



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: January 30, 2024
MOAHR Docket No.: 23-009614
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Caralyce M. Lassner

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 by telephone on January 22, 2024. The Petitioner represented herself. The Department of Health and Human Services (Department) was represented by Lori Turner, Eligibility Specialist.

ISSUE(S) PRESENTED

Did the Department properly determine that Petitioner was eligible for Medicaid (MA) coverage under only the Plan First Family Planning (PFFP) program?

FINDINGS OF FACT

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

1. Petitioner's household is comprised of herself, her spouse, and their three (3) minor children.
2. On September 5, 2023, the Department sent a Redetermination (MDHHS-1010 (Rev. 2-22)) for Food Assistance Program (FAP) to Petitioner.
3. On October 8, 2023, Petitioner timely returned the Redetermination to the Department.
4. The Petitioner disclosed changes in her and her spouse's income on the Redetermination, specifically that:

- a. Petitioner's spouse changed employers and the amount of his increased earnings, and
 - b. Petitioner is a substitute teacher and her income is different each pay period.
(Exhibit A, pp. 9 – 10).
5. On October 11, 2023, the Department sent Petitioner a Verification Checklist requesting verification of earnings from Petitioner, her spouse's former employer, and proof of loss of employment. (Exhibit A, pp. 11 – 12).
 6. Petitioner returned her and her spouse's income verification to the Department.
 7. On October 19, 2023, the Department sent Petitioner a Health Care Coverage Determination Notice notifying Petitioner that effective November 1, 2023, Petitioner and her spouse were eligible for MA under the PFFP program. (Exhibit A, p. 14).
 8. The determination of Petitioner and her spouse's eligibility was based on household total countable annual income of [REDACTED] and a healthcare household size of 5. (Exhibit A, p. 15).
 9. The minor children receive full MA coverage. (Exhibit A, p. 14).
 10. On December 15, 2023, the Department received Petitioner's hearing request disputing the MA action and an interruption in her FAP benefits.
 11. Subsequent to the hearing request, on January 3, 2024, the Department certified Petitioner for FAP benefits effective November 1, 2023 ongoing.

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).

In this case, Petitioner requested a hearing to dispute the Department's decision closing her FAP benefits and changing Petitioner and her spouse's Medicaid coverage to Plan First Family Planning (PFFP) coverage effective November 1, 2023. (Exhibit A, pp. 3, 14).

FAP

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's FAP benefits were reinstated prior to the hearing and that issue has been resolved. The Department testified that a Notice of Case Action regarding her FAP benefits was sent to Petitioner on January 3, 2024 stating the FAP case was recertified on January 3, 2024, effective November 1, 2023 ongoing in the amount of \$336.00 per month for a group size of 5. Petitioner confirmed her FAP benefits are reflected in her MiBridges account. Although Petitioner disputed the amount of benefits, the Department's decision concerning the amount was made *after* Petitioner's December 15, 2023 hearing request, which concerned only stoppage of FAP benefits. Accordingly, Petitioner's hearing request concerning FAP is DISMISSED. Petitioner is advised that she can request a hearing to dispute her monthly FAP allotment.

The only remaining issue to be decided is whether the Department properly changed Petitioner and her spouse's MA coverage to PFFP.

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.

Determining whether the Department properly determined each member's MA eligibility requires consideration of all MA categories. "Persons may qualify under more than one MA category. Federal law gives them the right to the most beneficial category. The most beneficial category is the one that results in eligibility, the least amount of excess income or the lowest cost share." BEM 105 (October 2023), p. 2. All MA category options must be considered in order for the Petitioner's right of choice to be meaningful. BEM 105, p. 2.

MA is available (i) under SSI-related categories to individuals who are aged (65 or older), blind or disabled, (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. 42 CFR 435.911; 42 CFR 435.100 to 435.172; BEM 105, p. 1; BEM 137 (June 2020), p. 1; BEM 124 (July 2023), p. 1.

Because Petitioner and her spouse were not age 65 or older, blind or disabled, under age 19, or pregnant or recently pregnant, Petitioner was potentially eligible for MA coverage under HMP. The MA program includes several sub-programs or categories. BEM 105, p. 1. Health care coverage for adults is available through several of those sub-programs or categories, including the Healthy Michigan Plan (HMP). Under the circumstances, Petitioner's and Spouse's MA category with the highest income limit is the MAGI-related category of HMP.

The notice dated October 19, 2023, stated that Petitioner was ineligible for HMP due to excess income. The Department approved Petitioner and her spouse for PFFP coverage. (Exhibit A, pp. 14 – 15).

To qualify for health care coverage under HMP, the individual must:

- be 19-64 years of age,
- not qualify for or be enrolled in Medicare,
- not qualify for or be enrolled in other Medicaid programs,
- not be 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, p. 1.

It was not disputed that Petitioner and Spouse were aged 19-64 years, not pregnant, and not disabled. Therefore, the only HMP factor at issue in this case is whether or not Petitioner and her spouse have income at or below 133% of the Federal Poverty Level.

HMP is a modified adjusted gross income (MAGI) related plan. BEM 105, p. 3; BEM 137, p. 1; 7 CFR 435.603. To calculate MAGI, the Department must first determine the Petitioner's group size, which is also tied to Petitioner's household size in this case. The group size is determined based on tax filer and tax dependent rules. BEM 211 (October 2023), p. 1. For tax filers, the group size includes the tax filer, the tax filer's spouse, and all dependents claimed. BEM 211, p. 2. Here, Petitioner has a group size of five (5) including herself, her spouse, and her three (3) minor children, which is consistent with the Department's determination. BEM 211.

To evaluate eligibility for HMP, the Department evaluates whether the group's countable income exceeds 133% of the Federal Poverty Level for Petitioner's group size. The FPL for a household size of five in 2023 is \$35,140. 88 FR 3424 (January 12, 2023). 133% of the FPL of \$35,140 is \$46,736.20.

For MAGI-related plans, a 5% disregard is available to make those individuals eligible who would otherwise not be eligible. BEM 500 (April 2022), p. 5. The 5% disregard increases the income limit by an amount equal to 5% of the FPL for the group size. BEM 500, p. 5. Practically speaking, what this means to the Petitioner is that the FPL is essentially increased by 5% *if needed* in order to find Petitioner eligible for HMP. 5% of the FPL of \$35,140 is \$1,757. Therefore, the total, with the disregard, is \$48,493.20. Thus, the income limit for Petitioner to be eligible for health care coverage under HMP is \$48,493.20 per year, or \$4,041.10 monthly.

Next, the Department calculates the countable income of the group. BEM 500, p. 1. 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). The Department elected to determine HMP eligibility based on current monthly income. (MAGI-Based Income Methodologies (SPA 17-0100), eff. 11/01/2017, app. 03/13/2018).

The Department begins its income determination by examining a client's self-reported income. BEM 500, p. 5. If the client's self-reported income is over the income limit, then the client is ineligible. BEM 500, p. 5. If the client's self-reported income is below the income limit, the Department compares the client's self-reported income to income information obtained from trusted sources to determine if the two are compatible. BEM 500, p. 5. Income is compatible if the difference between the two is 10% or less. BEM 500, p. 5. If the two are compatible, then the Department uses the client's self-reported income. BEM 500, p. 5. If the two are not compatible and the income obtained from trusted sources is over the income limit, then the Department requires the client to provide proof of the self-reported income. BEM 500, pp. 5-6.

Here, Petitioner self-reported that she received income of [REDACTED] every two weeks and that her income is from substitute teaching and fluctuates. Using [REDACTED] every two weeks results in monthly income of [REDACTED] in monthly income for Petitioner. Petitioner also self-reported that her spouse received income of [REDACTED] every two weeks. Based on biweekly pay of [REDACTED] Petitioner's husband receives monthly income of [REDACTED]. Because the sum of Petitioner's and her spouse's self-reported monthly income is below the applicable program limit for HMP eligibility, the Department must review income information from a trusted source to determine their eligibility for health care coverage under HMP.

The Department testified it relied on Petitioner's paystubs provided by Petitioner dated September 8, 2023 and September 22, 2023, and her spouse's paystubs dated September 7, 2023 and September 21, 2023, and in reliance on these paystubs, it budgeted their monthly income as [REDACTED] per month for Petitioner and [REDACTED] per month for her spouse. When added together, under the Department's calculation, Petitioner and her spouse had monthly MAGI income of [REDACTED] per month, which is over the monthly income limit for HMP eligibility.

The paystubs considered by the Department reflect gross earnings as follows:

Petitioner's paystubs:

September 8, 2023
September 22, 2023

[REDACTED]

Petitioner's spouse's paystubs:

September 7, 2023
September 21, 2023

[REDACTED]

(Exhibit A, pp. 18 – 22).

Neither Petitioner nor her spouse appear to have any pre-tax deductions from their pay that must be added back into their gross earnings.

Based on the Department's election to determine HMP eligibility based on current monthly income, Petitioner's monthly income was [REDACTED]. If this amount is annualized, strictly to compare to the Health Care Coverage Determination Notice, it equals [REDACTED]. This is significantly less than the \$53,004.00 in annual income cited on the Notice. The Department did not present sufficient evidence to support its income calculation.

For Petitioner or Spouse to be eligible for HMP, Petitioner's income would have to not exceed \$46,736.20 (\$3,894.68 per month). Based on the information the Department provided at the hearing, Petitioner's monthly income is less than the HMP income limit and therefore, the Department did not properly determine that Petitioner and Spouse were ineligible for HMP.

Additionally, the Department did not consider the fluctuating and irregular status of Petitioner's income. Petitioner disclosed on the redetermination that her income is from substitute teaching and is different each time she is paid. (Exhibit A, p. 9). Petitioner also testified that she only serves as a substitute teacher during the regular school year and not during the usual summer break of the school districts. When calculating MAGI 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. See: <https://www.healthcare.gov/income-and-household-information/how-to-report/>.

The Department did not present evidence that it considered the fluctuation in or irregular status of Petitioner's income in determining which MA programs Petitioner and her Spouse were eligible for.

Petitioner testified that she continued to provide income verification through MiBridges. The Department acknowledged that Petitioner continued to provide income verification before her MA case closed on November 1, 2023.

Furthermore, in addition to being potentially eligible for MA under HMP, as parents of minor children, Petitioner and her husband are also potentially eligible for MA under the Group 2 Caretaker (G2C) program, and the Department failed to consider the household's eligibility under this program.

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 FAP issue raised in Petitioner's hearing request was resolved prior to hearing and the Department did not act in accordance with Department policy when it calculated Petitioner's and her spouse's income to determine eligibility for MA.

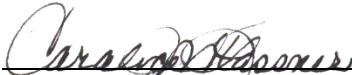
DECISION AND ORDER

Accordingly, Petitioner's hearing request concerning FAP is DISMISSED and the Department's MA 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. Reprocess Petitioner and her spouse's Medicaid eligibility beginning November 1, 2023 consistent with this Hearing Decision and subject to all income verification received or provided prior to November 1, 2023;
2. Provide Petitioner and her spouse for the most beneficial MA coverage, if any, they are eligible to receive from November 1, 2023 ongoing; and
3. Notify Petitioner of its decision in writing.

CML/ml



Caralyce M. Lassner
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
Tara Roland 82-17
Wayne-Greenfield/Joy-DHHS
8655 Greenfield
Detroit, MI 48228
MDHHS- Wayne-17-hearings@michigan.gov

Interested Parties

BSC4
M Schaefer
EQAD
MOAHR

Via First Class Mail:

Petitioner
[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]