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GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
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[REDACTED], MI [REDACTED]

Date Mailed: August 1, 2024  
MOAHR Docket No.: 24-007117  
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 July 22, 2024. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Danielle Moton, specialist.

### **ISSUES**

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

The second issue is whether MDHHS properly determined Petitioner's and her spouse'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. As of April 2024, Petitioner and her spouse, [REDACTED] [REDACTED] (hereinafter, "Spouse") were ongoing Medicaid recipients.
2. As of April 2024, neither Petitioner nor Spouse received unemployment compensation benefits (UCB).
3. On April 5 and April 19, 2024, Petitioner received respective biweekly gross wages of \$ [REDACTED] and \$ [REDACTED].

4. Beginning April 12, 2024, Spouse received weekly gross wages of \$ [REDACTED] \$ [REDACTED] \$ [REDACTED] and \$ [REDACTED]
5. On April 19, 2024, MDHHS terminated Petitioner's and Spouse's MA eligibility due to an alleged failure to return redetermination documents.
6. On [REDACTED] [REDACTED] 2024, Petitioner submitted to MDHHS an application for MA benefits reporting a household including Spouse and four tax dependent children. Petitioner also reported that she and Spouse were 19-65 years of age, not disabled, not Medicare recipients, not pregnant, and caretakers to minor children.
7. On [REDACTED] [REDACTED] 2024, Petitioner applied for FAP benefits.
8. On May 22, 2024, Petitioner reported to MDHHS during an interview that her employment was seasonal and that her last day of the season was June 6, 2024.
9. On June 4, 2024, MDHHS denied Petitioner's FAP application due to excess income based on \$1,556 in UCB for Spouse.
10. On June 12, 2024, Petitioner requested a hearing to dispute the determinations of FAP and MA benefits.
11. On June 26, 2024, MDHHS determined that Petitioner and Spouse were eligible for the limited-coverage MA category of Plan First beginning May 2024.

### **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] 2024. A Notice of Case Action dated June 4, 2024, stated that Petitioner's application for FAP benefits was denied due to excess gross income. Exhibit A, pp. 29-33.

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, 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-traditional 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.

There was no evidence that any of Petitioner's household members were recipients of FIP, SDA, or SSI. There was also no evidence that any members of Petitioner's benefit group were senior, disabled, or disabled veterans. As a non-SDV and non-traditional categorically eligible FAP group, the benefit group is subject to gross income testing.

The only evidence of the income amounts factored by MDHHS in the FAP determination was a budget.<sup>1</sup> Exhibit A, p. 10. MDHHS factored \$[REDACTED] in combined gross wages for Petitioner and Spouse; this income was verified by wage documents. Exhibit A, pp. 18-28. MDHHS also budgeted unearned income of \$1,556 from UCB. During the hearing, MDHHS testified that it was unable to verify that Petitioner or Spouse received UCB.

Given the evidence, MDHHS failed to establish that it properly calculated Petitioner's group's gross income. Accordingly, the denial of Petitioner's FAP application due to excess gross income must be reversed. As a remedy, Petitioner is entitled to a reprocessing of the application for FAP benefits.<sup>2</sup>

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 Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner also requested a hearing to dispute a determination of MA benefits for herself and Spouse.<sup>3</sup> Exhibit A, pp. 3-5. MDHHS testified that a Health Care Coverage

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<sup>1</sup> Based on the application date and reason for denial, a gross income budget from April, May, or June 2024 would be expected. Instead MDHHS presented a net income budget from July 2024. The budget calculated Petitioner's net income for FAP benefits, not gross income. Nevertheless, it was the only evidence stating the income concerning FAP benefits.

<sup>2</sup> Petitioner may still be ineligible due to excess gross or net income after reprocessing. If so, Petitioner is free to again request a hearing.

<sup>3</sup> Petitioner's hearing request was submitted in response to a written notice dated April 19, 2024, terminating MA benefits due to an alleged failure by Petitioner in submitting redetermination documents.

Determination Notice dated June 26, 2024, stated that Petitioner and Spouse were eligible only for the limited-coverage MA category of Plan First beginning May 2024.<sup>4</sup> Exhibit A, pp. 18-21.

Medicaid is also known as MA. BEM 105 (October 2023) p. 1. The MA program includes several sub-programs or categories. *Id.* 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.* Medicaid 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.<sup>5</sup> *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.*

MA categories are also split into categories of Group 1 and Group 2. *Id.*, p. 1. For Group 1, a group's net income must be at or below a certain income level for eligibility. *Id.* AD-Care is a Group 1 category.

As of the disputed benefit month, Petitioner and Spouse were 19-65 years of age, not pregnant, not disabled, and not Medicare recipients.<sup>6</sup> Given the circumstances, Petitioner and Spouse are potentially eligible for full-coverage Medicaid through the MAGI-related categories of HMP and Low-Income Family. MDHHS testified that Petitioner was ineligible for MA benefits under HMP due to excess income; because LIF has a lower income limit, the analysis will only consider eligibility under LIF.

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.<sup>7</sup> 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

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Presumably, the reason for termination was incorrect causing MDHHS to later process MA redetermination.

<sup>4</sup> Plan First is a MAGI-related, Group 1, limited-coverage MA category available to any United States citizen or individual with a qualified immigration status. BEM 124 (July 2023) p. 1. Plan First coverage is a "limited-coverage" because it only covers family planning services such as birth control (see form DCH-2840-MSA).

<sup>5</sup> Eligibility factors for all MA categories are found in the Bridges Eligibility Manual from BEM 105 through BEM 174.

<sup>6</sup> Petitioner testified that Spouse has seizures. Unless Spouse is disabled, his medical condition is irrelevant to a determination based on income.

<sup>7</sup> 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.

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 has chosen to determine HMP eligibility based on current monthly income.<sup>8</sup>

Modified adjusted gross income can be defined as a household's adjusted gross income with any tax-exempt interest income and certain deductions added back.<sup>9</sup> 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.<sup>10</sup>

Group composition for MAGI-related categories follows tax filer and tax dependent rules. BEM 211 (July 2019) p. 1. Generally, the household for an individual who is a tax dependent of someone else consists of the household of the tax filer claiming the individual as a tax dependent. *Id.*, p. 2. It was not disputed that Petitioner was a married tax filer with four dependents. Thus, Petitioner's group size under HMP is six persons.

Spouse's weekly wage documents starting April 12, 2024 verified receipt of gross wages of \$ [REDACTED] \$ [REDACTED] \$ [REDACTED] and \$ [REDACTED] Exhibit A, pp. 22-28. Adding the weeks and dividing by four results in average gross weekly wages of \$ [REDACTED] Multiplying the average weekly wage by 52 weeks and dividing by 12 months results in gross monthly wages of \$ [REDACTED] MDHHS calculated a slightly more favorable income of Spouse of \$ [REDACTED] Exhibit A, p. 47.

Spouse submitted to MDHHS documents from April 2024 verifying gross biweekly wages of \$ [REDACTED] and \$ [REDACTED] Exhibit A, pp. 18-21. Adding the amounts and dividing by two results in gross biweekly wages of \$568. Multiplying the average biweekly wage by 26 weeks and dividing by 12 months results in gross monthly wages of \$ [REDACTED] MDHHS calculated a slightly more favorable income of \$ [REDACTED] Exhibit A, p. 47. Adding Spouse's and Petitioner wages results in a total monthly income of \$ [REDACTED]

HMP income limits are based on 133% of the federal poverty level. RFT 246 (April 2014) p. 1. Also, MDHHS applies a 5% disregard to the income limit when the disregard is the difference between eligibility and non-eligibility. BEM 500 (July 2017) p. 5. Thus, HMP income limits are functionally 138% of the FPL. The 2024 federal poverty level is \$41,960 for a 6-person group.<sup>11</sup> Multiplying the FPL by 1.38 results in an income limit of \$57,904.80 (\$4,825.40 per month). Petitioner's group's income exceeded the HMP income limit.

Petitioner testified that she was interviewed by MDHHS on May 22, 2024, and reported that her wages are seasonal and that June 6, 2024 would be her last pay date of the current season. Petitioner's testimony of being interviewed was consistent with MDHHS

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<sup>8</sup> [https://www.michigan.gov/documents/mdhhs/SPA\\_17-0100\\_Approved\\_638230\\_7.pdf](https://www.michigan.gov/documents/mdhhs/SPA_17-0100_Approved_638230_7.pdf)

<sup>9</sup> <https://www.investopedia.com/terms/a/agi.asp>

<sup>10</sup> *Id.*

<sup>11</sup> <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>

issuing notices of FAP and MA eligibility within the following calendar month. Petitioner's testimony was also credibly given the proximity of Petitioner's reporting date to the change date. The testimony implied a contention that MDHHS over-estimated income in determining HMP eligibility.

For HMP, MDHHS generally considers *current* monthly income and family size (except for individuals who report seasonal work and complete a projected annual income field on the MA application to show work for only a portion of the year with reasonably predictable changes in income within the upcoming 12 months).<sup>12</sup> 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.<sup>13</sup>

The evidence established that MDHHS determined HMP eligibility based on a projection of Petitioner's wages from April 2024. However, MDHHS did not issue proper notice of MA benefits until June 26, 2024. As of June 26, 2024, MDHHS was aware of Petitioner's updated reporting from May 2024. Because of Petitioner's reporting, MDHHS should have calculated Petitioner's annual income based on "reasonably predictable changes in income" within the following year. MDHHS's failure to do so is reversible error.

Even if Petitioner did not report seasonal employment to MDHHS until the hearing request date of June 12, 2024, MDHHS would be obliged to update Petitioner's MA eligibility based on the reported change. As of the hearing date, there was no evidence that MDHHS updated Petitioner's income based on Petitioner's employment being seasonal.

Given the evidence, MDHHS improperly terminated Petitioner's MA eligibility by failing to factor Petitioner's seasonal wages. As a remedy, Petitioner is entitled to a reinstatement of MA benefits and a processing of MA eligibility based on seasonal employment and "reasonably predictable changes in income".<sup>14</sup>

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<sup>12</sup> Petitioner's MA application dated [REDACTED] [REDACTED] 2024, did not include a reporting of annual income or seasonal employment. Exhibit A, pp. 36-44. In fact, Petitioner's employment was not reported at all. *Id.*

<sup>13</sup>[https://www.michigan.gov/mdhhs//media/Project/Websites/mdhhs/Folder3/Folder80/Folder2/Folder180/Folder1/Folder280/SPA\\_17-0100\\_Approved.pdf](https://www.michigan.gov/mdhhs//media/Project/Websites/mdhhs/Folder3/Folder80/Folder2/Folder180/Folder1/Folder280/SPA_17-0100_Approved.pdf).

<sup>14</sup> An order to reprocess Petitioner's MA eligibility does not equate to a finding that Petitioner is eligible to receive MA benefits. The determination of Petitioner's MA eligibility based on seasonal wages is left for MDHHS.

**DECISION AND ORDER**

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

- (1) Reinstate Petitioner's MA eligibility beginning May 2024 subject to the finding that Petitioner reported to MDHHS on May 22, 2024, that reported employment was seasonal;
- (2) Reregister and reprocess Petitioner's FAP application dated [REDACTED] 2024, subject to the finding that it improperly calculated Petitioner's group's income;
- (3) Issue benefit supplements and notice, if any, in accordance with policy.

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

CG/nr

  
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**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**

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