



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: June 21, 2019
MOAHR Docket No.: 19-005303
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 June 20, 2019, from Detroit, Michigan. Appearing on behalf of Petitioner was Petitioner's Authorized Hearing Representative, [REDACTED]. The Department of Health and Human Services (Department) was represented by Aundrea Jones, Hearings Facilitator. During the hearing, a 30-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-30.

ISSUE

Did the Department properly deny Petitioner's [REDACTED], 2019 application for Medical Assistance (MA) in the form of the Medicare Savings Program (MSP) benefits?

Upon processing Petitioner's [REDACTED], 2019 application, did the Department properly determine Petitioner's eligibility for Food Assistance Program (FAP) benefits?

Did the Department properly process Petitioner's [REDACTED] 2019 application for MA coverage?

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 born [REDACTED], 1943 and is disabled. At all times relevant to the instant matter, Petitioner was actively enrolled in Medicare Part A and Medicare Part B. Exhibit A, pp. 17.

2. On [REDACTED] 2019, Petitioner submitted to the Department an application for MA, MSP, and FAP benefits. Exhibit A, pp. 7-12.
3. Petitioner had verified income of \$1,470 per month. Exhibit A, pp. 13-14.
4. Petitioner had verified housing expenses of \$404 per month and was responsible for paying for her electricity, which included a cooling component. Petitioner was also responsible for paying \$135.50 per month in medical premiums. Exhibit A, p. 13.
5. On May 9, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that her MSP application was denied. The stated justification was that Petitioner was “not eligible for any Medicare cost sharing program because he or she is not enrolled in Medicare Part A.” Exhibit A, pp. 21-23.
6. On May 9, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that she was eligible for \$10 in FAP benefits from April 10, 2019 through April 30, 2019 and \$15 per month thereafter. According to the Notice of Case Action, the Department did not factor into the equation Petitioner’s medical expenses or apply the heat and utility (h/u) standard. Exhibit A, pp. 18, 25-28.
7. Petitioner’s application for MA coverage has not been processed and is still pending.
8. On [REDACTED], 2019, Petitioner submitted to the Department a request for hearing objecting to the Department’s determination of Petitioner’s eligibility for MSP and FAP benefits and the Department’s failure to process Petitioner’s MA application.

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 applied for MSP, FAP, and MA benefits on [REDACTED], 2019. On May 9, 2019, Petitioner received two adjudications from the Department, one of which denied Petitioner’s application for MSP benefits and the other which determined that Petitioner was eligible for \$10 in FAP benefits from April 10, 2019 through April 30, 2019 and \$15 per month thereafter. At no time up to the date of the hearing had the Department made any decision with respect to Petitioner’s application for MA coverage. On [REDACTED], 2019, Petitioner submitted to the Department a request for hearing.

MSP DENIAL

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.

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. During the entire relevant time period, Petitioner's income totaled \$1,470.50 and was comprised of RSDI and pension income. Petitioner had no deductible expenses. BEM 541 (January 2019). Thus, Petitioner's countable income of \$1,470.50 exceeded the limit for program eligibility of \$1,426. Accordingly, the Department properly denied Petitioner's [REDACTED], 2019 MSP application, albeit not for the reason stated on the Health Care Coverage Determination Notice. Thus, the Department's denial of the application is affirmed.

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 denied Petitioner's [REDACTED], 2019 MSP application for exceeding the income limit for program eligibility.

MA APPLICATION

Petitioner applied for MA coverage on her [REDACTED] 2019 application. In addition to requesting coverage going forward, Petitioner requested retroactive MA coverage back to January 2019. As of the date of the hearing, the Department has still not processed

the application. The Department's witness acknowledged at the hearing that the Department's delay in processing Petitioner's MA application amounted to a failure to meet the standards of promptness applicable to such an application. It was agreed that the appropriate remedy would be to require the Department to process Petitioner's application, determine Petitioner's eligibility for MA coverage, and issue a Health Care Coverage Determination Notice informing Petitioner of the Department's decision.

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 did not act in accordance with Department policy when it failed to process Petitioner's [REDACTED] 2019 application for MA coverage.

FAP BENEFITS

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 applied for FAP benefits on [REDACTED], 2019. On May 9, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that she was eligible for \$10 in FAP benefits for the period from April 10, 2019 through April 30, 2019 and \$15 per month thereafter. The Notice of Case Action included a list of income and expenses that were factored into the equation to determine how much in FAP benefits Petitioner was eligible to receive. The list only included entries for unearned income (\$1,470), the standard deduction (\$158), and housing expenses (\$404). Notably, the list neglected to include the \$135 medical expense for Medicare premiums or the h/u standard.

During the hearing, the Department witness testified that Petitioner was not eligible for the h/u standard because Petitioner's verified expenses do not include any responsibility to pay for heating costs. While it is true that there is no evidence that Petitioner is responsible for heating costs, that does not preclude Petitioner from having the h/u standard applied to her case.

The h/u standard covers all heating and utility costs, including cooling. BEM 554 (April 2019), p. 15. FAP groups who pay for cooling (including room air conditioners) are eligible for the h/u standard if they verify they have the responsibility to pay for no-heat electric. BEM 554, p. 16. The Department witness conceded that Petitioner had verified that she paid for cooling and was responsible for non-heat electric. Thus, Petitioner should have had the h/u standard applied to the equation. Additionally, Medicare premiums are allowable expenses as well but were not factored into the equation. BEM 554, p. 10. The Department's failure to factor those two expenses into the equation in determining Petitioner's FAP benefits resulted in faulty decision. Thus, the Department must redetermine Petitioner's FAP benefits from the time of application.

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 did not act in accordance with Department policy when it determined Petitioner's eligibility for FAP benefits, April 10, 2019 through April 30, 2019 and May 1, 2019, ongoing.

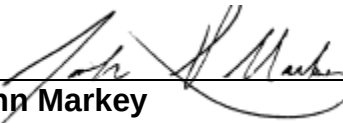
DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the denial of Petitioner's MSP application and **REVERSED IN PART** with respect to the failure to process Petitioner's MA coverage application and the determination of Petitioner's FAP benefits.

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. Promptly process Petitioner's [REDACTED] 2019 application for MA coverage;
2. Determine Petitioner's eligibility for MA benefits back to January 2019, as indicated on the application;
3. Determine Petitioner's FAP eligibility back to April 10, 2019, ensuring that all allowable expenses are applied, including the h/u standard and any allowable medical expenses;
4. If Petitioner is found to be eligible for additional benefits, promptly issue to Petitioner a supplement; and
5. Notify Petitioner in writing of its decisions.

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 of 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-18-Hearings
M. Holden
D. Sweeney
D. Smith
EQAD
BSC4- Hearing Decisions
MOAHR

**Authorized Hearing Rep. –
Via First-Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]

**Petitioner –
Via First-Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]