



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]  
[REDACTED]

Date Mailed: May 21, 2020  
MOAHR Docket No.: 20-001463  
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 May 13, 2020, from Detroit, Michigan. Petitioner was present and represented himself. The Department of Health and Human Services (Department) was represented by Judy Woodson, Eligibility Specialist and Edna Vasquez, Family Independence Manager.

### **ISSUES**

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefit eligibility?

Did the Department properly close Petitioner's Medical Assistance (MA) benefit case?

### **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 benefit recipient and an ongoing MA benefit recipient under the Healthy Michigan Plan (HMP) program.
2. On December 23, 2020, Petitioner completed a semi-annual related to his FAP benefit case (Exhibit A, pp. 1-3).
3. Petitioner's household consisted solely of himself.

4. Petitioner had income from employment from two different employers (Exhibit A, pp. 4-12).
5. On January 31, 2020, the Department sent Petitioner a Notice of Case Action informing him that he was approved for FAP benefits in the monthly amount of \$█ effective February 1, 2020, ongoing (Exhibit A, pp. 13-17).
6. On January 31, 2020, the Department sent Petitioner a Health Care Coverage Determination Notice (HCCDN) informing him that his MA benefit case was closing effective March 1, 2020, ongoing (Exhibit A, pp.
7. On █, 2020, Petitioner submitted a request for hearing disputing the Department's actions related to his MA and FAP benefit cases.

### **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.

Petitioner was an ongoing FAP recipient. On December 23, 2019, Petitioner completed a semi-annual review. As a result, the Department redetermined Petitioner's FAP eligibility. The Department determined Petitioner was entitled to FAP benefits in the amount of \$█ per month. The Department presented a FAP budget to establish the calculation of Petitioner's FAP benefit amount (Exhibit A, pp. 22-23).

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 (January 2020), pp. 6-7.

Per the budget provided, the Department included \$[REDACTED] in earned income. The Department presented the pay statements submitted by Petitioner with his semi-annual from his employment with [REDACTED] (Exhibit A, pp. 4-9). Petitioner was paid on November 1, 2019, in the gross amount of \$[REDACTED]; on November 15, 2019, in the gross amount of \$[REDACTED] and on November 29, 2019, in the gross amount of \$[REDACTED]. Petitioner was paid biweekly. When averaging the payments and multiplying by the 2.15 multiplier, it results in a standard monthly income of \$[REDACTED].

The Department also presented the Work Number report from Petitioner's employment at [REDACTED] (Exhibit A, pp. 10-12). The Department stated that for February 2019's FAP budget, it used Petitioner's income from December 20, 2019, in the gross amount of \$[REDACTED] and from January 3, 2020, in the gross amount of \$[REDACTED]. Petitioner was paid biweekly. When averaging the payments and multiplying by the 2.15 multiplier, it results in a standard monthly income of \$[REDACTED]. Petitioner's combined income from [REDACTED] and [REDACTED] results in a total household income amount of \$[REDACTED]. Therefore, the Department properly determined Petitioner's household income.

The deductions to income on the net income budget were also reviewed. There was no evidence presented that Petitioner's group includes a senior/disabled/veteran (SDV) household member. BEM 550 (January 2017), pp. 1-2. Thus, the group is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (January 2020), p. 1; BEM 556 (January 2020), p. 3.

The Department will reduce the gross countable earned income by 20 percent and is known as the earned income deduction. BEM 550 (January 2017), p.1. The Department correctly determined Petitioner is entitled to an earned income deduction of \$380. Petitioner's FAP benefit group size of one justifies a standard deduction of \$161. RFT 255 (October 2018), p. 1. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support expenses. Therefore, the budget properly excluded any deduction for dependent care or child support expenses.

When calculating the excess shelter deduction, the Department did not provide Petitioner with a housing expense. Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. BEM 554, p. 13. The expense must be a continuing one. BEM 554, p. 13. The Department will verify shelter expenses at application and when a change is reported. BEM 554, p. 14. If the client fails to verify a reported change in shelter, the Department will remove the old expense until the new expense is verified. BEM 554, p. 14. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130 (April 2017), p. 3. For FAP cases, the Department allows the client 10 calendar days to provide the verification that is required. BAM 130, p. 7.

The Department testified that Petitioner was not previously budgeted a housing expense. Petitioner reported an increase in his rent on June 17, 2019. The Department testified a Verification Checklist was sent to Petitioner on July 8, 2019. The Department stated that Petitioner did not return any verification of his rental expense. As a result, a housing expense was not included in Petitioner's FAP budget. When Petitioner completed the semi-annual on December 23, 2019, he indicated that he did not have a change in his housing expense. As such, the Department continued to calculate Petitioner's FAP budget without a housing expense.

Petitioner testified at the hearing that he submitted verification of his housing expense in 2019. Petitioner stated he was not aware the Department was not budgeting his housing expense until he attended his prehearing conference on February 12, 2020. Petitioner submitted verification of his housing expense on February 20, 2020.

The present issue is whether the Department correctly followed policy when determining Petitioner's FAP benefit amount effective February 1, 2020, ongoing. Petitioner indicated in his December 23, 2019 semi-annual that he did not have a change in his housing expense. Although Petitioner may not have been aware that the Department was not budgeting a housing expense, the responsibility lies with the client to report the correct information to the Department. Based on the information provided by Petitioner on the semi-annual, the Department properly followed policy when it did not include a housing expense in Petitioner's FAP budget. Additionally, Petitioner's current verification of his housing expense was submitted on February 20, 2020, subsequent to the issuance of the January 31, 2020 Notice of Case Action.

In calculating the excess shelter deduction of \$0, the Department stated that it considered Petitioner's verified utility expenses, which entitled him to the heat/utility standard of \$518. BEM 554, pp. 14-15. The Department testified when calculating Petitioner's excess shelter amount, they added the total shelter amount and subtracted 50% of the adjusted gross income, which resulted in a deficit. Therefore, the Department correctly determined Petitioner was not entitled to an excess shelter deduction.

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. After subtracting the allowable deductions, the Department properly determined Petitioner's adjusted gross income to be \$[REDACTED]. As Petitioner was not entitled to an excess shelter deduction, his net income is also \$[REDACTED]. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance based on the net income and group size. Based on Petitioner's net income and group size, Petitioner's FAP benefit issuance is \$[REDACTED]. Therefore, the Department properly calculated Petitioner's FAP benefit amount.

## 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 was an ongoing MA recipient under the HMP program. On December 23, 2019, Petitioner completed a semi-annual related to his FAP benefit case. The Department discovered Petitioner had income from employment from two separate employers. The Department had only been previously budgeting the income from one employer. As a result, the Department redetermined Petitioner's MA eligibility. The Department determined that Petitioner was not eligible for MA benefits and closed his MA benefit case.

The Department concluded that Petitioner was not eligible for HMP because his income exceeded the applicable income limit for his group size. HMP uses a Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (October 2016), p. 1. An individual is eligible for HMP if his 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 and did not claim any dependents. Therefore, for HMP purposes, he has a household size of one. BEM 211 (January 2016), pp. 1-2.

138% of the annual FPL in 2019 for a household with one member is \$17,236.20. See <https://aspe.hhs.gov/poverty-guidelines>. The monthly income limit for a group size of

one is \$1,436.35. Therefore, to be income eligible for HMP, Petitioner's income cannot exceed \$17,236.20 annually or \$1,436.35 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](https://www.michigan.gov/documents/mdhhs/MAGI-Based_Income_Methodologies_SPA_17-0100_-_Submission_615009_7.pdf)

The Department presented the pay statements submitted by Petitioner with his semi-annual from his employment with [REDACTED] (Exhibit A, pp. 4-9). Petitioner was paid on November 1, 2019, in the gross amount of \$[REDACTED]; on November 15, 2019, in the gross amount of \$[REDACTED] and on November 29, 2019, in the gross amount of \$[REDACTED]. Petitioner had pretax withholdings for retirement savings in the amount of \$5.81 on November 1, 2019 and November 15, 2019, and \$7.11 on November 29, 2019. Therefore, Petitioner's MAGI income on November 1, 2019 and November 15, 2019 was \$[REDACTED] and \$[REDACTED] on November 29, 2019. Petitioner's total MAGI income from his employment at [REDACTED] in November 2019 was \$[REDACTED].

The Department presented the Work Number report for Petitioner's employment at [REDACTED] (Exhibit A, pp. 10-12). As the semi-annual review was completed in December 2019, the Department would utilize Petitioner's income in November 2019 to determine his eligibility. Petitioner was paid on November 8, 2019, in the gross amount of \$[REDACTED] and on November 22, 2019, in the gross amount of \$[REDACTED]. Petitioner testified he did not have any pretax withholdings for retirement savings or health insurance. Therefore, Petitioner's MAGI income from [REDACTED] in November 2019 was \$[REDACTED].

Petitioner's total household income was \$[REDACTED]. Petitioner's income well exceeds the income limit for his group size under the HMP program. At the hearing, Petitioner argued that his income was higher in November and December 2019 due to the

Thanksgiving and Christmas holidays. However, as stated above, the Department is to use current monthly income to determine eligibility for ongoing MA recipients under the HMP program. Thus, the Department acted in accordance with policy when it closed Petitioner's MA benefit case.

**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 acted in accordance with Department policy when it determined Petitioner's FAP eligibility and closed Petitioner's MA benefit case. Accordingly, the Department's decisions are **AFFIRMED**.

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**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-Berrien-Hearings  
M. Holden  
D. Sweeney  
D. Smith  
EQAD  
BSC3- Hearing Decisions

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

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