



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: July 19, 2019  
MOAHR Docket No.: 19-004461  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

**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, an in-person hearing was held on July 15, 2019, from Detroit, Michigan. Petitioner was present with her Authorized Hearing Representative (AHR)/Attorney, [REDACTED]. The Department of Health and Human Services (Department) was represented by Sabrina Hopkins, Assistance Payments Supervisor and Joshua Huebner, Assistance Payments Worker.

**ISSUE**

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefit amount?

Did the Department act in accordance with policy when taking negative action related to Petitioner's Medical Assistance (MA) benefit case?

**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 FAP recipient. Petitioner was also an ongoing MA recipient under the Group 2 SSI-related (G2S) category subject to a deductible of \$0.
2. On [REDACTED], 2019, Petitioner completed a redetermination.

3. Petitioner had unearned income in the form of Retirement, Survivors and Disability Insurance (RSDI) benefits in the gross monthly amount of \$1,177.
4. On April 5, 2019, the Department sent Petitioner a Notice of Case Action informing her that she was approved for FAP benefits in the monthly amount of \$15 effective May 1, 2019, ongoing (Exhibit A, pp. 4-5).
5. Effective May 1, 2019, Petitioner was approved for MA benefits under the G2S program subject to a monthly deductible of \$734 (Exhibit A, p. 18).
6. On [REDACTED], 2019, Petitioner submitted a request for hearing disputing the Department's actions related to her FAP and MA benefit cases.

### **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 was an ongoing FAP recipient. Petitioner was previously receiving the maximum FAP benefit amount for a group size of one (Exhibit A, pp. 6-8). The Department testified that it committed an error by budgeting a one-time medical expense of \$20,158 as an ongoing expense, which resulted in Petitioner receiving the maximum FAP benefit amount. The Department stated that the error was discovered when Petitioner completed her redetermination in April 2019. The Department removed the expense and determined she was eligible for FAP benefits in the monthly amount of \$15. The Department presented a FAP budget to establish the calculation of Petitioner's FAP benefit amount (Exhibit A, pp. 9-11).

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.

According to the budget provided, Petitioner had unearned income in the standard monthly amount of \$1,177. The Department testified that Petitioner's State On-Line

Query (SOLQ) report was reviewed and it was verified that she had RSDI benefits in the monthly amount of \$1,177. Petitioner did not dispute the figure. Therefore, the Department properly calculated Petitioner's household income.

The deductions to income on the net income budget were also reviewed. There was evidence presented that the Petitioner's group includes a senior/disabled/veteran (SDV). BEM 550. Thus, the group is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- Medical deduction.

BEM 554; BEM 556 (August 2017), p. 1; BEM 556 (April 2018), p. 3.

Petitioner's FAP benefit group size of one justifies a standard deduction of \$158. RFT 255 (October 2018), p. 1. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support expenses. Therefore, the budget properly excluded any deduction for dependent care or child support expenses.

As Petitioner qualifies as an SDV member, the group is entitled to deductions for verifiable medical expenses that the SDV member incurs in excess of \$35. BEM 554, p. 1. According to the budget provided, Petitioner was provided with a medical expense deduction of \$13. The Department testified that it was unsure as to why Petitioner was provided with a medical expense deduction. According to the G2S budget provided, Petitioner had an insurance premium of \$47.77. With the \$35 exclusion, it results in a medical expense deduction of \$13. The Department testified that as of the date of the hearing request, Petitioner did not submit any verification of any other medical expenses.

Petitioner acknowledged that she initially did not submit any verification of her medical expenses, as there was no need. Petitioner testified that she submitted medical expense verifications on April 29, 2019.

As Petitioner had not yet submitted any medical expenses at the time the Notice of Case Action was issued or at the time of her hearing request, the Department acted in accordance with policy when it did not include the expenses in the budget. Medical expense changes can be reported and processed during the benefit period, but the expenses must be verified. BEM 554, p. 9. Although the Department could not provide any explanation as to why a medical expense of \$47.77 was being budgeted, the error was in Petitioner's favor, and therefore, harmless.

In calculating the excess shelter deduction of \$277, the Department stated that it considered Petitioner's verified housing expense of \$237.08 (Exhibit A, p. 17) and that she was responsible for a monthly heating expense, entitling her to the heat/utility

standard of \$526. BEM 554, pp. 14-15. The Department testified when calculating Petitioner's excess shelter deduction, they added the total shelter amount and subtracted 50% of the adjusted gross income. Petitioner's excess shelter deduction was properly calculated at \$277 per month.

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. After subtracting the allowable deductions, the Department properly determined Petitioner's adjusted gross income to be \$1,006. Petitioner's adjusted gross income subtracted by the \$277 excess shelter deduction results in a net income of \$729. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance based on the net income and group size. Based on Petitioner's net income and group size, Petitioner's FAP benefit issuance is \$15. Therefore, the Department properly calculated Petitioner's FAP benefit amount.

## **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 was an ongoing MA recipient under the G2S program. As stated above, the Department testified that it was incorrectly budgeting an old medical expense as an ongoing medical expense. Per the G2S budget provided by the Department, the Department miscategorized the expense as an ongoing insurance premium (Exhibit A, p. 13). In determining a monthly deductible under the G2S program, net income is reduced by health insurance premiums paid by the MA group. BEM 544 (July 2016), p. 1. As a result, Petitioner was approved for MA benefits under the G2S program with a \$0 deductible. When the Department realized its error, Petitioner's G2S deductible was recalculated after removing the improperly included expense. The Department determined Petitioner was eligible for MA benefits under the G2S program subject to a deductible of \$734 effective May 1, 2019, ongoing. Petitioner's AHR argued that Petitioner was not given proper notice of the increase in her deductible amount.

Upon certification of eligibility results, the Department automatically notifies the client in writing of positive and negative actions by generating the appropriate notice of case action. BAM 220 (January 2019), p. 2. A notice of case action must specify the following: the action(s) being taken by the department, the reason(s) for the action, the specific manual item which cites the legal base for an action or the regulation or law itself, an explanation of the right to request a hearing and the conditions under which benefits are continued if a hearing is requested. BAM 220, p. 3. Timely notice is given for a negative action unless policy specifies adequate notice or no notice. BAM 220, p. 5. A timely notice is mailed at least 11 days before the intended negative action takes

effect. BAM 220, p. 5. The action is pended to provide the client a chance to react to the proposed action. BAM 220, p. 5. If timely notice is required, the negative action date must be the first workday at least 11 days after the notice was sent, or the date the change is expected to occur if that is later. BAM 220, p. 10.

The Department testified at the hearing that it was unable to locate a Health Care Coverage Determination Notice (HCCDN) advising Petitioner of the increase in her deductible amount. The only notice presented was a HCCDN sent to Petitioner on April 5, 2019, advising her that she had full-coverage MA benefits (Exhibit 1). Therefore, the Department did not provide Petitioner with adequate notice of the negative action, as required by policy. Thus, the Department did not act in accordance with policy when it increased Petitioner's deductible under the G2S program from \$0 to \$734.

### **DECISION AND ORDER**


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 determined Petitioner's FAP benefit amount. The Department did not act in accordance with policy when it took negative action related to Petitioner's MA benefit case.

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

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. Reinstate Petitioner's MA benefits under the G2S program subject to a \$0 deductible as of May 1, 2019, ongoing until notice of change is provided.

EM/cg



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**Ellen McLemore**

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-57-Hearings  
M. Holden  
D. Sweeney  
D. Smith  
EQAD  
BSC4- Hearing Decisions  
MOAHR

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

[REDACTED]  
[REDACTED]  
[REDACTED]

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

[REDACTED]  
[REDACTED]  
[REDACTED]