



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

██████████
████████████████████
██████████ MI ██████████

Date Mailed: October 21, 2024
MOAHR Docket No.: 24-010275
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Linda Jordan

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 on October 9, 2024, via teleconference. Petitioner appeared and represented herself. Amber Gibson, Hearings Facilitator, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department). MDHHS’ Hearing Packet was admitted at the hearing as MDHHS Exhibit A, pp. 1-44.

ISSUES

Did MDHHS properly determine Petitioner’s eligibility for Food Assistance Program (FAP) benefits and Medicaid (MA) coverage?

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.
2. On ██████████ 2024, MDHHS sent Petitioner a Semi-Annual Contact Report for FAP. The report indicated that FAP benefits would end if the form was not returned to MDHHS by May 21, 2024 (Exhibit A, p. 7).
3. On June 10, 2024, MDHHS sent Petitioner a Notice of FAP Closure, indicating that her FAP case would close due to a failure to complete the Semi-Annual Contact Report (Exhibit A, p. 12).
4. On ██████████, 2024, Petitioner submitted an application to MDHHS for FAP and MA (Exhibit A, p. 17).

5. On August 27, 2024, Petitioner requested a hearing regarding her FAP and MA benefits (Exhibit A, pp. 4-5).
6. On September 6, 2024, MDHHS sent Petitioner a Health Care Coverage Determination Notice, indicating that Petitioner was approved for Plan First MA, a limited coverage category, effective October 1, 2024 ongoing (Exhibit A, p. 33).
7. On September 6, 2024, MDHHS sent Petitioner a Notice of Case Action indicating that she was approved for FAP benefits at a rate of \$█████ per month, beginning September 1, 2024, for a group-size of two (Exhibit A, p. 37).

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).

The Food Assistance Program (FAP)

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 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, MDHHS closed Petitioner's FAP case for failure to complete the Semi-Annual Contact Report. Petitioner reapplied for FAP and MDHHS approved her for FAP benefits at a rate of \$█████ per month. Petitioner disputed the case closure and FAP benefit rate.

MDHHS is required to periodically redetermine or renew an individual's eligibility for active benefit programs, including FAP. BAM 210 (January 2024), p. 1. Redetermination, renewal, semi-annual and mid-certification forms are often used to redetermine eligibility of active programs. *Id.* MDHHS sends clients a MDHHS-1046, Semi-Annual Contact Report, the beginning of the fifth month for cases assigned a 12-month benefit period. *Id.*, p. 11. The semi-annual contact report must be recorded, data collection updated and EDBC results certified in Bridges, MDHHS' internal case management system, by the last day of the sixth month of the benefit period to affect benefits no later than the seventh month. *Id.*, p. 12.

If the MDHHS-1046 is not logged in Bridges by the tenth day of the sixth month, Bridges will generate a MDDHS-1046-A, Notice of Food Assistance (FAP) Closure, to the client. *Id.*, p. 15. This reminder notice explains that the client must return the MDHHS-1046 and all required verifications by the last day of the month, or the case will close. *Id.* If the client fails to return a complete MDHHS-1046 by the last day of the sixth month, Bridges will automatically close the case. *Id.* If the client reapplies, MDHHS is required to treat it as a new application and Bridges will prorate the benefits. *Id.* If the completed MDHHS-1046 and verifications are returned by the last day of the sixth month, MDHHS must process

the changes to ensure the client's benefits are available no later than 10 days after their normal issuance date in the seventh month of the benefit period. *Id.*

The record shows that MDHHS sent Petitioner the Semi-Annual Contact Report on [REDACTED] 2024, with a due date of May 21, 2024 (Exhibit A, p. 7). MDHHS alleged that it did not receive the Semi-Annual Contact Report from Petitioner prior to the deadline. Petitioner disputed this contention and testified that she submitted the Semi-Annual Contact Report to MDHHS one day prior to the deadline. MDHHS testified that it had no record of this. Petitioner did not submit any additional evidence to prove that she returned the Semi-Annual Contact Report timely. Therefore, Petitioner has not submitted sufficient evidence to rebut MDHHS' contention, given the evidence presented. Accordingly, MDHHS sent Petitioner a Notice of FAP Closure on June 10, 2024, which informed Petitioner that her FAP case would close, effective June 30, 2024, if she did not complete and return the form by the end of the month. No evidence was presented that Petitioner returned the Semi-Annual Contact Report to MDHHS prior to June 30, 2024, which was the end of her benefit period. Therefore, MDHHS properly closed her FAP case.

Petitioner subsequently reapplied for FAP on [REDACTED] 2024 (Exhibit A, p. 17). MDHHS approved Petitioner for FAP benefits at a rate of \$ [REDACTED] per month. Petitioner disputed the FAP benefit rate. For FAP, the client may request a hearing disputing the current level of benefits at any time within the benefit period. BAM 600 (February 2024), p. 7.

To determine whether MDHHS properly calculated Petitioner's FAP benefit amount, it is necessary to evaluate the household's countable income. BEM 500 (April 2022), pp. 1-5. A group's benefits for a month are based, in part, on a prospective income determination. BEM 505 (October 2023), p. 1. A best estimate of income expected to be received by the group during a specific month is determined and used in the budget computation. *Id.* Each source of income is converted to a standard monthly amount unless a full month's income will not be received. *Id.* For past months, MDHHS uses actual gross income amounts received for past month benefits, converting to a standard monthly amount, when appropriate. *Id.*, p. 3. Additionally, MDHHS is required to discard a pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. *Id.*, p. 6.

Stable income refers to income received on a regular schedule that does not vary from check to check based on pay schedules or hours worked. BEM 505, p. 1. Fluctuating income refers to income received on a regular schedule but that varies from check to check, such as a waitress' income whose hours vary each week. *Id.*, p. 2. MDHHS is required to convert stable and fluctuating income that is received more often than monthly to a standard monthly amount. *Id.*, p. 8. MDHHS multiplies weekly income by 4.3, multiplies amounts received every two weeks by 2.15, and adds amounts received twice a month. *Id.* MDHHS uses 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. *Id.*, p. 6.

The record shows that MDHHS determined that Petitioner's monthly income for FAP was \$ [REDACTED] (Exhibit A, p. 25). Petitioner disputed this amount and testified that her income fluctuates. Petitioner also reported that her income changed from month to month of the FAP application (Exhibit A, p. 22). MDHHS testified that it based Petitioner's income

calculation on the two paychecks received August 16, 2024 and August 2, 2024, as shown on the Work Number Report (Exhibit A, p. 29). Petitioner testified that this amount included overtime income that was not regular.

The Work Number Report shows variation in Petitioner's income. It is unclear from the record why MDHHS did not use a 60- or 90-day period to determine Petitioner's monthly income, pursuant to policy in BEM 505, p. 6. No evidence was presented that MDHHS attempted to contact Petitioner to verify the fluctuations in her earned 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 MDHHS acted in accordance with Department policy when it closed Petitioner's FAP case, effective June 30, 2024, for failing to return the Semi-Annual Report. However, MDHHS did not demonstrate that it acted in accordance with Department policy when it determined Petitioner's FAP benefit rate, effective [REDACTED] 2024 ongoing.

Medicaid (MA)

MA 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, MDHHS determined that Petitioner was eligible for Plan First MA, a limited coverage category, and that she was over the income limit for Healthy Michigan Plan (HMP) MA. Petitioner disputed MDHHS' determination regarding her health care coverage.

MA includes several sub-programs or categories. BEM 105, 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, Flint Water Group and Health Michigan Plan (HMP) is based on Modified Adjusted Gross Income (MAGI) methodology. *Id.*

HMP MA provides health care coverage for a category of eligibility authorized under the Patient Protection and Affordable Care Act and Michigan Public Act 107 of 2013 effective April 1, 2014. BEM 137 (January 2024), p. 1. HMP is based on MAGI methodology. *Id.* To be eligible for HMP, an individual's income must be at or below 133% of the Federal Poverty Level (FPL). *Id.* Plan First MA is a MAGI-related limited coverage MA category, that covers services related to family planning and reproductive health. To be eligible for Plan First, a person must meet all non-financial eligibility factors, and their income cannot exceed 195% of the FPL. BEM 124 (July 2023), p. 1. 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.*

To evaluate Petitioner's eligibility for MA, MDHHS must determine Petitioner's MA fiscal group size, net income and assets. No evidence was presented that Petitioner was blind, disabled, over age 65, under age 19, pregnant, the parent of minor children, or a Medicare recipient. Thus, Petitioner was only potentially eligible to receive HMP MA or Plan First MA. MDHHS determined that Petitioner had a household of two. Petitioner did not dispute this determination.

To determine financial eligibility for MAGI-related MA programs, income must be calculated in accordance with MAGI under federal tax law. BEM 500 (April 2022), pp. 5-6. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500, p. 4. In order to determine earned 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 IRS tax form 1040 at line 37, form 1040 EZ at line 4, and form 1040A at line 21. 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.¹ Effective November 1, 2017, when determining eligibility for ongoing recipients of MAGI-related MA, the State of Michigan has elected to base financial eligibility on current monthly income and family size, and can take into account any reasonably predictable increase or decrease in income.²

MDHHS determined that Petitioner's annual income was \$██████████, or \$██████████ per month (Exhibit A, p. 34). At the hearing, MDHHS testified that it based Petitioner's income calculation on the two paychecks received ██████████ 2024 and ██████████ 2024, as shown on the Work Number Report (Exhibit A, p. 29). MDHHS testified that the amounts were averaged and then multiplied by 2.15. However, that would equal ██████████ (dropping the cents), not \$██████████. The reason for the discrepancy is unclear from the record.

HMP income limits are based on 133% of the Federal Poverty Level (FPL).³ RFT 246 (April 2014), p. 1. MDHHS also applies a 5% disregard to the income limit when the disregard is the difference between eligibility and non-eligibility. BEM 500, p. 5. Thus, HMP income limits are functionally 138% of FPL. The 5% disregard is the amount equal to 5% of the FPL, not a flat 5% disregard of income. BEM 500, p. 5; *See also*: Modified Adjusted Gross Income Related Eligibility Manual (May 2014), p. 15, *available at* https://www.michigan.gov/documents/mdch/MAGI_Manual_457706_7.pdf.

Effective January 17, 2024, 100% of FPL was \$20,440.00 annually for a two-person household residing in the contiguous 48 states. For Petitioner to be eligible for HMP MA in 2024, the household net income would have to be at or below \$28,207.20 per year or

¹ See Healthcare.gov, Count Income & Household Size, available at <<https://www.healthcare.gov/income-and-household-information/how-to-report/>> (last accessed September 16, 2024).

² Michigan Medicaid State Plan, December 18, 2017 Submission, available at <https://www.michigan.gov/documents/mdhhs/MAGI-Based_Income_Methodologies_SPA_17-0100_-_Submission_615009_7.pdf> (last accessed September 16, 2024).

³ Federal Poverty Level (FPL) refers to the Federal Poverty Guidelines published annually in the Federal Registrar. See <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines> (last accessed October 18, 2024).

\$[REDACTED] per month, which represents 138% of FPL. Persons with income less than 200% of FPL (applying the 5% disregard), which was \$[REDACTED] annually or \$[REDACTED] monthly in 2024, can qualify for Plan First MA.

On the MA application, Petitioner reported receiving \$[REDACTED] per hour and working an average of [REDACTED] hours per week, which would equal a monthly income of \$[REDACTED] using the multiplier of 4.3. This amount is below the income threshold for HMP MA. For MAGI, if a group's attested income is below the income threshold for the program being tested but the trusted data source indicates income above the income threshold, then MDHHS must perform a reasonable compatibility test. BEM 500, pp. 5-6. If income is reasonably compatible, then the applicant is eligible, and if the income is not reasonably compatible, then the program pends and the individual is required to provide proof of attested income. *Id.* Here, no proof was submitted that MDHHS performed the reasonable compatibility test for MAGI income or that it requested additional verification of Petitioner's attested income, contrary to Department policy.

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 MDHHS failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's eligibility for MA.

DECISION AND ORDER

Accordingly, **AFFIRMED IN PART** with respect to the FAP closure, effective June 30, 2024, and **REVERSED IN PART** with respect to the calculation of the FAP benefit rate, effective [REDACTED] 2024 ongoing, and **REVERSED** with respect to MDHHS' determination regarding Petitioner's MA coverage. MDHHS 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 benefit rate, from [REDACTED] 2024 ongoing, requesting additional information from Petitioner, as necessary;
2. Issue supplemental payments for any FAP benefits that Petitioner was eligible to receive, but did not, effective [REDACTED], 2024 ongoing;
3. Redetermine Petitioner's eligibility for MA, effective October 1, 2024 ongoing;
4. Provide Petitioner with the most beneficial category or MA coverage that she is eligible to receive, effective October 1, 2024 ongoing; and
5. Notify Petitioner of its decision(s) in writing.

LJ/pt



Linda Jordan
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

