



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: January 17, 2019  
MAHS Docket No.: 18-011841  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

**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 January 10, 2019, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by James McHoskey, supervisor.

**ISSUE**

The first issue is whether Petitioner timely disputed a termination of Medicare Savings Program (MSP).

The second issue is whether Petitioner timely disputed a determination of Food Assistance Program (FAP) benefits from June 2018.

The third issue is whether MDHHS properly determined Petitioner's current FAP eligibility.

**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 MSP and FAP benefits.
2. Petitioner was the only member of her MSP and FAP benefit groups.

3. On May 25, 2018, MDHHS mailed Petitioner a Health Care Coverage Determination Notice informing Petitioner of a termination of MSP benefits effective July 2018.
4. On an unspecified date in or near May 2018, MDHHS determined Petitioner's FAP eligibility and mailed Petitioner corresponding notice.
5. As of November 2018, Petitioner received gross RSDI of \$1,141/month.
6. As of November 2018, Petitioner reported the following to MDHHS: no child support expenses, no day care expenses, medical expenses not exceeding \$134, housing costs averaging \$274.36/month, and a responsibility for heat/cooling expenses.
7. On [REDACTED], 2018, Petitioner requested a hearing to dispute a closure of MSP and FAP issuances since June 2018. Exhibit A, pp. 3-4.
8. As of November 2018, MDHHS determined Petitioner to be eligible for \$39/month in FAP benefits.

### **CONCLUSIONS OF LAW**

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing on [REDACTED], 2018, to dispute a termination of MSP eligibility. A Health Care Coverage Determination Notice dated May 25, 2018, verified a termination of MSP beginning July 2018.

A client's request for hearing must be received in the MDHHS local office within 90 days of the date of the written notice of case action, BAM 600 (August 2018), p. 6. Generally, hearing requests must be submitted to MDHHS in writing. *Id.*, p. 2.<sup>1</sup>

MDHHS received Petitioner's hearing request disputing FAP eligibility 164 days after corresponding written notice was mailed to Petitioner. Thus, Petitioner's hearing request was untimely and is appropriately dismissed.

---

<sup>1</sup> The current amount of FAP benefits may be disputed at any time.

It should be noted that MDHHS testimony acknowledged that Petitioner reapplied for MSP benefits in August 2018 and was approved beginning August 2018. MDHHS testimony also indicated that Petitioner appears eligible for retroactive MSP benefits which will result in Petitioner's MSP eligibility for July 2018. Nothing within this hearing decision precludes MDHHS from approving Petitioner for MSP benefits in July 2018 or from Petitioner requesting a hearing to dispute whether MDHHS properly processed her August 2018 application.

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner also requested a hearing on November 5, 2018, to dispute FAP eligibility. Petitioner's written hearing request did not provide any details about which benefit month or action she was disputing. Petitioner testified that she wanted to dispute FAP eligibility from June 2018. Petitioner's testimony acknowledged that MDHHS mailed notice of FAP eligibility from June 2018 in or near May 2018. The precise number of days that passed since MDHHS sent written notice cannot be calculated; however, it can be concluded that more than 90 days have passed. Thus, Petitioner's dispute concerning June 2018 FAP eligibility is also untimely and properly dismissed.

Though clients have 90 days from written notice to request a hearing, clients can always dispute their "current" amount of FAP benefits. "Current" is interpreted in reference to the month of the hearing request submission. As Petitioner requested a hearing in [REDACTED] 2018, Petitioner is entitled to a hearing concerning [REDACTED] 2018 FAP eligibility.

BEM 556 outlines the factors and calculations required to determine FAP eligibility. MDHHS provided budget pages for December 2018 which listed all FAP budget factors; MDHHS determined Petitioner to be eligible for \$39. Exhibit A, pp. 23-26. MDHHS testimony credibly indicated that Petitioner's FAP budget for December 2018 mirrored Petitioner's FAP budget for November 2018. During the hearing, all relevant budget factors were discussed with Petitioner.

A FAP determination begins with calculating the group's income. It was not disputed that Petitioner received \$1,141/month in gross RSDI. Generally, MDHHS counts the gross amount of RSDI as income.<sup>2</sup> Thus, Petitioner's countable gross income is \$1,141.

---

<sup>2</sup> Exceptions to counting gross amount include the following: certain former SSI recipient (e.g. disabled-adult children, 503 individuals, and early widowers), retroactive RSDI benefits, Medicare premium refunds, fee deductions made by qualified organizations acting as payee, and "returned benefits" (see BAM 500). None of the exceptions are applicable to the present case.

MDHHS uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (October 2015), p. 1. For groups without a senior (over 60 years old), disabled or disabled veteran (SDV) member, MDHHS considers the following expenses: child care, excess shelter (housing and utilities) up to a capped amount and court-ordered child support and arrearages paid to non-household members (see *Id.*). For groups containing SDV members, MDHHS also considers the medical expenses above \$35 for each SDV group member(s) and an uncapped excess shelter expense. Petitioner was disabled and/or aged.

Verified countable medical expenses for SDV groups exceeding \$35, child support, and day care expenses are subtracted from a client's monthly countable income. MDHHS credited Petitioner for responsibility for a \$134/month Medicare premium resulting in a \$99 countable medical expense.<sup>3</sup> Petitioner's testimony acknowledged no relevant child support or day care expenses. Applying the medical expense results in a running income of \$1,042.

Petitioner's FAP benefit group size justifies a standard deduction of \$158 (see RFT 255). The standard deduction is given to all FAP benefit groups, though the amount varies based on the benefit group size. The standard deduction is subtracted from the countable monthly income to calculate the group's adjusted gross income. Petitioner's FAP group's adjusted gross income is found to be \$884.

Petitioner did not dispute budgeted housing costs of \$274.36. MDHHS credited Petitioner with the standard heat/utility of \$543 which is the maximum utility credit available. Thus, Petitioner's shelter costs (housing + utilities) are \$817 (rounding to nearest dollar).

MDHHS only credits FAP benefit groups with an "excess shelter" expense. The excess shelter expense is calculated by subtracting half of Petitioner's adjusted gross income from Petitioner's total shelter obligation. Petitioner's excess shelter amount is found to be \$375.

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. Petitioner's FAP benefit group's net income is \$509. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Petitioner's group size and net income, Petitioner's proper FAP benefit issuance for November 2018 is \$39 - the same issuance determined by MDHHS. Thus, MDHHS properly determined Petitioner's FAP eligibility for November 2018.

---

<sup>3</sup> MDHHS testimony warned Petitioner that she is not likely to continue to be credited with a \$134 Medicare premium payment because she is now eligible for MSP benefits. Removal of the expense may result in a reduction of Petitioner's future FAP eligibility.

**DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner failed to timely request a hearing to dispute FAP eligibility from June 2018 and MSP eligibility from July 2018. Concerning MSP eligibility from July 2018 and FAP eligibility from June 2018, Petitioner's hearing request is **DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined Petitioner's FAP eligibility for November 2018. The actions taken by MDHHS are **AFFIRMED**.

CG/cg



---

**Christian Gardocki**

Administrative Law Judge

for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**Via Email:**

MDHHS-Kent-1-Hearings  
M. Holden  
D. Sweeney  
D. Smith  
EQAD  
BSC3- Hearing Decisions  
MAHS

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

██████████  
██████████  
████████████████████