



GRETCHEN WHITMER
GOVERNOR

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

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ACTING DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: January 12, 2024
MOAHR Docket No.: 23-008876
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 hearing was held via telephone conference line on January 3, 2024. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Tamia McGlothlin, supervisor, and Ton-yae Bates, specialist.

ISSUES

The first issue is whether MDHHS properly denied Petitioner's application for Food Assistance Program (FAP) benefits.

The second issue is whether MDHHS properly terminated Petitioner's benefit group'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. As of October 2023, Petitioner was an ongoing recipient of MA benefits in a group including her [REDACTED]-year-old son, [REDACTED] (hereinafter, "Son2").
2. On [REDACTED] [REDACTED] 2023, Petitioner applied for FAP benefits and reported a household including Son2 and a [REDACTED]-year-old son (hereinafter, "Son1"). Petitioner also reported ongoing wages from [REDACTED] [REDACTED] [REDACTED] [REDACTED] (hereinafter, "Employer1") and recent loss of employment from [REDACTED] [REDACTED] (hereinafter,

“Employer2”). Petitioner additionally reported that Son1 was self-employed and that Son2 received ongoing wages from [REDACTED] [REDACTED] [REDACTED] (hereinafter, “Employer3”),

3. On October 24, 2023, MDHHS mailed Petitioner a Verification Checklist (VCL) requesting documentary proof by November 3, 2023 of the following: Petitioner’s loss of employment, Son1’s self-employment income, and the last 30 days of wages for Son2.
4. On an unspecified date, Petitioner returned to MDHHS wage documents verifying receipt of gross biweekly income in October 2023 of \$ [REDACTED] and \$ [REDACTED]
5. On October 31, 2023, Petitioner returned to MDHHS phone screenshots listing self-employment income for an individual who was not named in the screenshots. Petitioner additionally returned to MDHHS a biweekly wage document dated October 13, 2023, for Son2.
6. On November 21, 2023, MDHHS denied Petitioner’s FAP application due to Petitioner’s failure to verify Son1’s self-employment income, Son2’s employment income, and Petitioner’s loss of employment with Employer2.
7. On November 27, 2023, MDHHS terminated Petitioner and Son2’s MA benefits beginning January 2024.
8. On November 29, 2023, Petitioner requested a hearing to dispute the denial of FAP benefits and the termination of MA benefits for herself and Son2.

CONCLUSIONS OF LAW

The 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. MDHHS administers the FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. FAP policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing, in part, to dispute a denial of FAP benefits. Exhibit A, p. 3. Petitioner applied for FAP benefits on [REDACTED] [REDACTED] 2023. A Notice of Case Action dated November 21, 2023, stated that Petitioner was denied FAP benefits due to a failure to verify Son1’s self-employment income, Son2’s employment income, and Petitioner’s loss of employment with Employer2. Exhibit A, pp. 4-8.

MDHHS is to verify employment income at application. BEM 501 (July 2022) p. 10.
MDHHS is to verify self-employment income at application. BEM 502 (October 2019) p.

6. Generally, MDHHS is to count gross wages.¹ *Id.*, p. 2. For all programs, MDHHS is to tell the client what verification is required, how to obtain it, and the due date. BAM 130 (July 2021) p. 3. MDHHS is to use the DHS-3503, Verification Checklist (VCL), to request verification. *Id.* MDHHS is to allow the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. *Id.*, p. 7. MDHHS is to send a negative action notice when:

- The client indicates refusal to provide a verification, or
- The time period given has elapsed and the client has not made a reasonable effort to provide it.² *Id.*

Petitioner applied for FAP benefits and reported a recent loss of employment, that Son1 was self-employed, and Son2 received ongoing wages. MDHHS followed up by sending Petitioner a VCL on October 24, 2023. Exhibit A, pp. 15-17. The VCL requested documentary proof by November 3, 2023, of, among other items, Petitioner's loss of employment, Son1's self-employment income, and 30 days of Son2's wages. MDHHS contended that Petitioner's FAP application was properly denied after Petitioner failed to verify all three requests by the application denial date.

Concerning loss of employment, Petitioner did not deny failing to send verification. Petitioner testified she told MDHHS during a pre-hearing conference on December 7, 2023, that she was unable to obtain verification. MDHHS is to assist if the client is unable to obtain verification. BAM 130 (January 2023) p. 4. However, MDHHS cannot be expected to assist until first being told of the need for assistance. Because MDHHS was unaware of the need for assistance until December 7, 2023, MDHHS did not err for the earlier denial of Petitioner's application.

Concerning Son1's self-employment, MDHHS acknowledged that two pages of phone screenshots were sent. Exhibit A, pp. 21-22. However, MDHHS deemed the documents to be unacceptable because neither included Son1's name.

The wages for Son2, MDHHS contends, were also not adequately verified because 30 days of income verification were not received. It was not disputed that MDHHS received Son2's biweekly pay documentation dated October 13, 2023 on October 31, 2023. MDHHS did not receive a second pay document for Son until December 8, 2023: several days after the application denial.

During the hearing, subsequent processing of Petitioner's application was discussed. Subsequent processing allows MDHHS to process a previously denied FAP application if verifications are received before the 60th day following the application (see BAM 115). In the present case, MDHHS acknowledged it received sufficient self-employment wage verification for Son1 in December 2023. Exhibit A, pp. 21-22. MDHHS also stated that

¹ Exceptions to counting gross wages include student earnings, striker benefits, census worker pay, flexible benefits, strikers worker pay, and earned income tax credits.

² Only adequate notice is required for an application denial. BAM 130 (January 2023) p. 8. Adequate notices are effective as of the date of the notice. *Id.*

30 days of wage verification for Son2 was received by November 26, 2023. Exhibit A, pp. 23-24. MDHHS additionally acknowledged that Petitioner reported during a pre-hearing conference on December 7, 2023, that she tried, but was unable to obtain verification of stopped employment; under BAM 130, if a client cannot obtain verification, MDHHS is to assist or use the best available verification. MDHHS acknowledged that Petitioner's submissions and statements would have allowed for subsequent processing. Because Petitioner's verification compliance occurred after her hearing request, there is no administrative jurisdiction in the present case to order a subsequent processing of Petitioner's application. However, the issue is noted to remind MDHHS to consider subsequent processing of Petitioner's application and/or for Petitioner to request a hearing concerning subsequent processing if MDHHS fails to do so.

Petitioner's failure to verify self-employment income for Son1, employment income for Son2 and loss of employment for herself each was a proper basis for application denial. Thus, MDHHS properly denied Petitioner's application for FAP benefits dated [REDACTED] 2023.

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. MDHHS administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MA policies are contained in the BAM, BEM, and RFT.

Petitioner also requested a hearing to dispute a termination of MA benefits. Exhibit A, p. 3. A Health Care Coverage Determination Notice dated November 27, 2023, stated that Petitioner and Son2 were ineligible for MA benefits under various MA categories beginning January 2024. Exhibit A, pp. 9-13 Determining whether MDHHS properly terminated Petitioner's and Son2's MA benefits requires a consideration of all MA categories.

The MA program includes several sub-programs or categories. BEM 105 (January 2021) p. 1. To receive MA under a Supplemental Security Income (SSI)-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* MA eligibility for children under 19, parents or caretakers of children, pregnant or recently pregnant women, former foster children, MOMS, MIChild and Healthy Michigan Plan is based on Modified Adjusted Gross Income (MAGI) methodology. *Id.*

Persons may qualify under more than one MA category. *Id.*, p. 2. Federal law gives them the right to the most beneficial category. *Id.* The most beneficial category is the one that results in eligibility, the least amount of excess income or the lowest cost share. *Id.*

It was not disputed that Petitioner was aged 19-64 years, not pregnant, and not disabled. Under the circumstances, Petitioner is only potentially eligible for the MAGI-related category of HMP.³ The notice dated November 21, 2023, stated that Petitioner and Son2 were ineligible for HMP due to excess income.

MAGI-based income means income calculated using the same financial methodologies used to determine modified adjusted gross income as defined in section 36B(d)(2)(B) of the Code.⁴ 42 CFR 435.603(e). For individuals who have been determined financially-eligible for MA using the MAGI-based methods set forth in this section, a State may elect in its State plan to base financial eligibility either on current monthly household income and family size or income based on projected annual household income and family size for the remainder of the current calendar year. 42 CFR 435.603(h). MDHHS elected to determine HMP eligibility based on current monthly income.⁵

MAGI can be defined as a household's adjusted gross income with any tax-exempt interest income and certain deductions added back.⁶ Common deductions and disregards which should be factored in determining a person's adjusted gross income include alimony payments, unreimbursed business expenses, Health Savings Account (e.g., 401k) payments, and student loan interest.⁷

A MAGI-MA benefit group for a tax filer consists of the tax filer, spouse, and tax dependents. BEM 211 (October 2023) p. 2. MDHHS credibly stated it factored a benefit group of two based on Petitioner reporting she had no tax dependents on a redetermination dated October 4, 2023. MDHHS counted Petitioner as a group member while assuming Petitioner's 18-year-old son was a tax dependent. Petitioner contended she believes that Son1 should also have been a tax dependent. Because Petitioner reported otherwise, MDHHS reasonably did not include Son1 as a benefit group member. The evidence established that Petitioner's HMP benefit group was two persons: Petitioner and Son2.

For all programs, MDHHS generally counts gross wages.⁸ BEM 501 (October 2022) p. 7. It was not disputed that Petitioner submitted wage documents verifying receipt of gross biweekly income of \$ [REDACTED] on October 13, 2021, and \$ [REDACTED] on October 27, 2023. Adding the income results in a total monthly income of \$ [REDACTED]. It was also

³ Petitioner and Son2 previously received MA under the category of Transitional Medical Assistance (TMA). TMA is a proper MA category when a benefit group received MA under Low Income Family (LIF) MA category in the past six months (see BEM 111). There was no evidence that Petitioner or Son2 received MA under LIF benefits in the prior six months.

⁴ Income exceptions are made for lump-sums which are counted as income only in the month received; scholarships, awards, or fellowship grants used for education purposes and not for living expenses; and various exceptions for American Indians and Alaska natives. No known exceptions are applicable to the present case.

⁵ https://www.michigan.gov/documents/mdhhs/SPA_17-0100_Approved_638230_7.pdf

⁶ <https://www.investopedia.com/terms/a/agi.asp>

⁷ *Id.*

⁸ Exceptions to counting gross wages include student earnings, striker benefits, census worker pay, flexible benefits, strikers worker pay, and earned income tax credits.

not disputed that Petitioner submitted to MDHHS biweekly wage documents for Son2 listing gross income of \$ [REDACTED] on October 4, 2023 and \$ [REDACTED] on October 18, 2023. Adding Petitioner's and Son2's income results in a total monthly income of \$ [REDACTED] (dropping cents).

HMP income limits are based on 133% of the federal poverty level (FPL). RFT 246 (April 2014) p. 1. MDHHS applies a 5% income disregard when the disregard is the difference between a client's eligibility and ineligibility. BEM 500 (July 2017) p. 5. The disregard functionally renders the HMP income limit to be 138% of the FPL. The 2023 federal poverty level is \$19,720 for a two-person group.⁹ For Petitioner and Son2 to be eligible for HMP, Petitioner's group's income would have to not exceed \$27,213.60 (\$2,267.80 per month). Petitioner's group's income of \$3,826 exceeds the HMP income limit. As Petitioner was ineligible for any other MA categories, MDHHS properly determined that Petitioner was ineligible for MA benefits.

As an [REDACTED]-year-old, Son2 is also potentially eligible to receive MA benefits under the MICHild. MICHild is a MAGI-related Medicaid Expansion program for children who are under 19 years of age and who are not enrolled in comprehensive health insurance. BAM 130 (July 2019) p. 1. For children between 1 and 19 years of age, the income limit is 161 percent to 212 percent of the FPL. *Id.*

As a MAGI category, the benefit group of 2 and income of \$ [REDACTED] remains unchanged, after a 5% income disregard, for Son2 to be eligible for MICHild, Son2's group's income would have to not exceed 217% of the FPL: \$42,792.40 (\$3,566 per month). The group's income of \$3,826 exceeds the MICHild income limit.

Given the evidence, Petitioner and Son2 had excess income for MA benefits. Thus, MDHHS properly terminated Petitioner's and Son2's MA eligibility beginning January 2024.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's application for FAP benefits dated [REDACTED] [REDACTED] 2023. It is also found that MDHHS properly terminated Petitioner's and Son2's MA benefits beginning January 2024. The actions taken by MDHHS are **AFFIRMED**.

CG/nr



Christian Gardocki
Administrative Law Judge

⁹ <https://aspe.hhs.gov/poverty-guidelines>

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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Via-Electronic Mail :

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Via-First Class Mail :

Petitioner

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