



GRETCHEN WHITMER  
GOVERNOR

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

MARLON I. BROWN, DPA  
ACTING DIRECTOR

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Date Mailed: November 17, 2023  
MOAHR Docket No.: 23-006366  
Agency No.: ██████████  
Petitioner: ██████ ██████

**ADMINISTRATIVE LAW JUDGE: Colleen Lack**

**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 9, 2023, from Lansing, Michigan. ██████ ██████ the Petitioner, appeared on his own behalf. The Department of Health and Human Services (Department) was represented by Susan Derseweh, Hearing Facilitator.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-35.

**ISSUES**

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

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

**FINDINGS OF FACT**

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

1. On August ██████ 2023, Petitioner submitted a telephone Redetermination for MA. Petitioner reported income from employment with ██████ averaging 40.5 hours per week, \$█████ weekly. (Exhibit A, pp. 6-10)

2. On September █ 2023, Petitioner submitted a Redetermination for FAP and MA. Petitioner reported income from employment with █ averaging 40.5 hours per week, \$█ weekly. (Exhibit A, pp. 11-18)
3. On September █ 2023, a Health Care Coverage Determination Notice was issued to Petitioner stating MA was denied effective October 1, 2023 due to income in excess of program limits. (Exhibit A, pp. 19-22)
4. On September █ 2023, a Notice of Case Action was issued to Petitioner stating FAP was approved with a monthly benefit amount of \$█ effective October 1, 2023. (Exhibit A, pp. 23-29)
5. On September 29, 2023, Petitioner filed a hearing request contesting the Department's determinations. (Exhibit A, pp. 3-4)

### **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 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.

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.

#### **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 calculating the FAP budget, the Department considers income from employment. The Department counts the gross wages. BEM 501, July 1, 2022, pp. 6-7. The Department utilizes past income to prospect income for the future unless changes are expected. The Department is to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505, October 1, 2022, p. 6.

For FAP, a shelter expense is allowed when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554, (April 1, 2023), p. 13. Shelter expenses include property taxes and insurance. BEM 554 p. 15. The heat/utility (h/u) standard covers all heat and utility costs including cooling, except actual utility expenses, for example, installation fees etc. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. FAP groups whose heat is included in their rent may still qualify for the h/u standard. Some additional ways include but are not limited to, receipt of the Home Heating Credit (HHC) or a Low Income Home Energy Assistance Payment (LIHEAP). The amount of either payment must be greater than \$20 in the month of application or in the immediately preceding 12 months prior to the application month. BEM 554, p. 16. FAP groups who pay for cooling (including room air conditioners) are eligible for the h/u standard if, they have the responsibility to pay for non-heat electric. BEM 554 p. 18. FAP groups not eligible for the h/u standard who have other utility expenses or contribute to the cost of other utility expenses are eligible for the individual utility standards. Use the individual standard for each utility the FAP group has responsibility to pay. BEM 554 p. 22.

The Department re-determined Petitioner's eligibility for FAP as of October 2023. The Department considered Petitioner's income from employment, the standard deduction, Petitioner's housing expense, the full h/u standard, and a non-heat electric standard. On September 26, 2023, a Notice of Case Action was issued to Petitioner stating FAP was approved with a monthly benefit amount of \$[REDACTED] effective October 1, 2023. (Exhibit A, pp. 23-29). The Department indicated there was no change to the monthly FAP benefit amount. (Exhibit A, p. 1)

Petitioner described his bills and expenses. Petitioner is finding it very difficult to make ends meet. (Exhibit A, pp. 3-4; Petitioner Testimony). The Department considered Petitioner's rent and utilized the required standard for utility expenses. It appears the Department erroneously utilized both the full heat and utility standard as well as a non-electric heat standard in the FAP budget. (Exhibit A, p. 24) However, this error would be in Petitioner's favor. The applicable policy does not allow for consideration of the other types of expenses Petitioner listed in the FAP budget, such as expenses for a storage unit, credit card, car insurance, bank loan, second car, and gas. Overall, the evidence establishes that the Department properly determined ongoing FAP eligibility for Petitioner based upon the information available.

## **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.

The Medicaid program comprise several sub-programs or categories. In general, the terms Group 1 and Group 2 relate to financial eligibility factors. For Group 1, net income (countable income minus allowable income deductions) must be at or below a certain income limit for eligibility to exist. The income limit, which varies by category, is for nonmedical needs such as food and shelter. Medical expenses are not used when determining eligibility for MAGI-related and SSI-related Group 1 categories. For Group 2, eligibility is possible even when net income exceeds the income limit. This is because incurred medical expenses are used when determining eligibility for Group 2 categories. Group 2 categories are considered a limited benefit as a deductible is possible. BEM 105, January 1, 2021, p. 1.

Petitioner was only potentially eligible for the Healthy Michigan Plan (MA-HMP) program. For example, based on the information reported on the Redeterminations, Petitioner was not under age 19, aged, blind, disabled, pregnant, or a parent or caretaker relative a dependent child. (Exhibit A, pp. 6-18)

MA-HMP is based on Modified Adjusted Gross Income (MAGI) methodology. The MA-HMP provides health care coverage for individuals who: are 19-64 years of age; do not qualify for or are not enrolled in Medicare; do not qualify for or are not enrolled in other Medicaid programs; are not pregnant at the time of application; meet Michigan residency requirements; meet Medicaid citizenship requirements; and have income at or below 133 percent Federal Poverty Level (FPL). BEM 137, June 1, 2020, p. 1.

Medicaid eligibility is determined on a calendar month basis. Unless policy specifies otherwise, circumstances that existed, or are expected to exist, during the calendar month being tested are used to determine eligibility for that month. When determining eligibility for a future month, assume circumstances as of the processing date will continue unchanged unless you have information that indicates otherwise. BEM 105, January 1, 2021, p. 2. This is consistent with 42 CFR § 435.603(h), which states that financial eligibility for Medicaid for applicants must be based on current monthly household income and family size.

The 2023 FPL for the 48 contiguous states and the District of Columbia for a group size of one is an annual income of \$14,580.00. Accordingly, 133% of FPL is \$19,391.40 for a group size of one.

In this case, Petitioner reported income from employment with [REDACTED] averaging 40.5 hours per week, \$[REDACTED] weekly on the Redeterminations. (Exhibit A, pp. 6-18). The Department determined that this would be an annual income of \$[REDACTED] (Exhibit A, p. 20). Petitioner did not dispute his income. Rather, Petitioner noted his other expenses.

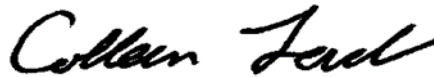
(Exhibit A, pp. 304; Petitioner Testimony). However, the applicable policy does not allow for consideration of expenses when determining eligibility for MA-HMP.

The Department properly determined Petitioner's eligibility for MA based on his current income. Accordingly, the denial MA must be upheld.

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 eligibility for FAP and MA.

### **DECISION AND ORDER**

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



CL/dm

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**Colleen Lack**  
Administrative Law Judge

**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-Electronic Mail :**

**DHHS**  
Susan Derseweh  
Genesee County DHHS Clio Rd Dist.  
**MDHHS-Genesee-Clio-  
Hearings@michigan.gov**

**HoldenM**

**DensonSogbakaN**

**SchaferM**

**EQADhearings**

**BSC2HearingDecisions**

**MOAHR**

**Via-First Class Mail :**

**Petitioner**

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