



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS  
DIRECTOR

[REDACTED]

Date Mailed: May 21, 2020  
MOAHR Docket No.: 20-001718  
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, a telephone hearing was held on May 20, 2020, from Detroit, Michigan. Petitioner was present with his wife, [REDACTED]. The Department of Health and Human Services (Department) was represented by Sunshine Simonson, Eligibility Specialist.

### **ISSUES**

Did the Department properly determine Petitioner's and Petitioner's wife's Medical Assistance (MA) eligibility?

Did the Department properly determine Petitioner's and Petitioner's wife's Food Assistance Program (FAP) benefit 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 and Petitioner's wife were ongoing FAP recipients and ongoing MA recipients under the Group 2 SSI-related (G2S) MA category.
2. Petitioner's household consisted of himself and his wife.
3. In 2019, Petitioner had unearned income in the form of Retirement, Survivors and Disability Insurance (RSDI) benefits in the gross monthly amount of \$948 and

Petitioner's wife had unearned income in the form of RSDI benefits in the gross monthly amount of \$1,076.

4. In 2020, Petitioner had unearned income in the form of RSDI benefits in the gross monthly amount of \$962 and Petitioner's wife had unearned income in the form of RSDI benefits in the gross monthly amount of \$1,093.
5. On August 20, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice (HCCDN) informing him that he and his wife were approved for MA benefits subject to a monthly deductible of \$1,504 (Exhibit A, pp. 43-45).
6. On August 21, 2019, the Department sent Petitioner a Notice of Case Action (NOCA) informing him that his FAP benefit amount was decreasing to \$37 per month effective August 1, 2019, ongoing (Exhibit A, pp. 28-31).
7. Effective October 1, 2019, Petitioner's and Petitioner's wife's deductible decreased to \$1,214 (Exhibit A, pp. 57-58).
8. On February 20, 2020, Petitioner submitted a request for hearing disputing the Department's actions related to his 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.

On February 20, 2020, Petitioner requested a hearing regarding the reduction of his FAP benefit amount. The NOCA informing Petitioner of the reduction in his FAP benefit amount was issued on June 21, 2019. A request for a hearing must be submitted within 90 days from the date of the written notice of case action. BAM 600 (April 2017), p. 6. Petitioner's hearing request was untimely. However, an exception applies to FAP Cases and a request for a hearing disputing the current level of benefits may be made any time within the benefit period. BAM 600, p. 7. "Current" is interpreted to refer to the client's eligibility as of the hearing request month. Based on Petitioner's hearing request

submission from February 20, 2020, Petitioner may dispute February 2020 FAP eligibility ongoing.

Petitioner was an ongoing FAP recipient. In June 2019, the Department discovered that a one time only medical expense was being incorrectly included in Petitioner's FAP budget as an ongoing medical expense (Exhibit A, p. 15). The Department removed the expense and recalculated Petitioner's FAP benefit amount. The Department determined that Petitioner was entitled to an ongoing FAP benefit amount of \$37. The Department presented the FAP budget summary in the NOCA to establish the calculation of Petitioner's FAP benefit amount (Exhibit A, p. 29).

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. For RSDI, the Department counts the gross benefit amount as unearned income. BEM 503 (January 2020), p. 28.

Per the budget provided, the Department included \$2,024 in unearned income. When Petitioner's FAP benefit amount was calculated in June 2019, Petitioner had a gross monthly RSDI benefit amount of \$948 and Petitioner's wife had a gross monthly RSDI amount of \$1,076. The Department presented Petitioner's and Petitioner's wife's State Online Query (SOLQ) reports verifying their RSDI income (Exhibit A, p. 47 and p. 50). Therefore, the Department properly determined 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 (January 2020), p. 1; BEM 556 (January 2020), p. 3.

Petitioner's FAP benefit group size of two justifies a standard deduction of \$161. 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 and his wife qualify as SDV members, the group is entitled to deductions for verifiable medical expenses that the SDV member incurs in excess of \$35. BEM 554, p. 1. Policy requires that medical expenses must be verified at initial application and redetermination. BEM 554, p. 11. Medical expense changes can be reported and processed during the benefit period, but the expenses must be verified. BEM 554, p. 9.

After the improperly budgeted medical expense was removed, the Department sent Petitioner a Verification Checklist (VCL) on June 6, 2019, requesting verification of his household's medical expenses (Exhibit A, pp. 21-22). The Department testified that Petitioner and his wife did not submit any verification of medical expenses to the Department until November 2019 (Exhibit A, pp. 15-18 and p. 61). As a result, the Department only included Petitioner's and Petitioner's wife's ongoing Medicare Part B premiums of \$135.50 per month (Medicare Part B premium amount in 2019). Petitioner's and Petitioner's wife's combined Medicare Part B premiums reduced by the \$35 exclusion is \$236, as shown on the budget.

At the hearing, Petitioner argued that he had been submitting medical expenses since June 2019. As stated above, the undersigned ALJ can only address Petitioner's FAP benefit amount effective February 1, 2020, ongoing. Per the FAP Eligibility Summary provided by the Department, Petitioner received \$355 in FAP benefits in February 2020 (Exhibit A, p. 27), which is the maximum allowed benefit amount for their group size. RFT 260 (October 2019), p. 1. The Department testified that Petitioner received the full FAP benefit amount because the group had submitted medical expenses. The Department presented the medical expenses submitted by Petitioner (Exhibit A, pp. 62-66). None of the expenses are ongoing expenses, and therefore, should not be included in Petitioner's ongoing FAP benefit calculation of \$37. The expenses were properly included in Petitioner's February 2020 FAP budget, resulting in an increase in his FAP benefit amount for that month. Thus, the Department properly determined Petitioner's ongoing medical expense amount of \$236 and Petitioner's February 2020 medical expense amount.

In calculating the excess shelter deduction of \$578, the Department stated that it considered Petitioner's verified housing expense of \$850 and that he was responsible for a monthly heating expense, entitling him to the heat/utility standard of \$543. BEM 554, pp. 14-15. The Department testified when calculating Petitioner's excess shelter amount, they added the total shelter amount and subtracted 50% of the adjusted gross income. Petitioner's excess shelter deduction was properly calculated at \$578 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 \$1,630. Petitioner's adjusted gross income subtracted by the \$578 excess shelter deduction results in a net income of \$1,052. 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 when it was calculated in June 2019 is \$37. 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 and his wife were ongoing MA recipients under the G2S program. The improperly categorized medical expense, as referenced above, was also incorrectly included in Petitioner's and Petitioner's wife's MA deductible budget (Exhibit A, p. 14). As a result, Petitioner and Petitioner's wife had a monthly deductible of \$0. After removing the expense, the Department determined that Petitioner and his wife were eligible for MA benefits subject to a monthly deductible of \$1,214.

As a disabled and/or aged individual, Petitioner and his wife are potentially eligible to receive MA benefits through AD-Care. Ad-Care is an SSI-related full-coverage MA program. BEM 163 (July 2017), p. 1. It was not disputed that in 2020, Petitioner's wife received \$1,093.60 per month in RSDI benefits and Petitioner received \$962.60 in RSDI benefits. The total household income was \$2,056. As Petitioner and his wife are married, per policy, Petitioner and his wife's fiscal group size for SSI-related MA benefits is two. BEM 211 (January 2016), p. 8. The Department gives AD-Care budget credits for employment income, guardianship and/or conservator expenses and cost of living adjustments (COLA) (for January through March only). Petitioner did not allege any such factors were applicable, with the exception of the COLA exclusion of \$32. Income eligibility for AD-Care exists when countable income does not exceed the income limit for the program. BEM 163 (July 2017), p. 2. The income limit for AD-Care for a two-person MA group is \$1,430. RFT 242 (April 2019), p. 1. Because Petitioner's and Petitioner's wife's monthly household income exceeds \$1,430, the Department properly determined Petitioner and his wife to be ineligible for MA benefits under AD-Care.

Petitioner and his may still receive MA benefits subject to a monthly deductible through a Group 2 Medicaid category. Petitioner and his wife are not the caretaker of any minor children, and therefore, they do not qualify for MA through the Group 2-Caretaker MA program.

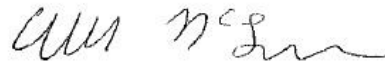
Petitioner and his wife may still receive MA benefits subject to a monthly deductible through the G2S program. G2S is an SSI-related MA category. BEM 166 (April 2017), p.1. As stated above, Petitioner's and Petitioner's wife's SSI-related MA group size is two. Petitioner's and Petitioner's wife's net income is \$2,036 (Petitioner's and Petitioner's wife's gross RSDI reduced by a \$20 disregard). BEM 541 (April 2017), p. 3. The deductible is in the amount that the client's net income (less any allowable needs deductions) exceeds the applicable Group 2 MA protected income levels (PIL); the PIL

is based on the client's MA fiscal group size and the county in which she resides. BEM 105, p. 1; BEM 166 (April 2017), pp. 1-2; BEM 544 (July 2016), p. 1; RFT 240 (December 2013), p. 1; RFT 200 (April 2017), p. 2. The monthly PIL for a client in Petitioner's and Petitioner's wife's position, with an MA fiscal group size of two living in Wayne County, is \$500 per month. RFT 200, p. 3; RFT 240, p. 1. Thus, if Petitioner's and Petitioner's wife's monthly net income (less allowable needs deductions) is in excess of \$500, they are eligible for MA assistance under the deductible program, with the deductible equal to the amount that their monthly net income, less allowable deductions, exceeds \$500. BEM 545 (January 2017), pp. 2-3. The Department presented an SSI-related MA budget showing the calculation of Petitioner's and Petitioner's wife's deductible (Exhibit A, p. 59).

In determining the monthly deductible, net income is reduced by health insurance premiums paid by the MA group and remedial service allowances for individuals in adult foster care or homes for the aged. BEM 544, pp. 1-3. In this case, there was no evidence that Petitioner or his wife currently reside in an adult foster care home or home for the aged. Therefore, they are not eligible for any remedial service allowances. There was evidence that Petitioner and his wife were receiving Medicare Part B. Therefore, the Department properly included an insurance premium deduction of \$289.20. Petitioner's net income of \$2,036 reduced by the \$500 PIL, the \$289.20 insurance premium, and the COLA exclusion of \$32 is \$1,214. Therefore, the Department properly determined that Petitioner and his wife are eligible for MA benefits under the G2S program subject to a monthly deductible of \$1,214.

### **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 and Petitioner's wife's MA and FAP eligibility. Accordingly, the Department's decisions are **AFFIRMED**.



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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-17-Hearings  
M. Holden  
D. Sweeney  
D. Smith  
EQAD  
BSC4- Hearing Decisions  
MOAHR

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

