



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  
DIRECTOR

[REDACTED]  
[REDACTED] MI [REDACTED]

Date Mailed: September 12, 2024

MOAHR Docket No.: 24-008857

Agency No.: [REDACTED]

Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun**

### **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 September 3, 2024, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Krista Kulick, Assistance Payments Worker.

### **ISSUE**

Did the Department properly close Petitioner's Food Assistance Program (FAP) and Medical Assistance (MA) cases?

### **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 and full coverage MA benefits.
2. On or around [REDACTED] 2024, Petitioner submitted an application requesting Child Development and Care (CDC) benefits. In connection with the CDC application, Petitioner participated in an interview and submitted verification of income. (Exhibit A, pp. 7-23)
3. Petitioner is employed as a real estate agent and is paid contractually off commissions based on the sale price of the home. Petitioner asserted that from the total gross commission, a portion is paid to the brokerage and another portion to Petitioner's team leader and thus, Petitioner's net commissions are lower than the total commissions. Petitioner reported during the application interview for her CDC case that she supplies her own materials and that they amount to about 25% of her

total income and that she works 20-40 hours per week, making [REDACTED] per month. (Exhibit A, pp. 7-23)

4. The Department asserted that based on information submitted in connection with Petitioner's CDC application, her eligibility for FAP and MA benefits was also reviewed.
5. On or around July 17, 2024, the Department sent Petitioner a Notice of Case Action advising her that effective August 1, 2024, her FAP case will be closed due to excess income. (Exhibit A, pp. 32-36)
6. On an unverified date, the Department sent Petitioner a notice advising that effective August 1, 2024, her MA case would be closed.
7. On or around July 29, 2024, Petitioner requested a hearing disputing the closure of her FAP and MA cases.
8. After receiving Petitioner's request for hearing, the Department reinstated Petitioner's MA case and determined that she was no longer eligible for full coverage MA, and effective August 1, 2024, was eligible for limited coverage MA benefits subject to a monthly deductible of \$1,726 monthly.
9. On or around August 4, 2024, the Department sent Petitioner a Health Care Coverage Determination Notice, advising her that effective August 1, 2024, she was eligible for MA with a monthly deductible of \$1,726. (Exhibit A, pp. 37-38)

### **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).

#### **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.

A client's request for hearing must be in writing and signed by an adult member of the eligible group, or authorized hearing representative (AHR). Department of Health and Human Services Bridges Administrative Manual (BAM) 600 (March 2021), pp. 1-2. Moreover, BAM 600, pp. 6-7 provides that a request for hearing must be received in the

Department local office within 90 days of the date of the written notice of case action. The Michigan Office of Administrative Hearings and Rules (MOAHR) may grant a hearing about a denial of an application and/or supplemental payments; reduction in the amount of program benefits or service; suspension or termination of program benefits or service; restrictions under which benefits or services are provided or delay of any action beyond the standards of promptness. BAM 600, pp. 4-6.

In this case, Petitioner requested a hearing on July 29, 2024, disputing the closure of her MA case effective August 1, 2024. At the hearing, the Department representative testified that since the date that Petitioner's hearing request was received, the Department reinstated Petitioner's MA case and approved her for MA benefits effective August 1, 2024. On or around August 4, 2024, the Department sent Petitioner a Health Care Coverage Determination Notice, advising her that effective August 1, 2024, she was eligible for MA with a monthly deductible of \$1,726. (Exhibit A, pp. 37-38). The Department asserted that because of Petitioner's earnings, she was no longer eligible for full coverage MA and was now only eligible for limited coverage MA subject to a monthly deductible. However, upon review, the evidence presented established that prior to the hearing, the Department corrected the action that Petitioner requested a hearing to dispute by reinstating the MA case effective August 1, 2024. Petitioner was advised that should she dispute the information contained in the August 4, 2024, Health Care Coverage Determination Notice and the transfer of her MA benefits from full coverage to limited coverage with a deductible, she was entitled to submit a new hearing request within 90 days of the notice date. Because Petitioner's MA case was reinstated, there remains no issue left to be resolved with respect to Petitioner's July 29, 2024, request for hearing for the MA program. As such, Petitioner's hearing request with respect to MA is **DISMISSED**.

### **FAP**

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.

Petitioner requested a hearing disputing the closure of her FAP case effective August 1, 2024. The Department representative testified that because Petitioner submitted an application for CDC benefits in June 2024 and submitted updated income information in connection with the application, this triggered a review of Petitioner's eligibility for all programs, including the FAP. The Department representative testified that Petitioner's FAP case was closed effective August 1, 2024, because the Department determined that her household had excess income and was no longer eligible to receive FAP benefits.

In order to be eligible for FAP benefits, FAP groups must have income below the applicable gross and/or net income limits based on their group size. Petitioner is subject to the net income test. BEM 213 (March 2024); BEM 212 (March 2024); BEM 550

(February 2024); RFT 250 (October 2023). The Department properly applied a net income limit for Petitioner's confirmed three person group size of \$2,072. RFT 250, p. 1.

Although the July 17, 2024, Notice of Case Action indicates that Petitioner's FAP case was closed due to excess gross income, the Department presented a FAP EDG Net Income Results Budget which was thoroughly reviewed to determine if the Department properly concluded that Petitioner's household had excess income. (Exhibit A, pp. 29-31). It is noted that Petitioner confirmed the amounts relied upon by the Department with respect to unearned income from child support, housing expenses, and utilities. Thus, the only dispute appeared to be with respect to the calculation of income.

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (April 2022), pp. 1-5. An employee's wages include salaries, tips, commissions, bonuses, severance pay, and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (January 2024), pp. 6-7. 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), pp. 1-2. 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. 5-6. The Department is to use income from the past 60 or 90 days for fluctuating or irregular income if the past 30 days is not a good indicator of future income, and the fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month. The Department will compute the average monthly income based on the amounts and the number of months entered. For changes in self-employment income, determine the monthly gross income to budget based on discussion with the client of what he/she expects to receive on average per month. BEM 505, pp. 7-8. A standard monthly amount must be determined for each income source used in the budget. For a regular income, the Department will determine the standard monthly amount by adding the amount entered together and dividing by the number of months used. BEM 505, pp. 7-10. An employee's wages include salaries, tips, commissions, bonuses, severance pay, and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (January 2024), pp. 6-7.

Individuals who run their own businesses are self-employed. BEM 502 (June 2024), p. 1. This includes but is not limited to providing direct services. BEM 502, p. 1. The Department makes a determination as to whether an individual's income is from employment or self-employment. When determining if an individual is self-employed, the Department considers certain factors including: (i) if the individual sets his/her own work hours (ii) the individual provides his/her own tools for the job (iii) the individual is responsible for the service being provided and for the methods used to provide the service; and (iv) the individual collects payment for the services provided from the individual paying for them. BEM 502, pp. 1-2.

The amount of self-employment income before any deductions is called total proceeds. BEM 502, p. 3. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. BEM 502, p. 3. Allowable expenses (except MAGI related MA) are the higher of 50 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502, p. 3. BEM 502 provides a list of expenses that are allowed when determining self-employment countable income, pp. 3-4. To verify self-employment income, the Department may request an income tax return as the primary verification source if the criteria outlined in BEM 502 is met, or the DHS-431, Self-Employment Statement, with all income receipts to support claimed income as a secondary verification source, or as a third verification source, the DHS-431, Self-Employment Statement, without receipts. BEM 502, pp. 7-8.

According to the FAP Net Income Results Budget, the Department determined that Petitioner's household had gross earned income of [REDACTED]. The Department representative testified that it relied upon the income verifications submitted by Petitioner from her employment as a real estate agent. Specifically, the Department representative testified that it considered: gross revenue/commissions in the amount of [REDACTED] received on or around May 9, 2024; gross revenue/commissions in the amount of [REDACTED] received on or around June 4, 2024; and [REDACTED] received on or around June 10, 2024. (Exhibit A, pp. 17-23). Although the Department identified three pay amounts considered, the Department was unable to explain how the total gross income of [REDACTED] was determined, in light of the above referenced policies.

Petitioner disputed the Department's reliance on gross revenue/commissions and testified that from the total gross commission, a portion is paid to the brokerage and another portion to Petitioner's team leader and thus, Petitioner's net commissions are lower than the total commissions. Petitioner testified her net commissions from the May 9, 2024, pay date were [REDACTED] and for the June 4, 2024, pay date, her net commissions were [REDACTED]. These figures were reflected on the pay transaction summary submitted by Petitioner to the Department. Petitioner asserted that her income is irregular and fluctuates based on her sales. Upon review, because Petitioner does not receive the full amount of the gross revenue/commissions, the Department should not rely upon those figures in determining the household's income.

Furthermore, Petitioner reported during the application interview for her CDC case that she supplies her own materials and that they amount to about 25% of her total income and that she works 20-40 hours per week, making [REDACTED] per month. While the Department determined that Petitioner's income was earned income, it is evident that Petitioner is likely self-employed and her income should be calculated in accordance with the self-employment income policies outlined in BEM 502.

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 because of the errors identified above with respect to the calculation of Petitioner's income, the Department did not act in accordance with Department policy when it closed Petitioner's FAP case effective August 1, 2024, due to excess income.


**DECISION AND ORDER**

Accordingly, the hearing request with respect to MA is **DISMISSED** and the Department's FAP 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. Reinstate Petitioner's FAP case effective August 1, 2024, and recalculate the FAP budget effective August 1, 2024, ongoing;
2. Issue FAP supplements to Petitioner for any benefits she was eligible to receive but did not, if any, from August 1, 2024, ongoing, in accordance with Department policy; and
3. Notify Petitioner in writing of its decision.

ZB/ml

  
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**Zainab A. Baydoun**  
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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**Interested Parties**

BSC4  
M Holden  
B Cabanaw  
N Denson-Sogbaka  
MOAHR

**Via First Class Mail:**

**Petitioner**

[REDACTED]  
[REDACTED] MI [REDACTED]