



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]
MI [REDACTED]

Date Mailed: May 23, 2024
MOAHR Docket No.: 24-004291
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Julia Norton

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 telephone hearing was held on May 20, 2024. Petitioner was present and self-represented. The Department of Health and Human Services (Department) was represented by Rebecca Scott, Eligibility Specialist.

ISSUE

1. Did the Department properly determine Petitioner's Food Assistance Program (FAP) eligibility?
2. Did the Department properly determine Petitioner's Medicaid (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. Petitioner was an ongoing recipient of FAP benefits and had MA coverage under Healthy Michigan Plan (HMP).
2. Petitioner is [REDACTED] years old, and her [REDACTED]-year-old daughter (JP) resides with her. Petitioner is married but separated and does not reside with Spouse.
3. Petitioner lives in [REDACTED] County, files taxes and claims JP as a dependent.
4. JP has full coverage MA, and her coverage was not in dispute.

5. On March 19, 2024, the Department reinstated Petitioner's FAP benefits using the best available information concerning Petitioner's loss of employment. Exhibit A, p, 21.
6. In March 2024, the Department approved Petitioner for \$135.00 per month in FAP benefits for her two-person FAP group starting March 2024.
7. On March 19, 2024, the Department sent Petitioner a Health Care Coverage Determination Notice (HCCDN) that indicated Petitioner was not eligible for MA HMP or Plan First Family Planning (PFFP) coverage for March 1, 2024 to March 31, 2024, due to excess income. The HCCDN listed Petitioner's annual income at [REDACTED] Exhibit A, pp. 23-26.
8. On April 15, 2024, the Department received Petitioner's request for hearing disputing the reduction of her FAP benefits and the closure of her MA case.
9. On or around April [REDACTED] 2024, Petitioner submitted a paystub to the Department for pay date April 12, 2024. Exhibit A, p. 21.
10. Sometime after March 2024, the Department reduced Petitioner's FAP benefit to \$23.00 per month, effective July 1, 2024 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).

Food Assistance Program

The Food Assistance Program (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, Petitioner disputed the Department's action of closing her FAP case for failing to return verifications. At the time of the hearing, the Department testified that this issue was resolved and the FAP case was reinstated. Petitioner's FAP benefits were \$135.00 per month for March 1, 2024 to June 30, 2024 and \$23.00 per month effective July 1, 2024 ongoing. Petitioner disputed both FAP benefit amounts.

To determine whether the Department properly determined Petitioner's eligibility for FAP benefits, the evaluation first starts with consideration of all countable earned and unearned income available to the group. BEM 500 (April 2022), pp. 1-5. The

Department 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. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, pp. 4-9. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. The standardized income is determined by averaging the income received and multiplying it by 4.3 for amounts received weekly; by 2.15 for amounts received every two weeks; and adding amounts received twice a month. Id.

The Department testified that Petitioner's FAP benefits had been reinstated to \$135.00 per month, effective March 1, 2024 to June 30, 2024. Then, the Department further testified FAP benefits were reduced to \$23.00 per month effective July 1, 2024 ongoing. Regarding the \$135.00 FAP benefit, there was no evidence presented as to the paychecks used to determine Petitioner's income and the resulting \$135.00 FAP benefit. Regarding the \$23.00 FAP benefit, the Department testified it used biweekly paychecks dated April 12, 2024 for [REDACTED] and March 29, 2024 for [REDACTED] to determine Petitioner's monthly income and \$23.00 FAP benefit. However, the Department did not present a FAP budget reflecting those amounts, nor did it accurately testify as to the deductions that were applied to Petitioner's income when determining the \$23.00 FAP benefit. The Department erroneously attributed the earned income deduction in the \$135.00 FAP benefit budget to the \$23.00 FAP benefit budget.

The Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it did not present evidence of the income used to determine Petitioner's \$135.00 FAP benefit and did not present evidence of the deductions used to determine Petitioner's \$23.00 FAP benefit.

Medical Assistance Program

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.

In this case, Petitioner disputed the Department's determination that she was not eligible for HMP or PFFP effective March 1, 2024 to March 31, 2024.

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, (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage, and (iv) to individuals who meet the eligibility criteria for Plan First Family Planning (PFFP) coverage. 42 CFR

435.911; 42 CFR 435.100 to 435.172; BEM 105 (January 2024), p. 1; BEM 137 (January 2024), p. 1; BEM 124 (July 2023), p. 1. Under federal law, an individual eligible under more than one MA category must have eligibility determined for the category selected and is entitled to the most beneficial coverage available, which is the one that results in eligibility and the least amount of excess income or the lowest cost share. BEM 105, p. 2; 42 CFR 435.404.

Petitioner is ■ years old and is not blind or disabled. Thus, she is not eligible for SSI-related MA. She is not the parent or caretaker of a minor child and presented no evidence of pregnancy or recent pregnancy. Therefore, Petitioner is potentially eligible for coverage under HMP or PFFP.

HMP is a MAGI-related MA category that provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income under the MAGI methodology at or below 133% of the federal poverty level (FPL); (iii) do not qualify for or are not enrolled in Medicare; (iv) do not qualify for or are not enrolled in other MA programs; (v) are not pregnant at the time of application; and (vi) are residents of the State of Michigan. BEM 137, p. 1; 42 CFR 435.603.

An individual is eligible for HMP if the household's MAGI-income does not exceed 133% of the FPL applicable to the individual's group size. An individual's group size for MAGI purposes requires consideration of the client's tax filing status and dependents. Petitioner files taxes and claims one dependent. While Petitioner is married, she is separated and does not live with Spouse. Therefore, for HMP purposes, Petitioner has a household size of two. The FPL for a group size of two in 2024 is \$20,440.00. 133% of the annual FPL for a household with two members is \$27,185.20 See <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's annual income cannot exceed \$27,185.20, and thus, the monthly income cannot exceed \$2,265.43. Additionally, Department policy provides that if an individual's group's income is within 5% of the FPL for the applicable group size, a disregard is applied, making the person eligible for MA. BEM 500 (April 2022), pp. 3-5. With the 5% disregard applied, the household income limit is \$28,207.20, or \$2,350.60 monthly.

To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. 42 CFR 435.603(e); BEM 500, p. 3. MAGI is based on Internal Revenue Service rules and relies on federal tax information. *Id.* To determine income in accordance with MAGI, a client's adjusted gross income (AGI) is added to any tax-exempt foreign income, tax-exempt Social Security benefits, and tax-exempt interest. AGI is found on line 11 of IRS tax forms 1040, 1040-SR, and 1040-NR. Alternatively, it is calculated by taking the "federal taxable wages" for each income earner in the household as shown on the paystub or, if not shown on the paystub, by using gross income before taxes reduced by any money the employer takes out for health coverage, childcare, or retirement savings. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>. When determining financial eligibility of current beneficiaries for MAGI-related MA, the State of Michigan has elected to base eligibility on current monthly household income and family

size and further consider reasonably predictable changes in income. Michigan Medicaid State Plan Amendment Transmittal 17-0100, effective November 1, 2017 and approved by the Center for Medicare and Medicaid Services on March 13, 2018, available at https://www.michigan.gov/mdhhs/-/media/Project/Websites/mdhhs/Folder3/Folder80/Folder2/Folder180/Folder1/Folder280/SPA_17-0100_Approved.pdf

Although the Department sent a HCCDN on March 19, 2024 notifying Petitioner that she was ineligible for MA for the month of March, at the hearing, the Department testified it used the gross income from the biweekly paychecks dated April 12, 2024 for [REDACTED] and March 29, 2024 for [REDACTED] to determine Petitioner's monthly gross income and her eligibility for HMP and PFFP. Adding the two paychecks results in a gross monthly income amount of [REDACTED]. This gross monthly amount is below the income eligibility threshold for HMP when the 5% disregard is applied to the income limit. Furthermore, to calculate income in accordance with MAGI methodologies, gross income should be reduced by any money the employer takes out for health coverage. Petitioner's April 12, 2024 paycheck lists pre-tax deductions for medical, dental and vision totaling \$186.60. The Department should have reduced Petitioner's gross income by this amount before determining her monthly income for HMP purposes. HMP provides more beneficial coverage than PFFP, which is a limited coverage MA program with income eligibility at 195% of the federal poverty level. Because the evidence established income eligibility for Petitioner under HMP, the Department did not act in accordance with Department policy when it denied Petitioner's eligibility for HMP based on excess income.

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 Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's eligibility for FAP benefits and did not act in accordance with Department policy when it denied Petitioner's eligibility for HMP based on excess income.

DECISION AND ORDER

Accordingly, the Department's decisions regarding FAP and MA are **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. Redetermine Petitioner's FAP eligibility, effective March 1, 2024 ongoing and, if eligible, issue supplements for benefits not previously received;
2. Redetermine Petitioner's MA eligibility, effective March 1, 2024 ongoing using Petitioner's gross income less any deductions for health coverage, childcare, or retirement savings;
3. If eligible, provide Petitioner with the most beneficial MA coverage she is eligible to receive from March 2024 ongoing; and
4. Notify Petitioner in writing of its decisions.



Julia Norton
Administrative Law Judge

JN/ml

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

Tracy Felder
Wayne-Southwest-DHHS
2524 Clark Street
Detroit, MI 48209

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Interested Parties

BSC4
M Holden
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N Denson-Sogbaka
M Schaefer
EQAD
MOAHR

Via First Class Mail:

Petitioner

[REDACTED]
MI [REDACTED]