



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], MI [REDACTED]

Date Mailed: February 22, 2024
MOAHR Docket No.: 24-000283
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 February 12, 2024. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Ryane McArthur, specialist.

ISSUES

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

The second issue is whether MDHHS properly denied Petitioner's State Emergency Relief (SER) application requesting energy bill assistance.

The third issue is whether MDHHS properly determined Medical Assistance (MA) eligibility for Petitioner and her minor child.

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 unmarried, not pregnant, a caretaker to a minor child, between the ages of 19 and 64 years, and not disabled. Also, Petitioner was a tax filer with one dependent.

2. From October 26 through December 7, 2023, Petitioner received the following weekly gross wages: \$ [REDACTED] \$ [REDACTED] \$ [REDACTED] \$ [REDACTED] \$ [REDACTED] \$ [REDACTED] and \$ [REDACTED]
3. On [REDACTED] [REDACTED] 2023, Petitioner applied for FAP benefits and reported a household including her minor child, [REDACTED] [REDACTED] (hereinafter, "Child"). Petitioner additionally reported being under 60 years of age and not being disabled or a disabled veteran.
4. As of November 2023, Petitioner and Child received ongoing MA benefits.
5. On December 8, 2023, MDHHS denied Petitioner's application for FAP benefits due to excess gross income.
6. On December 13, 2023, MDHHS determined that Petitioner was eligible for MA subject to a monthly deductible of \$1,968 beginning December 2023.
7. On December 14, 2023, MDHHS determined that Child was eligible for MA subject to a monthly deductible of \$2,807 beginning January 2024.
8. On [REDACTED] [REDACTED] 2024, Petitioner applied for SER seeking energy assistance and reported working 32 hours per week for \$ [REDACTED] per hour.
9. On January 3, 2024, MDHHS denied Petitioner's SER application due to excess income.
10. From January 4 through February 1, 2024, Petitioner received the following weekly gross wages: \$ [REDACTED] \$ [REDACTED] \$ [REDACTED] \$ [REDACTED] and \$ [REDACTED]
11. On January 8, 2024, Petitioner requested a hearing to dispute the denial of FAP and SER benefits. Petitioner also disputed MA eligibility for herself and Child.

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, pp. 3-5. Petitioner applied for FAP benefits on [REDACTED] [REDACTED] 2023. Exhibit A, pp. 30-37. A Notice of Case Action dated December 8, 2023, stated that MDHHS denied Petitioner's application due to excess gross income. Exhibit A, pp. 8-11.

To be eligible for FAP benefits, a non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. BEM 550 (January 2017) p. 1. An SDV group is one with a senior (a person over the age of 60 years), disabled individual, or disabled veteran. *Id.*

A traditionally categorically eligible FAP group is one whose members are all Family Independence Program (FIP) and/or State Disability Assistance (SDA) and/or Supplemental Security Income recipients (SSI). BEM 213 (January 2023) p. 1. Non-traditionally categorically eligible groups are categorically eligible based on Domestic Violence Prevention Services (DVPS), but an income and asset test are required. *Id.*, p. 2. Categorical FAP groups with three or more members that exceed the gross and/or 100 percent net income limit, but whose gross income is at or below 200% of the Federal Poverty Level (FPL) and who meet the asset limit and all other FAP eligibility requirements may be eligible for benefits as low as \$1 as determined by the Food Assistance Issuance Tables in RFT 260. *Id.*, p. 4.

Petitioner's application for FAP benefits reported a household including Child. Exhibit A, pp. 30-37. Based on Petitioner's reporting, the FAP benefit group size is two persons.¹

Petitioner's application also reported that Petitioner was neither senior, disabled, nor a disabled veteran. Additionally, Petitioner was not a FIP, SDA, or SSI recipient and there was no evidence suggesting that Petitioner's group exceeded the asset limit. Thus, Petitioner was a member of a two-person FAP group with no SDV members; therefore, the benefit group's income must fall below 200% of the FPL to establish FAP eligibility. The monthly gross income limit for a two-person non-traditional categorically eligible FAP group is \$3,288.² RFT 250 (October 2023) p. 1.

A group's benefits for a month are based, in part, on a prospective income determination. BEM 505 (January 2023) p. 1. For non-child support income, MDHHS 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. *Id.*, p. 6. For FAP benefits, MDHHS converts stable or fluctuating weekly income to a monthly amount by multiplying the average income by 4.3. *Id.*, p. 8.

TheWorkNumber documents listed the following weekly gross wages for Petitioner beginning October 26, 2023: \$█████ \$█████ \$█████ and \$█████ Exhibit A, pp. 16-19. Multiplying the average weekly gross wages by 4.3 results in countable monthly employment income of \$█████ (dropping cents).³ MDHHS calculated \$█████ in gross income for Petitioner. Exhibit A, pp. 12-14. For purposes of this decision, the income of

¹ See BEM 212 for determining FAP benefit group size.

² The Notice of Case Action stated that Petitioner exceeded the gross income limit of \$█████ Exhibit A, p. 9. A gross income limit of \$2,137 is 130% of the FPL and is applicable when a benefit group is not categorically eligible. Presumably, MDHHS determined Petitioner's FAP eligibility based on 200% of the FPL, and in compliance with policy, determined that the group was not categorically eligible because the group's income exceeded 200% of the FPL.

³

\$3,655, which is more favorable for Petitioner, will be accepted as correct. Petitioner's benefit group's countable gross income exceeded the gross income limit.

Petitioner contended that her income decreased after she applied for FAP benefits. Petitioner also suggested that she reported this to MDHHS. Accepting Petitioner's testimony as accurate would result in using Petitioner's actual gross income beginning November 22, 2023. Over the next four pay periods, TheWorkNumber documents listed gross weekly income for Petitioner of \$█████ \$█████ \$█████ and \$█████. Multiplying the average weekly gross wages by 4.3 results in countable monthly employment income of \$█████ (dropping cents) which still places Petitioner above the gross income limit of \$█████.

Given the evidence, MDHHS properly denied Petitioner's application for FAP benefits. As discussed during the hearing, Petitioner can reapply if FAP benefits are still needed.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. MDHHS administers the SER program pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049. SER policies are contained in the Emergency Services Manual (ERM).

Petitioner also requested a hearing to dispute SER benefits. Exhibit A, pp. 3-5. Petitioner applied for SER on ██████ 2024, seeking assistance with an energy bill. Exhibit A, pp. 24-29. A State Emergency Relief Decision Notice dated January 3, 2024, stated that Petitioner's application was denied due to excess income. Exhibit A, pp. 6-7.

There are no income copayments for SER- Energy. ERM 208 (October 2023) p. 1. With respect to income, clients are either eligible or not for SER-Energy. *Id.* For a group to be eligible for SER-Energy, the combined monthly net income that is received or expected to be received by all group members in the 30-day countable income period, cannot exceed the income standard which is based on the number of group members. *Id.* If the income exceeds the income standard limit, the SER request must be denied. *Id.*

A single SER group consists of persons who occupy the same home. ERM 201 (October 2023) p. 1. It was not disputed that Petitioner resided with Child. Thus, Petitioner's SER group size is two persons. The income limit for a 2-person SER-Energy group is \$2,465. ERM 208 (October 2023) p. 6.

MDHHS is to verify and budget all non-excluded gross income the SER group expects to receive during the countable income period. ERM 206 (October 2023) p. 1. The countable income period consists of 30 days beginning with the SER application date. *Id.*

MDHHS testified that it calculated a countable income of \$█████ for Petitioner's SER. Presumably, the income was calculated based on weekly income of \$█████ in the five pay periods within the 30 days following Petitioner's SER application. Petitioner contended that MDHHS erred by assuming her weekly income was \$█████ after she applied for SER.

Petitioner's contention was supported by her SER application reporting that she was working only 32 hours per week: a decrease in hours from previous months (see Exhibit A, pp. 16-19). In fairness to Petitioner, her SER income would be most accurately calculated from her actual income during the countable income period.

MDHHS provided credible and undisputed testimony of Petitioner's weekly gross income in the 30 days following the SER application. From January 4 through February 1, 2024, Petitioner received \$█████ \$█████ \$█████ \$█████ and \$█████ in gross income. The amounts total \$█████ Petitioner's income exceeds the SER income limit of \$2,465. Thus, MDHHS properly denied Petitioner's SER- Energy application.

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 lastly requested a hearing to dispute MA eligibility for herself and Child. Exhibit A, pp. 3-5. MDHHS testified that Petitioner was eligible for MA subject to a \$2,084 deductible beginning December 2023. MDHHS also testified that Child was eligible for a \$2,807 monthly deductible beginning January 2024. MDHHS testified that Petitioner and Child were ineligible for any categories without a deductible due to excess income. To determine if MDHHS properly determined MA eligibility, all potential MA categories must be considered.

The MA program includes several sub-programs or categories. BEM 105 (October 2023) 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 Child was under the of 18 years, not pregnant, and not disabled. Under the circumstances, the MA category with the highest potential income limit for Child is the MAGI-related category of MIChild.

It was not disputed that Petitioner was aged 19-64 years, not pregnant, not disabled, and a caretaker to a minor child. Under the circumstances, the MA category with the highest income limit is the MAGI-related category of HMP.

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

For a household of a tax filer, the MAGI benefit group consists includes the tax filer and tax dependents. The evidence supported that Petitioner was a tax filer and that Child was a tax dependent. Under the circumstances, Petitioner's benefit group size is two (see BEM 211).

MDHHS provided no evidence or documents indicating the monthly income to determine MA eligibility for Petitioner or Child. In lieu of such evidence, Petitioner's wages in the 30 days before the MA determination will be factored. From November 16 through December 7, 2023, Petitioner received the following weekly gross wages: \$ [REDACTED] \$ [REDACTED] and \$ [REDACTED]. Petitioner's income totaled \$ [REDACTED]. There was no evidence of applicable MAGI deductions.

For Child, MIChild income limits are based on 212% of the federal poverty level (FPL). BEM 130 (July 2021) p. 1. Applying the 5% disregard functionally renders the income limit to be 217% of the FPL. The 2023 federal poverty level for a 2-person group residing in Michigan is \$19,720.⁸ For MIChild, Petitioner's group's income would have to not exceed \$42,792.40 (\$3,566.03 per month). Petitioner's group's monthly income was less than the MIChild income limit. Thus, MDHHS erred in determining that Child was ineligible for MA benefits.

For Petitioner, 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

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 <https://www.healthcare.gov/glossary/federal-poverty-level-fpl/>

disregard functionally renders the HMP income limit to be 138% of the FPL. The 2023 federal poverty level is \$19,720 for a 2-person group.⁹ For Petitioner to be eligible for HMP, Petitioner's income would have to not exceed \$27,213.60 (\$2,267.80 per month). Petitioner's monthly income exceeds the HMP income limit. Thus, Petitioner is eligible only for Medicaid subject to a deductible.

As a caretaker to a minor child, Petitioner is potentially eligible for the Group 2 MA category of G2C. For Group 2 categories, MA eligibility is possible even when net income exceeds the income limit for a Group 1 category; this is possible because incurred medical expenses are used when determining eligibility. BEM 105 (October 2023) p. 1.

Clients with a deductible may receive Medicaid if sufficient allowable medical expenses are incurred. BEM 545 (April 2018), p. 11. Each calendar month is a separate deductible period. *Id.* The fiscal group's monthly excess income is called the deductible amount. *Id.* Meeting a deductible means reporting and verifying allowable medical expenses that equal or exceed the deductible amount for the calendar month. *Id.*

BEM 536 outlines a 16-step procedure for determining a client's income for purposes of G2C eligibility:

- Step 1 Determine countable employment income using BEM 500 and BEM 530.
- Step 2 Deduct \$90 from each member's employment income.
- Step 3 Subtract \$30 + 1/3 of a group member's employment income if the person received FIP or LIF benefits in any one of the four previous months.
- Step 4 Subtract \$200 from any remaining employment income if member has dependent care expenses.
- Step 5 Determine countable child support income using BEM 500 and BEM 530.
- Step 6 Subtract \$50 for countable child support income.
- Step 7 Determine countable unearned income using BEM 500 and BEM 530.
- Step 8 Add countable earned and unearned income.
- Step 9 Subtract child support paid by a group member (not to exceed the monthly obligation).
- Step 10 Subtract \$83 if client has court-appointed guardian paid by a group member. The result is the group's total net income.
- Step 11 Determine the number of dependents. A spouse and children under 18 are dependents.
- Step 12 Add 2.9 to the number of dependents to determine the prorated divisor.
- Step 13 Divide the prorated divisor into each group member's income to determine each member's prorated share of income.
- Steps 14-16 Applicable for non-parent caretakers.

The adult's net income for purposes of G2C is calculated by adding the following and subtracting insurance premiums, remedial services, and ongoing medical expenses:

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

- 2.9 x adult's prorated income (if adult has dependents)
- 3.9 x spouse's prorated income
- Prorated share of adult's income

MDHHS provided a G2C budget which calculated a prorated income of \$848 and a deductible of \$2,083. Exhibit B, p. 1. Presumably, MDHHS used the same income in determining Child's MA eligibility as it did in determining Petitioner's MA eligibility. Notably, it was already found that MDHHS failed to properly calculate Petitioner's income. Thus, it can be deduced that MDHHS wrongly calculated Petitioner's deductible. Given the evidence, Petitioner is entitled to a reprocessing of MA eligibility.

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 FAP application dated [REDACTED] 2023, due to excess gross income. It is also found that MDHHS properly denied Petitioner's SER- Energy application dated [REDACTED] 2024. Concerning FAP and SER benefits, the actions of MDHHS are **AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's and her child's MA eligibility. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reprocess Petitioner's and Child's MA eligibility beginning December 2023, subject to the finding that MDHHS failed to properly use Petitioner's last 30 days of income; and
- (2) Issue notice and supplements, if any, in accordance with policy.

The actions taken by MDHHS are **REVERSED**.

CG/nr



Christian Gardocki

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
Denise Key-McCoggle
Wayne-Greydale-DHHS
27260 Plymouth Rd
Redford, MI 48239
**MDHHS-Wayne-15-Greydale-
Hearings@michigan.gov**

Interested Parties
Wayne 15 County DHHS
BSC4
M. Holden
N. Denson-Sogbaka
B. Cabanaw
J. McLaughlin
E. Holzhausen
M. Schaefer
EQAD
MOAHR

Via-First Class Mail :

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