



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.: 19-002913
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 on April 22, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Michelle Morley, Assistance Payment Specialist. Department trainees, Amanda Hatley and Lindsey Hile, observed the hearing but did not participate.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefits for April 2019 ongoing?

Did the Department properly determine that Petitioner was eligible for Medicaid (MA) subject to a monthly deductible for May 2019 ongoing?

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 MA benefits.
2. Petitioner receives gross monthly Retirement Survivors and Disability Insurance (RSDI) benefits of \$1290 based on a disability.
3. On February 22, 2019, the Department became aware that Petitioner's RSDI was suspended (Exhibit A, p. 1).

4. On February 21, 2019, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits would increase to \$192 monthly effective March 1, 2019 (Exhibit A, pp. 7-10).
5. On February 22, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice notifying her that she was eligible for full coverage MA effective March 1, 2019 (Exhibit A, pp. 4-6).
6. In March 2019, the Department became aware that Petitioner's RSDI benefits had been reinstated with no loss of benefits (Exhibit A, pp. 14-16).
7. On March 14, 2019, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits were decreasing to \$15 monthly effective April 1, 2019 (exhibit A, p. 22-25).
8. On [REDACTED] 2019, the Department received Petitioner's request for hearing disputing her FAP benefits, her MA deductible, and her hearing request being torn up by a Department supervisor (Exhibit A, pp. 53-54). Petitioner also submitted documentation of medical expenses she had incurred (Exhibit A, pp. 32-39).
9. On March 28, 2019, the Department sent Petitioner (i) a Health Care Coverage Determination Notice notifying her that she was eligible for MA subject to a \$878 monthly deductible effective May 1, 2019 (Exhibit A, pp. 26-31) and (ii) a Notice of Case Action notifying Petitioner that her FAP benefits for April 2019 had increased to \$38 (Exhibit A, pp. 40-43).

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).

In her [REDACTED], 2019 hearing request, Petitioner disputed the decrease in her monthly FAP benefits and her MA deductible. Petitioner also requested a hearing to dispute her hearing request being torn by a Department supervisor, but, because the undersigned's jurisdiction is limited to addressing changes in an individual's benefits and those issues were addressed at the hearing, it is found that no hearable issue was presented with respect to the torn request. See BAM 600 (October 2018), p. 5.

FAP Calculation

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.

The Department explained that, because Petitioner's RSDI benefits were temporarily suspended, her FAP benefits were recalculated based on zero dollars in income, and as a result, she was approved for \$192 in FAP benefits for the month of March 2019. When the Department became aware that Petitioner's RSDI income was reinstated, the Department recalculated her FAP budget based on her receipt of \$1290 in monthly RSDI income and determined that she was eligible for \$15 in monthly FAP benefits effective April 1, 2019. Based on medical expenses Petitioner submitted on March 19, 2019, the Department increased Petitioner's FAP benefits for only April 2019 to \$38.

The Department presented FAP net income budgets showing how it calculated Petitioner's FAP eligibility for April 2019 (Exhibit A, pp. 44-46) and for May 2019 ongoing (Exhibit A, p. 19-21). Both budgets showed monthly RSDI income of \$1290, which Petitioner confirmed. The deductions applied to gross income in determining Petitioner's net income were also reviewed. Because Petitioner receives RSDI income based on a disability, she is a senior/disabled/veteran (SDV) member of her FAP group. See BEM 550 (January 2017), pp. 1-2. For FAP groups with one or more SDV members and no earned income, the Department must reduce the household's gross monthly unearned income by the following deductions: the standard deduction (based on group size), child care expenses, child support expenses, verified out-of-pocket medical expenses in excess of \$35, and the excess shelter deduction. BEM 554 (August 2017), p. 1; BEM 556 (April 2018), pp. 3-5.

Petitioner, who confirmed that she was the sole member of her household, was properly considered by the Department as a single-member FAP group. As a single-member FAP group, she was eligible for a \$158 standard deduction. RFT 255 (October 2018), p. 1. Petitioner confirmed that she had no child care or child support expenses. Therefore, she was not eligible for deductions for such expenses.

As an SDV member of her household, Petitioner was eligible for a medical expense deduction for verified monthly out-of-pocket medical expenses in excess of \$35. BEM 554, pp. 8-12. Based on the verified medical expenses Petitioner submitted to the Department on March 19, 2019, the Department determined that Petitioner was eligible for a \$263 medical deduction for April 2019. A review of the medical expense verifications shows that the Department considered the total expenses for prescriptions and doctor-prescribed over-the-counter vitamins for the three-month period shown on the documents and, based on the three-month period covered, divided the expenses by three to arrive at monthly drug and vitamin expenses totaling \$13.38. The Department also considered a \$125 outpatient treatment expense for mental health services and the full \$143.18 of an outstanding bill to her neurologist (even though \$30.99 of the bill was overdue and should not have been considered) (Exhibit A, p. 32). BEM 554, p. 11. The total of these expenses in excess of \$35 was \$263 (Exhibit A, p. 44). The Department

thus established the calculation of the medical expense deduction for April 2019, and Petitioner did not present any evidence disputing the Department's calculation. The Department explained that it applied the \$263 medical expense deduction to only the April 2019 FAP budget. Because the only monthly verified medical expenses that recurred were Petitioner's \$16.60 Part D Medicare premium and the \$13.38 vitamins and prescription costs and those monthly medical expenses did not exceed the \$35 threshold for the medical expense deduction eligibility, there was no ongoing medical expense deduction after April 2019. See BEM 554, pp. 8-9. Based on the evidence presented, the Department properly considered the medical expenses for April 2019 FAP budget and did not include any medical expense deduction for the May 2019 ongoing budget.

The final deduction available in the calculation of Petitioner's net income for FAP purposes, the excess shelter deduction, is based on Petitioner's monthly housing expense and the utility standard applicable to Petitioner's case based on the utilities she was obligated to pay. BEM 556, pp. 4-5; BEM 554, pp. 13-24. The Department based the excess shelter deduction calculation on Petitioner's monthly rent of \$650 and, based on Petitioner's payment of water, trash removal and telephone, the standards for those utilities, \$91, \$19, and \$31 respectively. RFT 255, p. 1. Petitioner confirmed that she was not responsible for paying for heat or electricity and had not received a home heating credit, a LiHEAP payment or State Emergency Relief (SER) assistance with heat or electric. As such, she was not eligible for the heat/utility standard. See BEM 554, pp. 15-20. Based on \$650 in rent and the utility standards for water, trash removal and telephone, the Department properly determined that Petitioner was eligible for a \$357 excess shelter deduction in April 2019 and a \$225 excess shelter deduction for May 2019 ongoing.

For Petitioner's April 2019 FAP budget, when Petitioner's \$1290 gross RSDI unearned income is reduced by the \$158 standard deduction, the \$263 medical expense, and the \$357 excess shelter deduction, her net income for FAP purposes is \$512. Based on net income of \$512 and a group size of one, Petitioner was eligible for monthly FAP benefits of \$38 for April 2019. RFT 260 (October 2018), p. 8. For Petitioner's May 2019 ongoing FAP budget, when Petitioner's \$1290 gross RSDI unearned income is reduced by the \$158 standard deduction and the \$225 excess shelter deduction, her net income for FAP purposes is \$907. Based on net income of \$907 and a group size of one, Petitioner was eligible for monthly benefits of \$15 for May 2019 ongoing. RFT 260, p. 13. This is consistent with the Notices of Case Action sent to Petitioner. Therefore, the Department acted in accordance with Department policy in calculating Petitioner's FAP benefits for April 2019 ongoing.

MA Deductible

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.

The March 28, 2019 Healthcare Coverage Determination Notice notified Petitioner that she was eligible for MA subject to a monthly \$878 deductible. Under federal law, Petitioner is eligible for the best available MA coverage based on her income and other eligibility criteria. BEM 105 (April 2017), p. 2. As a disabled individual, Petitioner is eligible for MA under an SSI-related MA program. BEM 105, p. 4. The Ad-Care program is a full-coverage SSI-related MA program for disabled individuals who are income eligible based on their MA fiscal group size. BEM 163 (July 2017), p. 1. Because Petitioner is unmarried, her fiscal group size for SSI-related MA purposes is one. BEM 211 (February 2019), p. 8. The income limit under the Ad-Care program where there is one member in the MA fiscal group is \$1031.67. BEM 163, p. 2; RFT 242 (April 2018), p. 1. When the \$20 unearned income disregard is applied to Petitioner's RSDI income, Petitioner has net unearned income of \$1270. See BEM 541 (January 2018), p. 3. Because Petitioner's net income exceeded the income limit under the Ad-Care program, Petitioner is ineligible for Ad-Care coverage based on her income.

Despite having excess income, Petitioner, based on her receipt of RSDI income due to a disability, was eligible for Group 2 SSI-related (G2S) MA coverage. BEM 166 (April 2017), p. 1. As a Group 2 MA program, G2S provides potential MA coverage with a deductible for an individual whose net income exceeds the income limit for full-coverage MA. BEM 105 (April 2017), p. 1. In such cases, the deductible is 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 a set allowance for non-medical need items such as shelter, food and incidental expenses that is based on the county in which the client resides and the client's fiscal MA group size. BEM 544 (July 2016), p. 1. The PIL for Roscommon County, where Petitioner resides, for a single-member MA fiscal group is \$375. RFT 200 (April 2017), p. 2; RFT 240 (December 2013), p. 1.

To show how the deductible was calculated, the Department presented an SSI Related MA budget. In determining the monthly deductible, net income is reduced by health insurance premiums paid by the MA group and remedial service allowances for individuals in adult foster care or homes for the aged. BEM 544 (July 2016), pp. 1-3. In this case, Petitioner does not reside in an adult foster care home or home for the aged. Therefore, she is not eligible for any remedial service allowances. Because she is responsible for Part D Medicare premiums of \$16.60, her net income reduced by \$16.60 results in countable income of \$1253, rounded down.

When Petitioner's \$1253 countable income is reduced by the \$375 PIL, Petitioner has excess income of \$878. Therefore, the Department acted in accordance with

Department policy when it concluded that Petitioner was eligible for MA subject to a monthly \$878 deductible.

At the hearing, Petitioner also alleged that the Department had not properly processed her medical transportation expenses. MA covers non-emergency medical transportation (NEMT) to and from MA-covered services. BAM 825 (October 2018), p. 1. The client must submit expense documentation in accordance with BAM 825, p. 4. The Michigan Office of Administrative Hearings and Rules (formerly known as the Michigan Administrative Hearing System) is responsible for conducting hearings on medical transportation issues. BAM 825, p. 5.

Here, the Department acknowledged receiving several requests for reimbursement of medical transportation expenses on September 4, 2018 (Exhibit 1). However, a review of Petitioner's hearing request shows that Petitioner did not identify the issue of the Department's failure to process, or its denial, of reimbursement or payment of her medical transportation expenses on its hearing request. Because the Department was not aware that Petitioner was disputing the medical transportation and did not have the opportunity to review this matter and prepare for hearing on this issue, the issue was not properly presented for consideration by the undersigned. BAM 825, p. 5.

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 acted in accordance with Department policy when it calculated Petitioner's FAP benefits and determined that she was eligible for MA subject to a monthly \$878 deductible.

DECISION AND ORDER

Accordingly, the Department's calculation of Petitioner's FAP benefits for April 2019 ongoing and determination of Petitioner's MA eligibility under the G2S program for May 2019 ongoing are **AFFIRMED**.



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

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Petitioner

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cc: FAP: M. Holden; D. Sweeney
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