



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 30, 2019
MOAHR Docket No.: 19-003117
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 appeared at the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Brenda Drownicki, Hearings Facilitator. During the hearing, three packets of documents were offered and admitted into evidence as Exhibit A, pp. 1-34; Exhibit B, pp. 1a-8a; and Exhibit C, pp. 1-4.

ISSUES

Did Petitioner file a timely hearing request with respect to the Department's November 2, 2018, Health Care Coverage Determination Notice informing Petitioner of the change in her Medicaid (MA) coverage, effective December 1, 2018?

Did the Department properly close Petitioner's Medicare Savings Plan (MSP) benefits case, effective April 1, 2019?

Did the Department properly deny Petitioner's applications for State Emergency Relief (SER) benefits?

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefits for the month of March 2019?

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 is disabled and lives in a household that includes herself and her daughter.
2. For the relevant time period, Petitioner's household income consisted of unearned income in the form of Retirement, Survivors, and Disability Insurance (RSDI). Petitioner received \$1,524.50 per month, and her daughter received \$762 per month.
3. Petitioner was an ongoing recipient of MA benefits from the Department under the full-coverage Low-Income Family (LIF) category prior to December 1, 2018.
4. On November 2, 2018, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that her MA coverage was changing to the Group 2 Caretaker (G2G) program, which included a \$694 deductible, effective December 1, 2018. Exhibit C, pp. 1-4.
5. On [REDACTED], 2019, and [REDACTED], 2019, Petitioner submitted to the Department applications requesting SER benefits to pay for a heat bill totaling \$209. Both of those applications were denied. Exhibit A, pp. 7-9; Exhibit B, pp. 1a-3a.
6. Petitioner was an ongoing recipient of MSP benefits. On March 6, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that her MSP benefits case was closing, effective April 1, 2019. Exhibit A, pp. 13-16.
7. In March 2019, Petitioner received \$15 in FAP benefits for her household of two. Exhibit B, pp. 6a-8a.
8. On [REDACTED], 2019, Petitioner submitted to the Department a request for hearing objecting to the actions taken with respect to her MA, MSP, SER, and 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).

In this case, Petitioner submitted to the Department a [REDACTED], 2019, request for hearing objecting to actions taken with respect to four different benefits programs administered by the Department.

MA COVERAGE, EFFECTIVE DECEMBER 1, 2018

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.

Clients have the right to a hearing to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. Upon receiving a request for hearing, the Department will forward the matter to the Michigan Office of Administrative Hearings and Rules (MOAHR) for a hearing before an Administrative Law Judge (ALJ). The ALJ has jurisdiction to hear a case involving any of the following:

- 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.
- For FAP only, the current level of benefits or denial of expedited service.
BAM 600 (October 2018), pp. 5-7.

However, the ALJ only has jurisdiction to hear a timely and properly submitted request for hearing. BAM 600, p. 6, provides in relevant part as follows:

The client or [authorized hearing representative] has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days.

The Health Care Coverage Determination Notice informing Petitioner of the Department's determination of Petitioner's MA benefits, effective December 1, 2018, was issued on November 2, 2018. Petitioner requested a hearing on [REDACTED] 2019, beyond the 90-day time limit. Because Petitioner's hearing request was untimely with respect to that case action, whether or not the decision was correct is not an issue that this ALJ has the authority to hear or issue a decision upon. Thus, Petitioner's hearing request with respect to her challenge of the Department's November 2, 2018, Health Care Coverage Determination Notice is dismissed.

MSP CLOSURE, EFFECTIVE APRIL 1, 2019

On March 6, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that her MSP benefits case was closing, effective April 1, 2019, after the Department determined that Petitioner's income

exceeded the limit for program eligibility. Petitioner challenged the Department's action via the [REDACTED], 2019, request for hearing.

MSP benefits are SSI-related MA categories. There are three categories of MSP benefits including the Qualified Medicare Beneficiary (QMB), the Special Low Income Medicare Beneficiary (SLMB), and the Additional Low Income Medicare Beneficiary (ALMB). QMB pays Medicare premiums, and Medicare coinsurances, and Medicare deductibles. QMB coverage begins the calendar month after the processing month. SLMB pays Medicare Part B premiums. SLMB coverage is available for retro MA months and later months. ALMB pays Medicare Part B premiums provided funding is available. ALMB coverage is available for retro MA months and later months. BEM 165 (January 2018), pp. 2-4. Income eligibility for MSP benefits exists when net income for the fiscal group is within the limits in RFT 242 or 247. The Department is to determine countable income according to the SSI-related MA policies in BEM 500 and 530, except as otherwise explained in BEM 165. RFT 242 (April 2019), pp. 1-2; BEM 165 (January 2018), pp. 7-8. RSDI income is counted. BEM 165, p. 8.

Petitioner was not married. Thus, Petitioner's fiscal group size is one. BEM 211 (February 2019), p. 8. For a fiscal group size of one, the highest possible monthly income for eligibility is \$1,426, which amounts to 135% of the federal poverty limit plus a \$20 disregard for RSDI income. Petitioner's monthly RSDI income was \$1,524.50 or higher during the entire relevant time period. Petitioner had no deductible expenses. BEM 541 (January 2019). Thus, Petitioner's countable income exceeded the limit for program eligibility. Accordingly, the Department properly closed Petitioner's MSP benefits case, effective April 1, 2019.

SER APPLICATION DENIALS

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

Petitioner applied for SER benefits to cover her heating bill on two separate occasions. One was on [REDACTED], 2019, and the other was on [REDACTED] 2019. Both of the applications requested SER benefits to pay for her \$209 bill that was required to be paid in order to prevent services from being shut down. The Department denied both of Petitioner's applications for the same reason: Petitioner's monthly income exceeded the limit for program eligibility.

Low-income households who meet all SER eligibility requirements may receive assistance to help them with household heat and electric costs. ERM 301 (March 2019), p. 1. An energy crisis includes a situation where an individual or household has a past due amount or shut-off notice on an energy bill for his or her household. ERM 301, p. 1. Certain conditions must be met before SER can be issued to help individuals and families whose health and safety are threatened, which includes that the SER payment

must resolve the emergency. ERM 103 (March 2019), p. 3. Additionally, SER payments may only be approved upon completing an SER budget to determine eligibility. ERM 103, p. 3. For a group size of two, the income limit for eligibility for SER for energy services is \$2,058 per month. ERM 208 (March 2019), p. 6. If the group's income exceeds the limit, the request must be denied. ERM 208, p. 1.

Petitioner lived in a household of two and had total income of \$2,286. Thus, Petitioner's household income exceeded the limit for SER eligibility by \$228. Petitioner argues that because the Department erroneously closed her MSP benefits case and caused her Medicare premium to be deducted from her income for March 2019, she should receive a deduction for those expenses. However, those benefits have been restored, and Petitioner has or will soon receive reimbursement of what she was wrongfully required to pay. Additionally, even if the \$135 for her March 2019 premium was deducted from Petitioner's household income, she would still be above the limit for program eligibility by nearly \$100. Accordingly, the Department properly denied both of Petitioner's SER applications for being over the income limit. Thus, the Department's denials are affirmed.

FAP BENEFITS FOR MARCH 2019

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 also objected to the Department's determination of her monthly FAP benefits. The last Notice of Case Action issued concerning Petitioner's FAP benefits was issued on July 11, 2018. As Petitioner's [REDACTED], 2019, request for hearing was more than 90 days after that Notice of Case Action, the hearing request is not timely to challenge that Notice of Case Action. BAM 600, p. 6. However, BAM 600 does entitle Petitioner to a hearing contesting her current level of FAP benefits. Thus, because Petitioner submitted a hearing request in [REDACTED] 2019, Petitioner is entitled to a hearing with respect to the calculation of her FAP benefits for March 2019.

The Department, in calculating Petitioner's monthly FAP benefits, used a monthly unearned income amount of \$2,286, which consisted of Petitioner's and her daughter's combined RSDI income and was verified as correct by Petitioner. The Department then reduced Petitioner's income by the standard deduction of \$158 and applied a \$101 medical deduction.¹ Petitioner is not eligible for any other deductions for dependent care or child care expenses. Thus, Petitioner's gross income was \$2,027.

¹ As Petitioner was eligible for MSP benefits for the month of March 2019, the medical deduction was in error. However, it was a harmless error as it did not impact the final allotment calculation. Additionally, this error was made in Petitioner's favor as it worked to reduce Petitioner's final net income amount.

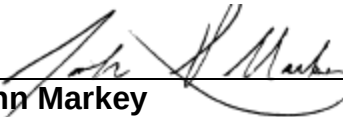
Petitioner is eligible for the excess shelter deduction. Petitioner had housing costs of \$1,000 and was eligible for the heat and utility (h/u) standard of \$543. Adding the expenses Petitioner qualified for together, Petitioner had monthly shelter expenses of \$1,543. The excess shelter deduction is calculated by subtracting from the \$1,543 one half of the adjusted gross income of \$2,027, which is \$1,013. The remaining amount, if it is greater than \$0, is the excess shelter deduction. In this case, the remaining amount is \$530, which the Department properly calculated as Petitioner's excess shelter deduction. Exhibit B, pp. 6a-8a. Petitioner's net income of \$1,497 is calculated by subtracting the excess shelter deduction (\$530) from the adjusted gross income (\$2,027), which is what the Department properly found. Exhibit B, pp. 6a-8a.

The Food Assistant Issuance Table shows \$15 in benefits for \$1,497 net income for a household of two. RFT 260 (October 2018), p. 21. This is the amount determined by the Department and is correct. The Department acted in accordance with Department policy when it determined Petitioner's FAP benefits for March 2019.

DECISION AND ORDER

Accordingly, the Department's decisions are **AFFIRMED**.

JM/cg



John Markey
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-Macomb-12-Hearings
M. Holden
D. Sweeney
T. Bair
E. Holzhausen
D. Smith
EQAD
BSC4- Hearing Decisions

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]