



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 25, 2020  
MOAHR Docket No.: 20-003239  
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 June 18, 2020, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Karl Norgan, Eligibility Specialist.

### **ISSUE**

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

Did the Department properly determine that Petitioner was eligible for Medical Assistance (MA) benefits with a monthly deductible of \$870?

Did the Department properly determine Petitioner's eligibility for Medicare Savings Program (MSP) benefits?

### **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 an ongoing recipient of FAP and MA benefits.
2. Petitioner was previously approved for FAP benefits in the amount of \$23.

3. On or around May 4, 2020, the Department sent Petitioner a Notice of Case Action advising her that effective June 1, 2020, her FAP benefits were being increased to \$42 monthly. (Exhibit A, pp. 19-23)
4. Petitioner was approved for MA benefits under the Group 2 Aged Blind Disabled (G2S) category with a monthly deductible of \$870 effective June 1, 2020. (Exhibit A, pp. 29)
5. Petitioner receives gross monthly unearned income from Retirement Survivors Disability Insurance (RSDI) benefits in the amount of \$1,443.60 and is responsible for her own Medicare premiums in the amount of \$144.60.
6. On or around ██████████ 2020, Petitioner requested a hearing disputing the amount of her FAP benefits, the calculation of her MA deductible and the Department's failure to determine her eligibility for MSP 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**

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 disputing the amount of her FAP benefits. At the hearing, Petitioner confirmed that at issue, was the amount of her FAP benefits effective June 1, 2020 in the amount of \$42. The Department testified that upon receiving verification of Petitioner's increased housing expenses, it recalculated her FAP budget and determined that she was eligible for \$42 monthly. The Department presented a FAP EDG Net Income Results Budget which was thoroughly reviewed to determine if the Department properly calculated the amount of Petitioner's FAP benefits for the month of June 2020, ongoing. (Exhibit A, pp. 26-28).

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 Retirement Survivors Disability

Insurance (RSDI) or Social Security in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (January 2020), pp. 29-30. The budget shows that Department concluded that Petitioner had gross unearned income from RSDI in the amount of \$1,443 which Petitioner confirmed was correct. Therefore, 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 (January 2020); BEM 556 (January 2020).

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. The Department properly applied a standard deduction of \$161 which was based on Petitioner's confirmed group size of one. RFT 255 (January 2020), p. 1. With respect to the excess shelter deduction of \$667, the Department properly applied the \$518 heat and utility standard, which covers all heat and utility costs including cooling. FAP groups that qualify for this standard do not receive any other individual utility standards. The Department also properly considered Petitioner's confirmed monthly housing expenses of \$735.30, which included her mortgage, taxes, and home insurance. BEM 554, pp. 13-15. Therefore, upon review the excess shelter deduction was properly calculated.

Petitioner is eligible for a medical deduction if she submits verified medical expenses that exceed \$35. The budget shows a medical deduction of \$110, which the Department testified was attributable to Petitioner's monthly \$144.60 responsibility for Medicare Premiums. \$144.60 less \$35 results in a medical deduction of \$110 which was properly determined.

For Petitioner's reference, at application and redetermination, the Department is to estimate an SDV member's medical expenses for the benefit period based on (i) verified allowable medical expenses; (ii) available information about the SDV member's medical condition and health insurance; and (iii) changes that can reasonably be anticipated to occur during the benefit period. BEM 554, pp. 8-12.

Additionally, a FAP group is not required to, but may voluntarily report changes during the benefit period. The Department must process changes that the client voluntarily reports and verifies during the benefit period or that another source reports and there is sufficient information and verification to determine the allowable amount without contacting the FAP group. BEM 554, pp. 8-12. Expenses are budgeted for the month they are billed or otherwise become due. BEM 554, p. 3. Medical bills may not be overdue, which means they are currently incurred, currently billed, or the client made a payment arrangement before the medical bill became overdue. The list of allowable medical expenses that are to be considered by the Department are found in BEM 554, at pp. 9-11. The Department will allow medical expenses when verification of the portion paid, or to be paid by insurance, Medicare, Medicaid, etc. is provided and will only allow the non-reimbursable portion of a medical expense. BEM 554, p. 11. A medical expense does not have to be paid to be allowed. BEM 554, pp. 8-12.

For FAP groups that do not have a 24-month benefit period, a one-time-only medical expense may be budgeted for one month or averaged over the balance of the benefit period. BEM 554, pp. 8-9. FAP groups that have 24-month benefit periods must be given the following options for one-time-only medical expenses billed or due within the first 12 months of the benefit period: (i) the expense can be budgeted for one month; (ii) the expense can be averaged over the remainder of the first 12 months of the benefit period; or (iii) averaged over the remainder of the 24-month benefit period. BEM 554, pp. 8-9.

While Petitioner asserted that she has additional medical expenses that were not considered, Petitioner confirmed that she did not submit the expenses to the Department for review and application towards the FAP budget as a medical deduction. Petitioner is advised that should she submit verified allowable and current medical expenses, the Department will process the expenses in accordance with the above referenced policy and apply them to the FAP budget for the applicable months.

After further review, the Department properly determined Petitioner's net income and took into consideration the appropriate deductions to income. Based on net income of \$505, Petitioner's one-person FAP group is eligible for \$42 in monthly FAP benefits. RFT 260 (October 2019), p. 8.

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 for the month of June 2020, 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 indicated she did not agree with the amount of her deductible effective June 2020.

Petitioner, who has no minor children and receives RSDI based on a disability, is eligible for SSI-related MA, which is MA for individuals who are blind, disabled or over age 65. BEM 105 (January 2020), 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 has a MA fiscal group of one. BEM 211 (July 2019), pp. 5-8. Effective April 1, 2020, an MA fiscal group with one member is income-eligible for full-coverage MA under the Ad-Care program if the group's net income is at or below \$1,084, which is 100 percent of the Federal Poverty Level, plus the \$20 disregard. RFT 242 (April 2020), 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 her gross monthly RSDI benefits in the amount of \$1,443, which Petitioner confirmed was accurate.

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 was ineligible for full coverage MA benefits under the Ad-Care program without a deductible and determined that she would be eligible for MA under the Group 2 Aged Blind Disabled (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 (July 2019), 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 (January 2020), 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 one living in Macomb County is \$408 per month. RFT 200 (April 2017), pp. 1-2; RFT 240, p. 1. Thus, if Petitioner's net monthly income is in excess of the \$408, she may become eligible for assistance under the deductible program, with the deductible being equal to the amount that her monthly income exceeds \$408. 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 \$1,423.

The Department considered Medicare premiums in the amount of \$144.60 as a deduction to Petitioner's income which as referenced above, were correct. This deduction results in countable income of \$1,278. There was no evidence that Petitioner was entitled to any other deductions to income. BEM 530, pp. 1-4; BEM 541, pp. 2-3; BEM 545. Although Petitioner indicated that she had medical expenses, there was no evidence that these bills or expenses were submitted to the Department for consideration at any point prior to the hearing. Thus, the Department properly did not apply any medical expenses to Petitioner's net income. BEM 530, pp. 1-4; BEM 541, pp. 2-3; BEM 545.

Therefore, because Petitioner's countable income of \$1,278 for MA purposes exceeds the monthly protected income level of \$408 by \$870, the Department properly calculated Petitioner's monthly \$870 MA deductible in accordance with Department policy.

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 properly determined that Petitioner was eligible for MA under the G2S category with a monthly deductible.

Petitioner raised additional concerns at the hearing regarding to the Department's failure to process her eligibility for MSP benefits, as she indicated she requested assistance with paying her Medicare premiums on several occasions.

MSP are SSI-related MA categories. There are three MSP categories: Qualified Medicare Beneficiaries (QMB); Specified Low-Income Medicare Beneficiaries (SLMB); and Additional Low-Income Beneficiaries (ALMB). BEM 165 (January 2018), p. 1. QMB

is a full coverage MSP that pays Medicare premiums (Medicare Part B premiums and Part A premiums for those few people who have them), Medicare coinsurances, and Medicare deductibles. SLMB pays Medicare Part B premiums and ALMB pays Medicare Part B premiums provided funding is available. BEM 165, pp. 1-2. Income eligibility for MSP benefits may exist when net income is within the limits in RFT 242 or 247 or when below 135% of the FPL. 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, pp1-2; BEM 165, pp. 7-8.

Although the Department testified that Petitioner may have excess income for the MSP categories, the Department conceded that upon review of its Bridges case system, there was no eligibility determination made with respect to the MSP categories for Petitioner. While Petitioner was notified that she may likely be ineligible for QMB benefits due to her income being in excess of the income limit and due to her ineligibility for Ad-Care, at the time of the hearing, there was no evidence that the Department properly considered Petitioner's eligibility for SLMB or ALMB coverage as required by BEM 165.

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 or determine Petitioner's eligibility for MSP benefits.

### **DECISION AND ORDER**


Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the FAP and the MA deductible and **REVERSED IN PART** with respect to the MSP.

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. Process Petitioner's MSP eligibility to determine her eligibility under all MSP categories;
2. Process the buy-in and provide Petitioner with MSP coverage from her eligibility begin date, ongoing, if otherwise eligible, in accordance with Department policy; and

3. Notify Petitioner in writing of its decision.

ZB/tm

  
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**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



**DHHS**

Chelsea McCune  
27690 Van Dyke  
Warren, MI  
48093

**Petitioner**

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

cc: FAP: M. Holden; D. Sweeney  
MA- Deanna Smith; EQADHShearings  
Macomb County AP Specialist (4)