



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: April 29, 2019
MOAHR Docket No.: 19-002495
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 April 24, 2019, from Detroit, Michigan. Petitioner was present and represented himself. The Department of Health and Human Services (Department) was not present.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) and Medical Assistance (MA) program benefit 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 FAP and MA recipient.
2. On February 20, 2019, Petitioner completed a redetermination.
3. Petitioner had unearned income in the form of Retirement, Survivors, and Disability Insurance (RSDI) benefits in the gross monthly amount of \$1,133 (Exhibit A, p. 14).
4. On March 1, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice (HCCDN) informing him that his MA benefit case was closing effective April 1, 2019, ongoing (Exhibit A, pp. 4-8).

5. On March 1, 2019, the Department sent Petitioner a Notice of Case Action (NOCA) informing him that his FAP benefits were being reduced to \$15 per month effective March 1, 2019, ongoing (Exhibit A, pp. 9-12).
6. On [REDACTED], 2019, Petitioner submitted a request for hearing disputing the Department's actions related to his MA and FAP benefit cases.

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).

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.

On February 20, 2019, Petitioner completed a redetermination. As a result, the Department redetermined Petitioner's FAP eligibility. The Department sent Petitioner a NOCA on March 1, 2019, informing him that he was approved for FAP benefits in the monthly amount of \$15. On the NOCA, the Department included a FAP budget summary of the income and expenses that were considered when calculating his FAP benefit amount (Exhibit A, p. 10).

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 (July 2017), pp. 1-5. According to the NOCA, the Department determined Petitioner had unearned income in the amount of \$1,133 per month. According to the State Online Query (SOLQ), Petitioner received a gross monthly RSDI benefit amount of \$1,133. Petitioner confirmed that figure was correct. Therefore, the Department properly calculated Petitioner's household income.

The deductions to income on the net income budget were also reviewed. There was no evidence presented that Petitioner's group includes a senior/disabled/veteran (SDV) household member. BEM 550 (October 2015), pp. 1-2. Thus, the group is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.

- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (August 2017), p. 1; BEM 556 (April 2018), p. 3.

There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support expenses. Therefore, the budget properly excluded any deduction for dependent care or child support expenses. Petitioner's FAP benefit group size of one justifies a standard deduction of \$158. RFT 255 (October 2018), p. 1.

When calculating the excess shelter deduction, the Department will add the total shelter amount and reduce that figure by 50% of the adjusted gross income. According to the budget summary, Petitioner was not budgeted a housing expense, nor the heat/utility (h/u) standard. Petitioner was only provided with the telephone standard.

Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. BEM 554, p. 13. Property taxes, state and local assessments and insurance on structure are allowable expenses. BEM 554, p. 14. The expense must be a continuing one. BEM 554, p. 13. The Department will verify shelter expenses at application and when a change is reported. BEM 554, p. 14. If the client fails to verify a reported change in shelter, the Department will remove the old expense until the new expense is verified. BEM 554, p. 14. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130 (April 2017), p. 3. For FAP cases, the Department allows the client 10 calendar days to provide the verification that is required. BAM 130, p. 7.

The h/u standard covers all heat and utility costs including cooling expenses. BEM 554, p. 15. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. BEM 554, p. 15. FAP groups whose heat is included in the cost of their monthly rent may still be eligible for the h/u standard if: they are billed for excess heat payments from their landlord; they have received a home heating credit in an amount greater than \$20 for the applicable period; or they have received a Low Income Home Energy Assistance Payment (LIHEAP) or a LIHEAP payment was made on their behalf in an amount greater than \$20 for the applicable period. BEM 554, pp. 15-19. Additionally, FAP groups who pay cooling (including room air conditioners) are eligible for the h/u standard if they verify their responsibility to pay for non-heat electric expenses. BEM 554, p. 16. FAP groups not eligible for the h/u standard who have other utility expenses or contribute to the costs of other utility expenses are eligible for the individual utility standards. BEM 554, p. 21.

Petitioner testified that he pays yearly property taxes. Petitioner estimated that the yearly tax total was around \$850. Petitioner also testified he is responsible for heating costs. It is unclear as to why Petitioner was not budgeted a housing expense or the h/u standard, as he is eligible for both expenses. Therefore, the Department failed to

establish it properly calculated Petitioner's excess shelter deduction. As it follows, the Department failed to establish it properly calculated Petitioner's FAP benefit amount.

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.

Petitioner was an ongoing MA recipient under the Health Michigan Plan (HMP) program. Petitioner completed a redetermination on February 20, 2019. As a result, the Department redetermined Petitioner's MA eligibility. On March 1, 2019, the Department sent Petitioner a HCCDN informing him that his MA benefit case was closing effective April 1, 2019, ongoing.

The Department concluded that Petitioner was not eligible for HMP because his income exceeded the applicable income limit for his group size. HMP uses a Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (October 2016), p. 1. An individual is eligible for HMP if her household's income does not exceed 133% of the Federal Poverty Level (FPL) applicable to the individual's group size. BEM 137, p. 1. An individual's group size for MAGI-related purposes requires consideration of the client's tax filing status. In this case, Petitioner filed taxes and did not claim any dependents. Therefore, for HMP purposes, he has a household size of one. BEM 211 (January 2016), pp. 1-2.

133% of the annual FPL in 2019 for a household with one member is \$16,146.20. See <https://aspe.hhs.gov/poverty-guidelines>. The monthly income limit for a group size of one is \$1,345.52. Therefore, to be income eligible for HMP, Petitioner's income cannot exceed \$16,146.20 annually or \$1,345.52 monthly. To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. BEM 500 (July 2017), p. 3. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500, p. 3. Income is verified via electronic federal data sources in compliance with MAGI methodology. MREM, § 1.

In order to determine income in accordance with MAGI, a client's adjusted gross income (AGI) is added to any tax-exempt foreign income, 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, child care, or retirement savings. This figure is multiplied by the number of paychecks the client expects in 2017 to estimate income for

the year. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>. For MAGI MA benefits, if an individual receives RSDI benefits and is a tax filer, all RSDI income is countable. BEM 503 (January 2019), p. 29.

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 currently monthly income and family size. See:

https://www.michigan.gov/documents/mdhhs/MAGI-Based_Income_Methodologies_SPA_17-0100_-_Submission_615009_7.pdf

According to Petitioner's SOLQ, he receives \$1,133 in monthly RSDI benefits. As he is a tax filer, all of the RSDI income is countable. Petitioner testified he does not have any other income. It is unclear as to why the Department determined Petitioner was income ineligible for MA benefits under the HMP program. Petitioner's monthly RSDI benefit amount is less than the income limit for his group size under the HMP program. Therefore, the Department failed to establish it properly determined Petitioner's MA eligibility.

DECISION AND ORDER

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 MA and FAP eligibility.

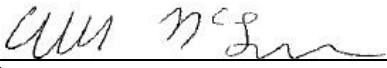
Accordingly, the Department's decision is **REVERSED**.

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. Redetermine Petitioner's FAP eligibility as of March 1, 2019, ongoing;
2. If Petitioner is eligible for additional FAP benefits, issue supplements he is entitled to receive as of March 1, 2019, ongoing;
3. Redetermine Petitioner's MA eligibility as of April 1, 2019, ongoing;
4. If Petitioner is eligible for MA benefits, provide coverage he is entitled to receive as of April 1, 2019, ongoing; and

5. Notify Petitioner of its MA and FAP decisions in writing.

EM/cg


Ellen McLemore
Administrative Law Judge
for Robert Gordon, 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 Office 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 Email:

MDHHS-Wayne-57-Hearings
M. Holden
D. Sweeney
D. Smith
EQAD
BSC4- Hearing Decisions
MAHS

Petitioner – Via First-Class Mail:

[REDACTED]
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