



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 26, 2019
MOAHR Docket No.: 19-002905
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 via 3-way telephone conference on April 22, 2019, from Detroit, Michigan. Petitioner appeared by telephone and was assisted by her son, [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator, and [REDACTED] Eligibility Specialist.

ISSUE

Did the Department properly determine that Petitioner was eligible for Medicaid (MA) subject to a deductible?

Did the Department properly deny Petitioner's [REDACTED]-year-old son's application for Food Assistance Program (FAP) benefits?

Did the Department properly process Petitioner's [REDACTED]-year-old son's MA application?

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 lives in Wayne County with her [REDACTED] son [REDACTED] (Child A) and [REDACTED] son [REDACTED] (Child B).

2. Petitioner receives gross monthly Retirement, Survivors and Disability Insurance (RSDI) benefits of \$[REDACTED]. \$[REDACTED] of her RSDI benefits are used to pay her Part B Medicare premium.
3. Child A receives [REDACTED] in monthly RSDI income.
4. Petitioner receives RSDI benefits based on a disability; Child A is not disabled.
5. On February 5, 2019, Petitioner applied for MA for herself and Child A, and FAP benefits for Child B (Exhibit A, pp. 10-19).
6. On February 6, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice notifying her that, effective March 1, 2019, she was approved for full coverage MA, Child A was approved for full coverage MA, and neither were eligible for Medicare Savings Program benefits under the Qualified Medicare Beneficiary (QMB) category (Exhibit B).
7. On February 26, 2019, the Department sent Petitioner (i) a Notice of Case Action notifying her that her FAP application was denied due to excess income and (ii) a Health Care Coverage Determination Notice notifying her that she was eligible for MA subject to a [REDACTED] monthly deductible effective April 1, 2019 and neither she nor Child A were eligible for QMB benefits (Exhibit A, pp. 22-25, 27-32).
8. On March 14, 2019, the Department received Petitioner's request for hearing disputing her MA deductible, the denial of Child A's MA, and the denial of Child B's FAP benefits.

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 Eligibility

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 disputed the Department's finding that Child B was not income eligible for FAP benefits. At the hearing, the Department explained that, because Child B was

under age 22 and lived with Petitioner and Child A, in determining Child B's eligibility for FAP, Child B was in a FAP group with Petitioner and Child A and Petitioner and Child A's income had to be budgeted in determining FAP eligibility. Department policy provides that parents and their children under age 22 years of age who live together must be in the same FAP group. BEM 212 (January 2017), p. 1. The entire amount of unearned countable income for FAP group members who are not disqualified must be budgeted in determining an applicant's income eligibility. BEM 550 (January 2017), p. 1; BEM 503 (April 2019), pp. 28-29. Therefore, the Department properly concluded that in determining Child B's eligibility for FAP, the FAP group was composed of Child B, Petitioner, and Child A and the income each received should be budgeted in determining FAP eligibility.

Because Petitioner received RSDI benefits due to a disability, she was a senior/disabled/veteran (SDV) member of her household and the Department was required to show that the household had access net income to establish that it was not income eligible for FAP benefits. BEM 550 (January 2017), p. 1. The Department presented a net income budget it used to calculate the group's net income (Exhibit A, pp. 20-21).

The net income budget showed total countable unearned income of [REDACTED]. At the hearing, the Department conceded that this figure improperly included [REDACTED] in child support the household was no longer receiving. In reviewing the deductions an SDV household is eligible to receive, the Department was questioned about the housing expenses and utility standard used in calculating Petitioner's excess shelter deduction. See BEM 554 (August 2017), pp. 13-24. The Department testified that, in calculating the excess shelter deduction, it considered Petitioner's monthly [REDACTED] property taxes and utilities for water and telephone. However, Petitioner's February 5, 2019 application showed monthly housing expenses of [REDACTED] and indicated that Petitioner was responsible for heat expenses (Exhibit, p. 16). Petitioner testified that she paid \$800 in monthly rent and did not pay property taxes. The Department contended that Petitioner was responsible for property taxes on the home and, accordingly, it properly considered the monthly property taxes rather than the monthly rent identified on the application in calculating the excess shelter deduction, but it did not present any evidence that it requested that Petitioner clarify the discrepancy. See BAM 130 (April 2017), p. 9. Further, it did not explain why Petitioner was not eligible for the standard heat and utility standard of [REDACTED] where the evidence showed that Petitioner was responsible for paying heat. RFT 255 (October 2018), p. 1; BEM 554, p. 15. Under these circumstances, the Department has not established that it properly calculated Petitioner's household net income. Therefore, the Department has failed to show that it acted in accordance with Department policy when it concluded that Petitioner's household was ineligible for FAP benefits due to excess net income.

Petitioner's MA and Child A's 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 requested a hearing to dispute the Department's finding that she was eligible for MA subject to a deductible and that her son was ineligible for MA. At the hearing, the Department presented the February 6, 2019 Health Care Coverage Determination Notice that showed that Child A was approved for full coverage MA (Exhibit B). Because Child A's MA issue was resolved, Petitioner's hearing request with respect to his MA case is dismissed.

The February 26, 2019 Healthcare Coverage Determination Notice notified Petitioner that she was eligible for MA subject to a monthly \$663 deductible effective April 1, 2019. For MA purposes, Petitioner had a fiscal group size of one. BEM 211 (February 2019), p. 8. The evidence showed that Petitioner's monthly income consisted of [REDACTED] gross RSDI benefits. Based on this income and an MA fiscal group size of one, Petitioner was not income-eligible for full coverage MA under the Ad-Care program. RFT 242 (April 2018), p. 1.

Despite having excess income, Petitioner, as the parent of a minor child, was eligible for Group 2 Caretaker Relative (G2C) MA coverage. BEM 135 (October 2015), p. 1. As a Group 2 MA program, G2C provides potential MA coverage for an individual whose net income exceeds the income limit for full-coverage MA. BEM 105 (April 2017), p. 1. In such cases, the client is eligible for MA coverage with a monthly deductible, with the deductible equal to the amount the individual's net income, calculated in accordance with the applicable Group 2 MA policy, exceeds the applicable Group 2 MA protected income level (PIL). The PIL is based on the county in which the client resides and the client's fiscal MA group size. BEM 135, p. 2; BEM 544 (July 2016), p. 1. The PIL for Wayne County, where Petitioner resides, is [REDACTED]. RFT 200 (April 2017), p. 2; RFT 240 (December 2013), p. 1.

To show how the deductible was calculated, the Department presented a G2-FIP Related MA budget showing a [REDACTED] deductible. Based on Petitioner's receipt of gross monthly income of \$[REDACTED] and Petitioner having one dependent (which is defined as a child under age 18) in the household, Petitioner's prorated share of her income is [REDACTED] and her fiscal group's net income for G2C purposes is [REDACTED]. See BEM 536 (November 2018), pp. 1-7 (for calculating net income for Group 2 MA programs) and BEM 530 (July 2017), pp. 3-4 (for prospecting income for Group 2 MA programs). To determine Petitioner's countable income for G2C purposes, this figure should be reduced by health insurance premiums incurred by Petitioner. BEM 544, p. 1. Here, Petitioner incurred monthly part B Medicare premiums of [REDACTED] but the budget does not show a deduction for this expense. Therefore, the deductible of [REDACTED] showing on the MA budget is incorrect. Although the Healthcare Coverage Determination Notice shows

that the monthly deductible was [REDACTED], at the hearing the Department contended that the applicable deductible was [REDACTED], not [REDACTED]. Because a deductible of [REDACTED] was not calculated in accordance with Department policy, the Department has failed to show that it properly calculated the deductible applicable to Petitioner's MA case.

At the hearing, Petitioner expressed concerns regarding the availability of home help services. In order to be eligible for HHS services, a client with an MA deductible case must have met the deductible. Adult Services Manual (ASM) 105 (January 2018), p. 1. A client whose cost of personal care services is more than the MA deductible amount may be eligible for MA under the Medicaid personal care option, in which case the home help payment is reduced by the deductible amount and the client is responsible for paying the provider the MA deductible amount each month. ASM 105, p. 2. Petitioner may wish to discuss this option with the Department.

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 Petitioner's MA issue concerning Child A was resolved prior to hearing and the Department did not act in accordance with Department policy when it concluded that (i) Petitioner's household was not net income eligible for FAP and (ii) Petitioner's monthly MA deductible was [REDACTED]

DECISION AND ORDER

Because the Department resolved Petitioner's hearing request concerning Child A's Medicaid coverage, the hearing request on that issue is **DISMISSED**.

The Department's denial of Petitioner's FAP application and its calculation of Petitioner's MA deductible 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 and reprocess Petitioner's February 5, 2019 FAP application;
2. If eligible, issue FAP benefits to Petitioner that she is eligible to receive from February 5, 2019 ongoing;
3. Recalculate Petitioner's MA deductible for April 1, 2019 ongoing;
4. Provide Petitioner with MA coverage she is eligible to receive from April 1, 2019 ongoing; and

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



AE/tm

Alice C. Elkin
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

DHHS

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

CC:

[REDACTED]