



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 14, 2017
MAHS Docket No.: 17-008122
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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, an in-person hearing was held on September 13, 2017, from Warren, Michigan. Petitioner appeared and was represented by [REDACTED] of [REDACTED]. Petitioner's spouse (her name was not obtained) participated as an observer. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], hearing facilitator. [REDACTED] of [REDACTED] began the hearing as a [REDACTED] translator. [REDACTED] of [REDACTED] replaced the original [REDACTED] translator in mid-hearing.

ISSUE

1. The first issue is whether MDHHS properly determined Petitioner's Food Assistance Program (FAP) eligibility.
2. The second issue is whether MDHHS properly determined Petitioner's Medicaid eligibility.
3. The third issue is whether MDHHS properly determined Petitioner's Medicare Savings Program (MSP) eligibility.
4. The fourth issue is whether there is administrative jurisdiction to change Petitioner's case worker.

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 Food Assistance Program (FAP), Medicaid, and MSP benefits.
2. Petitioner's household included his spouse and no other persons.
3. Petitioner received monthly gross Retirement, Survivors and Disability Insurance (RSDI) of \$ [REDACTED]/month.
4. Petitioner's spouse received gross RSDI of \$ [REDACTED]/month.
5. Petitioner had annual housing expenses of \$ [REDACTED]
6. On [REDACTED], MDHHS terminated Petitioner's and his spouse's MSP eligibility, effective [REDACTED], due to excess income.
7. The corresponding written notice for MSP termination was vague enough that Petitioner established good cause for not timely requesting a hearing.
8. On [REDACTED], MDHHS determined Petitioner to be eligible to receive \$ [REDACTED]/month in FAP benefits, in part, based on \$ [REDACTED]/month in income and \$ [REDACTED]/month in housing expenses.
9. As of [REDACTED], Petitioner and his spouse were each responsible for a \$ [REDACTED]/month Medicare premium.
10. On [REDACTED], MDHHS determined Petitioner and his spouse were eligible for Medicaid, subject to a \$ [REDACTED]/month deductible.
11. On [REDACTED], Petitioner requested a hearing disputing FAP, Medicaid, and MSP eligibility, as well as requesting a change in MDHHS specialist.

CONCLUSIONS OF LAW

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. MDHHS (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. MDHHS 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 an amount of FAP eligibility. MDHHS presented a Notice of Case Action (Exhibit A, pp. 1-4) dated [REDACTED]. The notice informed Petitioner of FAP eligibility of \$ [REDACTED] beginning [REDACTED].

The presented notice included a budget summary listing all income-related factors for FAP eligibility. During the hearing, all benefit factors were discussed with Petitioner.

Petitioner testimony referenced his vehicle expenses. Vehicle expenses are not factored in FAP eligibility. BEM 556 outlines the factors and calculations that are required to determine FAP eligibility.

MDHHS presented a State Online Query (SOLQ) for Petitioner (Exhibit A, pp. 5-7) and Petitioner's spouse (Exhibit A, pp. 8-10). The SOLQs listed a "Monthly Benefit Credited Amount" of \$[REDACTED] for Petitioner and \$[REDACTED] for Petitioner's spouse. These amounts are known to reflect a person's gross RSDI benefit amount.

[For all programs,] Bridges counts the gross benefit amount as unearned income. BEM 503 (July 2015), p. 28. Some exceptions to counting the gross benefit amount exist (e.g. Medicare premium refunds, returned benefits (see BEM 500), fees paid to qualified organizations acting as a payee...), though none were alleged to be applicable in the present case. Gross amount means the amount of RSDI before any deduction, such as Medicare. BEM 163 (July 2013), p. 2.

Adding Petitioner's and his spouse's RSDI results in a countable gross income of \$[REDACTED] MDHHS factored the same amount in the FAP-benefit determination.

[MDHHS] uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (October 2015), p. 1. For groups without a senior (over 60 years old), disabled or disabled veteran (SDV) member, MDHHS considers the following expenses: child care, excess shelter (housing and utilities) up to a capped amount and court-ordered child support and arrearages paid to non-household members (see *Id.*). For groups containing SDV members, MDHHS also considers the medical expenses above \$[REDACTED] for each SDV group member(s) and an uncapped excess shelter expense. It was not disputed Petitioner and his spouse were SDV members.

Verified medical expenses for SDV groups, child support, and day care expenses are subtracted from a client's monthly countable income. Petitioner conceded not having day care or child support expenses. Medical expenses were somewhat disputed.

Petitioner testimony only alleged medical expenses of Medicare premiums. At the time of the written notice disputed by Petitioner, Petitioner had no such expenses because MDHHS was paying Petitioner's Medicare premium. Though MDHHS later terminated Petitioner's eligibility for assistance with Medicare premiums, the later action is not relevant to determining if the determination on [REDACTED], was correct. As of [REDACTED], Petitioner had no known medical expenses. MDHHS happened to factor \$[REDACTED]/month in medical expenses (\$[REDACTED] in countable expenses after applying the \$[REDACTED] copayment). For purposes of this decision, the medical expenses factored by MDHHS will be accepted as correct. Thus, Petitioner's running income total is \$[REDACTED]

Petitioner's FAP benefit group size justifies a standard deduction of \$[REDACTED] (see RFT 255). The standard deduction is given to all FAP benefit groups, though the amount varies based on the benefit group size. The standard deduction is subtracted from the countable monthly income to calculate the group's adjusted gross income. Petitioner's FAP group's adjusted gross income is found to be \$[REDACTED]

Petitioner testified he was responsible for paying \$[REDACTED]/year for property insurance, \$[REDACTED] for property taxes, and that he had no mortgage. MDHHS is to convert annual expenses to monthly expenses by dividing the expenses by 12 (see BEM 554). Petitioner's countable monthly housing expenses are found to be \$[REDACTED]. MDHHS factored Petitioner's expenses to be \$[REDACTED]. For purposes of this decision, the higher, and more Petitioner-favorable, amount will be accepted as correct.

MDHHS credited Petitioner with a utility standard of \$[REDACTED] (see RFT 255). The utility standard incorporates all utilities and is the maximum credit available. Petitioner's total shelter expenses are found to be \$[REDACTED].

MDHHS only credits FAP benefit groups with an "excess shelter" expense. The excess shelter expense is calculated by subtracting half of Petitioner's adjusted gross income from Petitioner's total shelter obligation. Petitioner's excess shelter amount is found to be \$[REDACTED].

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. Petitioner's FAP benefit group's net income is found to be \$[REDACTED]. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Petitioner's group size and net income Petitioner's proper FAP benefit issuance for [REDACTED] is found to be \$[REDACTED], the same amount calculated by MDHHS. Thus, it is found that MDHHS properly determined Petitioner's FAP eligibility.

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. MDHHS (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MDHHS 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 determination of Medicaid. MDHHS presented a Health Care Coverage Determination Notice (Exhibit 1, pp. 15-19) dated [REDACTED]. The notice informed Petitioner and his spouse of Medicaid eligibility, subject to a \$[REDACTED]/month deductible.

Medicaid is also known as Medical Assistance (MA). BEM 105 (January 2016), p. 1. The Medicaid program comprise [sic] 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. *Id.*

For most SSI-related MA categories, the fiscal and asset group includes the client and spouse (see BEM 211 (January 2016), p. 8). Listed exceptions to excluding a spouse as a group member include eligibility for long-term care, waiver patients, and Freedom-To-Work eligibility.

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 and his spouse disabled and/or aged. As disabled and/or aged individuals, Petitioner and his spouse are potentially eligible to receive Medicaid through AD-Care. BEM 163 outlines the procedures for determining AD-Care eligibility.

As stated in the FAP analysis, MDHHS is to factor gross RSDI in calculating eligibility for all programs. Thus, \$ [REDACTED] is the countable RSDI for Petitioner and his spouse for purposes of Medicaid eligibility.

MDHHS gives AD-Care budget credits for employment income, guardianship and/or conservator expenses and cost of living adjustments (COLA) (for [REDACTED] through [REDACTED] only). No such expenses were alleged.

Income eligibility for AD-Care exists when countable income does not exceed the income limit for the program. BEM 163 (October 2010), p. 1. The income limit for AD-Care for a two-person MA group is \$ [REDACTED] RFT 242 (April 2017), p. 1.

Petitioner's and his spouse's countable income exceeds the AD-Care limit. It is found that MDHHS properly determined Petitioner and his spouse to be ineligible for Medicaid under AD-Care.

Petitioner and his spouse may still receive Medicaid subject to a monthly deductible through the G2S program. Clients with a deductible may receive Medicaid if sufficient allowable medical expenses are incurred. Each calendar month is a separate deductible period. The fiscal group's monthly excess income is called the deductible amount. Meeting a deductible means reporting and verifying allowable medical expenses... that equal or exceed the deductible amount for the calendar month. BEM 545 (July 2016), p. 11.

The G2S budget allows a \$20 disregard for unearned income and various earned income disregards. The G2S budget also factors ongoing medical expenses (which are applied toward a deductible), insurance premiums, and remedial services. Petitioner testimony only alleged insurance premiums from Medicare Part B. Presented SOLQs verified Medicare Part B premium amounts for Petitioner and his spouse of \$ [REDACTED]/month each.

The deductible is calculated by subtracting the protected income level (PIL) from the MA net income. A PIL is a standard allowance for non-medical need items such as shelter, food and incidental expenses. The PIL for Petitioner's shelter area and group size is

\$ [REDACTED] (see RFT 240 (December 2013), p. 1). Subtracting the PIL, insurance premiums, and \$20 disregard from the group's income results in a monthly deductible of \$ [REDACTED]

MDHHS calculated a deductible of \$ [REDACTED]/month. A presented G2S budget was not directly insightful into understanding the MDHHS calculation because it did not correspond with the disputed notice. The presented G2S budget calculated a \$ [REDACTED]/month deductible; MDHHS testimony indicated that the presented G2S budget factored an excess of insurance premiums. All other factors appeared to be properly budgeted.

Given presented evidence, it is presumed that MDHHS improperly calculated Petitioner's and his spouse's Medicaid eligibility by improperly factoring insurance premiums. Thus, MDHHS will be ordered to reprocess Petitioner's and his spouse's Medicaid eligibility using \$ [REDACTED]/month for insurance premiums. Unfortunately for Petitioner, the correction will only result in a slight deductible reduction.

Petitioner also requested a hearing, in part, to dispute a termination of MSP eligibility. MDHHS presented a Health Care Coverage Determination Notice (Exhibit A, pp. 11-14) dated [REDACTED]. The notice informed Petitioner of a termination of MSP eligibility, effective [REDACTED], due to excess income.

Consideration was given to barring Petitioner from a decision on the merits of MSP eligibility because his hearing request was submitted more than 90 days after MDHHS mailed written notice (see BAM 600). The consideration was rejected for two reasons. First, it was not disputed that Petitioner applied for medical benefits in [REDACTED] and that MDHHS sent a notice to Petitioner denying eligibility; Petitioner's hearing request would not be tardy to address a denial. A second and superior reason exists for allowing Petitioner's hearing request concerning MSP eligibility to proceed.

The notice of MSP termination specified a termination of medical benefits, but the termination was not clearly a termination MSP benefits. The notice was sufficiently vague that a reasonable person could easily fail to understand the consequences of the notice. The vaguely written consequences on the notice justify excusing Petitioner's tardiness in requesting a hearing. The analysis will proceed to consider whether the termination was justified.

MSP programs offer three different degrees of assistance with payment toward a client's Medicare premium and deductibles. Qualified Medicare Beneficiaries (QMB) coverage pays for a client's Medicare premiums, coinsurances, and deductibles (see BEM 165 (October 2016), p. 2). Specified Low Income Beneficiaries (SLMB) coverage pays for a client's Medicare Part B premium (see *Id.*). Additional Low Income Beneficiaries (ALMB) coverage pays for a client's Medicare Part B premium if DHHS funding is available. (See *Id.*)

[For MSP income eligibility, MDHHS is to] determine countable income according to the SSI-related MA policies in BEM 500, 501, 502, 503, 504 and 530, except as explained in COUNTABLE RSDI in this item. BEM 165 (October 2016) p. 8. [MDHHS is to] apply

the deductions in BEM 540 (for children) and 541 (for adults) to countable income to determine net income. *Id.*

Medicare Savings Programs are SSI-related MA categories. *Id.*, p. 1. Thus, Petitioner and his spouse are factored together in determining eligibility.

As noted in the FAP analysis and MA analyses, MDHHS is to factor gross RSDI income for all programs. For purposes of MSP eligibility, Petitioner's and his spouse's gross income is \$ [REDACTED]

Countable budget expenses including those for guardianship, conservator, and cost of living adjustments (for [REDACTED] through [REDACTED] only). None of the expenses were applicable to Petitioner. It is found Petitioner's countable income for MSP eligibility is \$ [REDACTED]

Income eligibility exists [for MSP] when net income is within the limits in RFT 242 or 247. *Id.*, p. 8. The highest income limit for any MSP category for a group size of [REDACTED] is \$ [REDACTED] (see RFT 242 (April 2017), p. 1.

Petitioner's countable income exceeds the income limits for MSP eligibility. Accordingly, it is found that MDHHS properly terminated Petitioner's and his spouse's MSP eligibility.

Petitioner's hearing request also indicated a wish to change specialists. Petitioner testified that he is repeatedly disrespected, and even once had the police called on him for no known reason.

The Michigan Administrative Hearing System may grant a hearing about any of the following (see BAM 600 (June 2015), p. 4):

- 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;
- delay of any action beyond standards of promptness; or
- the current level of benefits or denial of expedited service (for Food Assistance Program benefits only).

Changes in specialist are not among the listed reasons justifying administrative review. The discretion of specialist assignment lies completely with MDHHS. It is recommended that Petitioner contact MDHHS management if a change of specialists is still needed. Petitioner's hearing request will be dismissed concerning his wish to change specialists.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that Petitioner is not entitled to an administrative remedy concerning a change in specialists. Petitioner's hearing request is **PARTIALLY DISMISSED**.

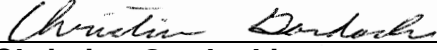
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined Petitioner to be eligible for \$█/month in FAP benefits effective █. It is further found that MDHHS properly terminated Petitioner's and his spouse's MSP eligibility, effective █. The actions taken by MDHHS are **PARTIALLY AFFIRMED**.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's and his spouse's Medicaid eligibility. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Recalculate Petitioner's and his spouse's FAP eligibility, subject to the finding that Petitioner's and his spouse's insurance premiums are \$█/month; and
- (2) Send proper notice of the recalculation in accordance with MDHHS policy.

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

CG/jaf



Christian Gardocki
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

[REDACTED]

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
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