



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: September 12, 2019
MOAHR Docket No.: 19-008407
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 September 4, 2019, from Detroit, Michigan. Petitioner appeared for the hearing with her husband/Authorized Hearing Representative (AHR), [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED] Hearing Facilitator. [REDACTED], Family Independence Specialist served as Arabic interpreter.

ISSUE

Did the Department properly calculate the amount of Petitioner's Food Assistance Program (FAP) benefits?

Did the Department properly calculate the amount of Petitioner's Medical Assistance (MA) deductible?

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 and her husband are ongoing recipient of FAP and MA benefits.
2. In connection with a redetermination, Petitioner's eligibility to receive FAP benefits was reviewed. (Exhibit A, pp. 15-22)

3. In processing the redetermination, the Department discovered that it had been improperly budgeting Petitioner and her husband's income.
4. On May 3, 2019, the Department sent Petitioner a Notice of Case Action, advising her that effective June 1, 2019, she was approved for FAP benefits in the monthly amount of \$15. (Exhibit A, pp. 25-28)
5. Petitioner was previously approved for MA under the Healthy Michigan Plan (HMP) without a deductible and her husband was receiving MA under the Group 2 Aged Blind Disabled (G2S) category with a monthly deductible.
6. Upon review of Petitioner's case in connection with the redetermination, the Department also discovered that Petitioner and her husband had separate MA cases and were not included in the same fiscal group. Thus, the Department took action to include both Petitioner and her husband on the same MA case and in the same fiscal group.
7. Petitioner received MA under the HMP through July 2019, and effective August 1, 2019, her MA coverage was transferred to the G2S category with a monthly deductible of \$1,437, which she shared with her husband who was also approved for G2S MA benefits.
8. Petitioner's husband receives gross monthly unearned income from Retirement Survivors Disability Insurance (RSDI) benefits in the amount of \$[REDACTED]. He also receives monthly income from pension/retirement in the amount of \$[REDACTED]. Petitioner receives gross monthly RSDI in the amount of \$[REDACTED].
9. On or around July 30, 2019, Petitioner requested a hearing disputing the Department's calculation of her FAP benefits and the calculation of the monthly deductible.

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.

In this case, Petitioner requested a hearing to dispute the Department's actions with respect to the decrease in her FAP benefits to \$15 effective June 1, 2019. At the hearing, the Department testified that in processing the redetermination, it discovered that it had been previously improperly budgeting income in Petitioner's FAP case. The Department stated that it updated the income information on file for Petitioner's FAP case and determined that she and her husband were now eligible for \$15 in monthly FAP benefits.

While the Department failed to provide a FAP EDG Net Income Results Budget for review during the hearing, the Department presented the Budget Summary from the May 3, 2019 Notice of Case Action in support of the \$15 FAP benefit calculation.

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. The Department considers the gross amount of money earned from RSDI/Social Security and retirement pensions in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (April 2019), pp. 28-29. The budget shows that the Department concluded that Petitioner's household had gross unearned income in the amount of \$[REDACTED], which it testified consisted of \$[REDACTED] in RSDI for Petitioner's husband, \$[REDACTED] in a monthly retirement pension for Petitioner's husband, and \$[REDACTED] in monthly RSDI for Petitioner. Petitioner and her husband confirmed that the gross income amounts relied upon by the Department were correct. Thus, the unearned income was properly calculated.

The deductions to income on the net income budgets were also reviewed. Petitioner's FAP group includes a senior/disabled/veteran (SDV) member. BEM 550 (January 2017), pp. 1-2. Groups with one or more SDV members are eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Medical expenses for the SDV member(s) that exceed \$35.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (April 2019), p. 1; BEM 556 (April 2018), p. 3.

In this case, Petitioner's group did not have any earned income, thus, there was no applicable earned income deduction. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support expenses; therefore, the budget properly did not include any deduction for dependent care or child support. Petitioner's household is eligible for a medical deduction if she submits verified medical expenses that exceed \$35. The Budget Summary shows a medical deduction of \$80 which the Department testified was attributable to a \$115.40 Medicare Part B premium that Petitioner's husband is responsible to pay. However, the Department conceded that the

Medicare Part B premium is \$135 and thus, although the correct medical deduction of \$100 may not change the net benefit amount of \$15 in monthly FAP benefits, the Department acknowledged that the medical deduction was not properly calculated.

The Department properly applied a standard deduction of \$158 which was based on Petitioner's confirmed group size of two. RFT 255 (October 2018), p. 1. With respect to the excess shelter deduction, the Department properly applied the \$543 heat and utility standard and considered Petitioner's responsibility for monthly rent in the amount of \$1,000, which was confirmed to be correct during the hearing.

Therefore, upon thorough review, 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 because of the errors in the calculation of Petitioner's medical deduction, identified above, the Department did not act in accordance with Department policy when it calculated Petitioner's FAP benefits for June 1, 2019, ongoing.

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.

In this case, Petitioner requested a hearing disputing the Department's actions with respect to her MA case. Specifically, Petitioner and her husband raised concerns regarding the Department processing separate MA cases for the two of them, as well as the calculation of the monthly deductible of \$1,437. At the hearing, the Department testified that prior to reviewing Petitioner's case, she and her husband were approved for MA on two separate cases and under two different categories. The Department stated that it added Petitioner and her husband to the same fiscal group and determined that each was eligible for MA under the G2S category with a shared monthly deductible of \$1,437.

Petitioner and her husband, who have no minor children and receive RSDI based on a disability, are eligible for SSI-related MA, which is MA for individuals who are blind, disabled or over age 65. BEM 105 (April 2017), p. 1. Individuals are eligible for Group 1 coverage, with no deductible, if their income falls below the income limit, and eligible for Group 2 coverage, with a deductible that must be satisfied before MA is activated, when their income exceeds the income limit. BEM 105, p. 1. Ad-Care coverage is a SSI-related Group 1 MA category which must be considered before determining Group 2 MA eligibility. BEM 163 (July 2017), p. 1. Eligibility for Ad-Care is based on the client meeting nonfinancial and financial eligibility criteria. BEM 163, pp. 1-2. The eligibility requirements for Group 2 MA and Group 1 MA Ad-Care are the same, other than income. BEM 166 (April 2017), pp. 1-2.

Income eligibility for the Ad-Care program is dependent on MA fiscal group size and net income which cannot exceed the income limit in RFT 242. BEM 163, p.2. Petitioner and her husband have an MA fiscal group of two. BEM 211 (February 2019), pp. 5-8. Effective April 1, 2019, a MA fiscal group with two members is income-eligible for full-coverage MA under the Ad-Care program if the group's net income is at or below \$1,430, which is 100 percent of the Federal Poverty Level, plus the \$20 disregard. RFT 242 (April 2017), p. 1.

The Department is to determine countable income according to SSI-related MA policies in BEM 500 and 530 *except* as explained in the countable RSDI section of BEM 163. The Department will also apply the deductions in BEM 540 (for children) or 541 (for adults) to countable income to determine net income. BEM 163, p. 2. The Department testified that in calculating Petitioner's countable income, it considered [REDACTED] in RSDI for Petitioner's husband, \$[REDACTED] in a monthly retirement pension for Petitioner's husband and \$[REDACTED] in monthly RSDI for Petitioner, which were properly determined.

After further review of Department policy and based on the evidence presented at the hearing, because Petitioner's countable income exceeds the net income limit for the Ad-Care program, the Department acted in accordance with Department policy when it determined that Petitioner and her husband were ineligible for full coverage MA benefits under the Ad-Care program without a deductible and determined that they are eligible for MA under the G2S program with a monthly deductible.

Additionally, deductible is a process which allows a client with excess income to become eligible for Group 2 MA if sufficient allowable medical expenses are incurred. BEM 545 (October 2018), p. 10. Individuals are eligible for Group 2 MA coverage when net income (countable income minus allowable income deductions) does not exceed the applicable Group 2 MA protected income levels (PIL), which is based on shelter area and fiscal group size. BEM 105, pp. 1-2; BEM 166, pp. 1-2; BEM 544 (July 2016), p. 1; RFT 240 (December 2013), p. 1. The PIL is a set allowance for non-medical need items such as shelter, food and incidental expenses. BEM 544, p. 1. The monthly PIL for an MA group of two living in Wayne County is \$500 per month. RFT 200 (April 2017), pp. 1-2; RFT 240, p. 1. Thus, if Petitioner and her husband's net monthly income is in excess of the \$500, they may become eligible for assistance under the deductible program, with the deductible being equal to the amount that the monthly income exceeds \$500. BEM 545, p. 1.

The Department produced an SSI-Related MA budget showing how the deductible in Petitioner's case was calculated. (Exhibit A, pp. 36). The Department testified that it relied on the income figures identified above, which were properly calculated and the budget shows that the Department properly subtracted the \$20 unearned income general exclusion to determine that Petitioner had net income for MA purposes of \$[REDACTED].

The Department considered insurance premiums in the amount of \$115.40 as a deduction to Petitioner's income. However, as discussed above, Petitioner's husband is

responsible for \$135 in monthly insurance premiums. There was no evidence that Petitioner or her husband were entitled to any other deductions to income. BEM 530, pp. 1-4; BEM 541, pp. 2-3; BEM 545.

Therefore, because of the error in the insurance premium deduction, the Department did not establish that it properly calculated Petitioner's monthly deductible of \$1,437. It is noted that there was no evidence that Petitioner or her husband submitted medical expenses to be applied towards the deductible MA or that they otherwise incurred medical expenses in the amount of the deductible. Thus, the minor error in the calculation of the deductible may prove to be harmless.

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 because of the error in the insurance premium deduction, the Department did not establish that it properly calculated Petitioner's monthly deductible of \$1,437.

DECISION AND ORDER

Accordingly, the Department's FAP and MA decisions are **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. Recalculate Petitioner's FAP budgets from June 1, 2019, ongoing;
2. Issue FAP supplements to Petitioner from June 1, 2019, ongoing, for any FAP benefits she was eligible to receive, if any, but did not, in accordance with Department policy;
3. Recalculate the MA deductible for Petitioner's husband effective July 1, 2019 and recalculate the MA deductible for Petitioner effective August 1, 2019;
4. Provide Petitioner and her husband with MA coverage that they were entitled to receive, if any, but did not from July 1, 2019, ongoing, and

5. Notify Petitioner of its decisions in writing.

ZB/tlf



Zainab A. Baydoun

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:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Authorized Hearing Rep.

- **Via First-Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

- **Via First-Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]