



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
DIRECTOR

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

Date Mailed: March 1, 2024
MOAHR Docket No.: 24-000538
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 21, 2024. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Lori Turner, specialist.

ISSUES

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

The second issue is whether MDHHS properly determined Petitioner'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. In September 2023, Petitioner received \$ [REDACTED] and \$ [REDACTED] in biweekly gross employment income.
2. As of September 2023, Petitioner may have received foster care subsidy income totaling no more than \$ [REDACTED]

3. On [REDACTED] 2023, Petitioner submitted to MDHHS an application requesting FAP and MA benefits.
4. On November 3, 2023, MDHHS denied Petitioner's FAP application due to excess income based on gross monthly wages of \$[REDACTED] and foster care subsidy income of \$[REDACTED].
5. On January 5, 2024, Petitioner requested a hearing to dispute FAP and MA eligibility.
6. On January 24, 2024, MDHHS determined Petitioner was ineligible for MA benefits beginning January 2024 other than the limited coverage MA category of Plan First.

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. MA 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] 2023. Exhibit A, pp., 8-24. A Notice of Case Action dated November 3, 2023, stated that Petitioner's application was denied due to excess income. Exhibit A, pp. 41-46.

FAP benefit amounts are determined by a client's net income. BEM 556 outlines the factors and calculations required to determine a client's net income. FAP net income is based on group size, countable monthly income, and relevant monthly expenses. During the hearing, only Petitioner's income was discussed.

FAP budget documents verified that MDHHS calculated \$[REDACTED] in monthly gross wages for Petitioner. MDHHS testified that Petitioner's income was calculated from Petitioner's September 2023 gross wages. TheWorkNumber documents listed that Petitioner received biweekly gross wages of \$[REDACTED] and \$[REDACTED] in September 2023. Exhibit A, pp. 34-38. For FAP benefits, MDHHS generally counts gross wages.¹ BEM 501 (January 2024) p. 7. MDHHS converts stable or fluctuating biweekly income to a monthly amount by multiplying the average income by 2.15. BEM 505 (October 2022) p. 8. Multiplying Petitioner's average biweekly gross wages by 2.15 results in countable

¹ Exceptions to using gross wages include the following: earned income tax credits, flexible benefits used to purchase insurance, striker earnings, earnings for students, military combat pay, work study, and wages for temporary census workers. BEM 501 (January 2024) pp. 1-9. None of these exceptions apply to the present case.

monthly wages of \$ [REDACTED] (dropping cents). MDHHS provided no justification for its calculation of monthly gross wages of \$ [REDACTED]

FAP budget documents also verified that MDHHS calculated monthly unearned income of \$ [REDACTED]. MDHHS provided no documentation verifying the source or amount of unearned income in its hearing packet. During the hearing, MDHHS was unable to provide testimony of the source and amount of unearned income as the testifying specialist stated she was unable to access to the MDHHS database.

Petitioner disputed the amount of unearned income and testified she received only unearned income from foster care subsidies. Petitioner also testified she received \$ [REDACTED] in gross income of for one child and \$ [REDACTED] for a second. Thus, Petitioner acknowledged receiving foster care subsidies totaling no more than \$ [REDACTED]

Given the evidence, MDHHS failed to establish it properly calculated Petitioner's unearned income. The evidence also established that MDHHS improperly determined Petitioner's wages. As a remedy, Petitioner is entitled to a reprocessing of FAP eligibility.²

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 determination of MA benefits. Exhibit A, pp. 3-5. A Health Care Coverage Determination Notice dated January 24, 2024, stated that Petitioner was only eligible for limited MA coverage under the category of Plan First beginning January 2024.³ Exhibit A, pp. 50-52. Determining whether MDHHS properly determined Petitioner's MA eligibility requires a consideration of MA categories.

The MA program includes several sub-programs or categories. BEM 105 (January 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 (HMP) is based on Modified Adjusted Gross Income (MAGI) methodology. *Id.*

² Petitioner should be aware that a reprocessing of FAP benefits does not equate to a finding that Petitioner was eligible to receive FAP benefits. It is reasonably possible that MDHHS may still deny FAP benefits after reprocessing. Petitioner may again request a hearing if dissatisfied with the result of the reprocessing.

³ Plan First Medicaid is a MAGI-related limited coverage Medicaid group available to any United States citizen or individual with an immigration status. BEM 124 (July 2023) p. 1. Generally, Plan First coverage is limited to family planning services such as birth control. (see form DCH-2840-MSA)

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, not disabled, and not a recipient of Medicare. Under the circumstances, Petitioner's potential Group 1 MA category with the highest income limit and unlimited MA coverage is the MAGI-related category of HMP. MDHHS stated that Petitioner was 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 Medicaid 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 tax filers, the MAGI benefit group includes a spouse and tax dependents. Petitioner was unmarried. Petitioner's application reported her two foster children as tax dependents. Exhibit A, p. 22. Under the circumstances, Petitioner's MAGI group is three persons.⁸

As discussed in the FAP analysis, Petitioner received gross biweekly income in September 2023 of \$ [REDACTED] and \$ [REDACTED]. For MAGI, gross monthly wages are generally countable.⁹ BEM 501 (January 2024) p. 1. For purposes of MAGI, Petitioner's

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 See BEM 211 for benefit group composition policy.

⁹ Exceptions to using gross wages include the following: earned income tax credits, flexible benefits, striker earnings, student disregards, wages from independent living services, military combat pay, work study, and census worker earnings. BEM 501 (January 2024), pp. 6-8. None of these exceptions apply to the present case.

countable monthly income is the sum of Petitioner's September 2023 wages: \$ [REDACTED] (dropping cents).

Also discussed in the FAP analysis was Petitioner income from foster care subsidies. For purposes of this decision, Petitioner's stated monthly earnings of \$ [REDACTED] will be accepted as fact. For MAGI benefits, foster care support subsidies are not counted. For MA programs. BEM 503 (January 2023) p. 3. Thus, Petitioner's countable income for MA benefits is \$ [REDACTED]

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 for a 3-person group residing in Michigan is \$24,860.¹⁰ For Petitioner to be eligible for HMP, the group's income would have to not exceed \$34,306.80 (\$2,858.90 per month). Petitioner's countable income of \$ [REDACTED] exceeds the monthly income limit.

Petitioner testified she has breast cancer. Petitioner additionally testified she needs health coverage for regular radiology and screenings. Petitioner's testimony was sincere but irrelevant as HMP income eligibility does not factor a client's need for medical coverage.

The evidence established that Petitioner had excess income for HMP. Because Petitioner was ineligible for any other unlimited coverage MA categories with a higher income limit, MDHHS properly limited Petitioner's MA eligibility to Plan First beginning January 2024.

¹⁰ <https://aspe.hhs.gov/poverty-guidelines>

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly approved Petitioner for the limited coverage MA category of Plan First beginning January 2024. Concerning MA, the actions taken by MDHHS are **AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly denied Petitioner's FAP 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 FAP eligibility beginning January 2024 subject to the finding that MDHHS improperly calculated Petitioner's wages and that it failed to establish it properly calculated Petitioner's foster care subsidy income; and
- (2) Issue supplements and notice, 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

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Via-First Class Mail :

Petitioner

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