



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: January 26, 2024
MOAHR Docket No.: 23-009362
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Linda Jordan

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 on January 17, 2024, via teleconference. Petitioner appeared and represented herself. Dania Ajami, Eligibility Specialist, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUES

1. Did MDHHS properly determine Petitioner's Food Assistance Program (FAP) benefit rate?
2. Did MDHHS properly determine Petitioner's eligibility for Medicaid (MA) coverage?

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 recipient of FAP benefits on behalf of herself, her husband, [REDACTED] (Husband), and two children.
2. On November 15, 2023, Petitioner submitted a Redetermination for MA to MDHHS (Exhibit A, p. 9).

3. On December 2, 2023, MDHHS sent Petitioner a Notice of Case Action, indicating that she was approved for FAP benefits at a rate of \$ [REDACTED] per month, beginning January 1, 2024 (Exhibit A, p. 7).
4. On December 2, 2023, MDHHS sent Petitioner a Health Care Coverage Determination Notice, indicating that Husband was eligible for Plan First MA, a limited MA coverage category, beginning January 1, 2024 (Exhibit A, p. 6).
5. On December 11, 2023, Petitioner filed a Request for Hearing to dispute MDHHS' determinations regarding FAP benefits and MA coverage (Exhibit A, pp. 3-5).

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)

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, MDHHS determined that Petitioner was eligible for FAP benefits at a rate of \$ [REDACTED] for a group-size of three, beginning January 1, 2024. Petitioner disputed the FAP benefit rate.

MDHHS must determine the FAP group composition in order to verify eligibility for benefits. To determine FAP group composition, MDHHS considers (i) who lives together; (ii) the relationships of the people who live together; (iii) whether the people living together prepare food together; and (iv) whether the person resides in a special living situation which requires the consideration of other factors. BEM 212 (January 2022), p. 1. Living together means sharing a home where family members usually sleep and share any common living quarters, excluding access areas such as an entrance or hallway or a laundry area. *Id.*, p. 3. Spouses who are legally married and who live together must be in the same FAP group. *Id.*, p. 1. Parents and their children under age 22 who live together must be in the same FAP group regardless of whether the children have their own spouse or a child who lives with the group. *Id.*

Here, MDHHS approved Petitioner for FAP benefits for a group-size of three, excluding Husband. Petitioner reported that Husband lived in her household with their two

children. No explanation was given at the hearing regarding Husband's exclusion from the FAP group.

Additionally, MDHHS must consider a FAP group's countable income to determine the FAP benefit rate. BEM 500 (April 2022), pp. 1-5. MDHHS 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 2023), p. 1. For the purposes of FAP, MDHHS must convert income that is received more often than monthly into a standard monthly amount. BEM 505, pp. 8-9. To standardize income received weekly, MDHHS multiplies the average weekly income by 4.3. BEM 505, p. 9. To standardize income received biweekly, MDHHS multiplies the average by 2.15. *Id.*

MDHHS uses income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505, p. 6. For fluctuating or irregular income, MDHHS is required to use the past 60 or 90 days if the past 30 days is not a good indicator of future income and the fluctuations in income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month. *Id.* The 60 or 90-day period can begin up to 60 or 90 days before the date the information was requested. *Id.*, p. 7. For irregular income, MDHHS determines a standard monthly amount by adding the amounts together and dividing by the number of months used. *Id.*, p. 9. Department policy further provides that MDHHS should seek input from clients whenever possible when prospecting income. *Id.* at 1.

Here, MDHHS testified that the group's countable income was based on Husband's employment income and that it relied on a paystub submitted by Petitioner (Exhibit A, p. 16). The paystub was for a check dated November 10, 2023, and showed that Husband received \$[REDACTED] in gross earnings for a one-week period (Exhibit A, p. 16). Petitioner testified that the paystub was not reflective of Husband's current and ongoing pay. Petitioner testified that Husband was working overtime during that period and that the work subsequently slowed down. The paystub shows that Husband worked eight hours in overtime, and thus, supports Petitioner's claim (Exhibit A, p. 16).

The record shows that MDHHS based Husband's income calculation on one week of pay, rather than 30 days. Additionally, given the fluctuating or irregular pay, a 60 or 90-day pay period would likely have been a more accurate representation of Husband's earnings. Finally, it is unclear from the record why Husband was excluded from the FAP group. Due to these inconsistencies, MDHHS has not shown that it properly calculated Petitioner's FAP benefit rate.

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 MDHHS failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's FAP benefit rate.

Medicaid (MA)

MA 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 MA pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MA is also known as Medical Assistance. BEM 105 (January 2021), p. 1.

In this case, MDHHS determined that Husband was eligible for Plan First MA, a limited coverage MA category. Although no documentation was introduced regarding Petitioner's MA coverage, MDHHS testified at the hearing that it was terminated because she was not included in the redetermination. However, the record clearly shows that Petitioner submitted a redetermination for MA on November 15, 2023, and Petitioner was included as a household member (Exhibit A, pp. 9-10). Thus, MDHHS failed to establish that it had a valid reason for terminating Petitioner's MA coverage.

MA includes several sub-programs or categories. BEM 105, 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, Flint Water Group and Health Michigan Plan (HMP) is based on Modified Adjusted Gross Income (MAGI) methodology. *Id.*

HMP MA provides health care coverage for a category of eligibility authorized under the Patient Protection and Affordable Care Act and Michigan Public Act 107 of 2013 effective April 1, 2014. BEM 137 (June 2020), p. 1. HMP is based on MAGI methodology. *Id.* To be eligible for HMP, an individual's income must be at or below 133% of the Federal Poverty Level (FPL). *Id.* Plan First MA is a MAGI-related limited coverage MA category, that covers services related to family planning and reproductive health. To be eligible for Plan First, a person must meet all non-financial eligibility factors and their income cannot exceed 195% of the FPL. BEM 124 (July 2023), p. 1. 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.*

At the hearing, MDHHS testified that it approved Husband for Plan First MA because he was over the income limit for HMP MA, which is a full-coverage category. No evidence was presented to show that Husband was potentially eligible for an SSI-related MA category. Petitioner disputed MDHHS' calculation of Husband's income. MDHHS did not introduce a MA budget to show how it calculated Husband's income at the hearing. Based on the Health Care Coverage Determination Notice, MDHHS determined that the household income was \$ [REDACTED] for a group-size of four (Exhibit A, p. 6). This amount was based on the November 10, 2023 paystub that Petitioner submitted, which showed that Husband earned \$ [REDACTED] in gross pay for a one-week period (Exhibit A, p. 16).

Petitioner testified that the November 10, 2023 paystub was not reflective of Husband's ongoing pay and that it included overtime.

When an eligibility factor is in dispute, MDHHS is required to request verification of that factor and to allow clients a reasonable opportunity to resolve any discrepancies. See *generally*, BAM 130 (October 2023). Petitioner argued that MDHHS did not accurately calculate Husband's income. No evidence was presented to show that MDHHS requested additional information regarding Husband's income, according to policy.

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 MDHHS failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's eligibility for MA.

DECISION AND ORDER

Accordingly, MDHHS's decisions are **REVERSED**.

MDHHS 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 eligibility for FAP, requesting additional verification of income and group composition, as necessary, from January 1, 2024 ongoing;
2. Issue supplemental payments for any FAP benefits that Petitioner was entitled to receive, but did not, from January 1, 2024 ongoing;
3. Redetermine Petitioner and Husband's eligibility for MA, requesting additional verification, as necessary, from January 1, 2024 ongoing;
4. Provide Petitioner and Husband with the most beneficial MA coverage that they are eligible to receive, from January 1, 2024 ongoing; and
5. Notify Petitioner of its decision(s) in writing.



LJ/tm

Linda Jordan
Administrative Law Judge

