supplements to Petitioner or on her behalf for benefits not previously received effective January 1, 2020;
5. Notify Petitioner in writing of its decisions.

AMTM/jaf



Amanda M. T. Marler
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
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Petitioner

