



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: October 4, 2017  
MAHS Docket No.: 17-011391  
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 October 2, 2017, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Serlibrity Good, Assistance Payments Worker.

**ISSUE**

1. Did the Department properly deny Petitioner's application for Food Assistance Program (FAP) benefits?
2. Did the Department properly determine Petitioner's and Petitioner's husband's Medical Assistance (MA) 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 is an ongoing MA benefit recipient.
2. On [REDACTED], 2017, Petitioner submitted an application for FAP benefits.
3. Petitioner was a member of a household that included her, her spouse and her minor daughter.
4. Petitioner receives earned income from employment in the amount of \$2,277 per month.

5. Petitioner's husband receives Retirement, Survivors, and Disability Insurance (RSDI) benefits in the amount of \$993 per month. Petitioner's daughter receives RSDI benefits in the amount of \$496 per month.
6. Petitioner's husband had been determined as disabled.
7. Petitioner's husband is responsible for \$124 per month for Medicare Part B premiums.
8. On July 27, 2017, Petitioner was sent a Notice of Case Action informing her that her application for FAP benefits was denied (Exhibit A).
9. On August 4, 2017, the Department sent Petitioner a Health Care Coverage Determination Notice informing her that she was eligible for MA benefits subject to a monthly deductible of \$1,856 for July 1, 2017, ongoing (Exhibit D).
10. On August 18, 2017, Petitioner submitted a request for hearing regarding her FAP benefits, as well as her and her husband's MA 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.

On July 27, 2017, the Department sent Petitioner a Notice of Case Action informing her that her application for FAP benefits was denied. Petitioner's application for FAP benefits was denied as a result of Petitioner's household income exceeding the net income limit.

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits. Group composition policies specify whose income is countable. BEM 500 (January 2016), pp. 1-5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (April 2017), pp. 1-2. In prospecting income, the Department is

required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, pp. 5-6. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 7-8. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. Income received weekly is converted to a standard amount by multiplying the average of the weekly pay amounts by the 4.3 multiplier. BEM 505, pp. 7-9. An employee's wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. BEM 501 (July 2017), p. 6. The Department counts gross wages in the calculation of earned income. BEM 501, p. 7.

According to the budget provided, the Department concluded that Petitioner's group had earned income in the amount of \$2,277, which it testified consisted of Petitioner's biweekly earnings from employment. The Department presented Petitioner's Work Number from her employment with [REDACTED] (Exhibit B). The Department testified it used Petitioner's earnings for the 30 days previous to the date that the application was processed, which was June 16, 2017. Petitioner was issued a payment on June 16, 2017, in the amount of \$1,061.24 and on June 2, 2017, in the amount of \$1,056.72. When the two payments are averaged and multiplied by the 2.15 multiplier, Petitioner's earned income is \$2,277. Therefore, the Department properly calculated Petitioner's earned income from employment.

The Department retrieved the State Online Query (SOLQ) for Petitioner's husband and daughter's RSDI benefits (Exhibit G). Petitioner's husband's monthly RSDI payment is \$993. Petitioner's daughter's monthly RSDI payment is \$496 per month. The Department correctly determined the group's countable income to be \$3,766 per month based on the sum of all the household members' 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.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (January 2017), p. 1; BEM 556 (July 2013), p. 3.

The Department will reduce the gross countable earned income by 20 percent and is known as the earned income deduction. BEM 550 (January 2017), p. 1. The Department correctly determined Petitioner's earned income deduction to be \$456. Petitioner's FAP benefit group size of three, which consists of Petitioner, Petitioner's

husband and their minor child, justifies a standard deduction of \$151. RFT 255 (October 2016), 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.

The budget provided did not include any deductions for medical expenses. The Department testified that Petitioner's husband has been determined as disabled and that he pays a monthly premium for Medicare Part B in the amount of \$124. As Petitioner's husband 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. Allowable medical expenses include Medicare premiums. BEM 554, p. 10. Therefore, Petitioner's FAP group was entitled to a medical deduction and the Department failed to properly include the deduction, as required by policy, when determining Petitioner's FAP eligibility.

When calculating the excess shelter deduction, the Department determined that Petitioner was not entitled to an excess shelter deduction. Petitioner has a verified monthly housing expense of \$1,050. Petitioner was also entitled to a monthly standard for trash in the amount of \$21 and telephone in the amount of \$33. The Department testified Petitioner was not entitled to the heat/utility standard. The Department added the total shelter amount and subtracted 50 percent of the adjusted gross income, which resulted in a deficit. Therefore, the Department did not include an excess shelter deduction when budgeting Petitioner's FAP benefits.

The heat/utility standard (h/u) standard covers all heat and utility costs including cooling expenses. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. FAP groups whose heat is included in the cost of their monthly rent may still be eligible for the h/u standard if: they are billed for excess heat payments from their landlord; they have received a home heating credit in an amount greater than \$20 for the applicable period; or they have received a Low Income Home Energy Assistance Payment (LIHEAP) or a LIHEAP payment was made on their behalf in an amount greater than \$20 for the applicable period. Additionally, FAP groups who pay cooling (including room air conditioners) are eligible for the h/u standard if they verify their responsibility to pay for non-heat electric expenses. BEM 554, pp. 15-25. FAP groups not eligible for the h/u standard who have other utility expenses or who contribute to the costs of other utility expenses are eligible for the individual utility standards. BEM 554, p. 21.

Petitioner testified that she is responsible for utilities, including heating costs. The Department did not provide any testimony as to why Petitioner was not given the h/u standard. Therefore, the Department failed to establish that it properly followed policy when it did not include the h/u standard when determining Petitioner's excess shelter deduction.

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. The Department determined that Petitioner's net income was \$3,159. The net income limit for a group

size of three is \$1,680. RFT 250 (October 2016), p. 1. As the Department's calculated net income for Petitioner's FAP group exceeded the limit, Petitioner's application for FAP benefits was denied in the July 27, 2017 Notice of Case Action.

Although the Department did not correctly calculate Petitioner's net income, there was harmless error, as Petitioner's net income still exceeds the income limit when the improperly excluded deductions are added to the budget. If Petitioner did receive the h/u standard of \$526, she would receive an excess shelter deduction of \$40. The excess shelter deduction combined with the \$124 medical expense deduction only reduces Petitioner's net income by \$164 for a total of \$2,995. The correctly calculated net income for Petitioner's FAP group still exceeds the net income limit. Therefore, the Department acted in accordance with policy when it denied Petitioner's application for FAP benefits.

## **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.

On August 4, 2017, the Department sent Petitioner a Health Care Coverage Determination Notice informing her that her and her husband were eligible for MA benefits subject a monthly deductible of \$1,856 each, effective July 1, 2017, ongoing. On August 18, 2017, Petitioner submitted a hearing request disputing the deductible amount for her and her husband.

The Department, in accordance with Department policy, reviewed Petitioner's circumstances and determined that, because she was the parent of a dependent child in her home, she was eligible for MA coverage under the G2C program. See BEM 105 (April 2017), p. 2; BAM 220 (April 2017), pp. 17-19; BAM 210 (April 2017), p. 1; BEM 135 (October 2015), p. 1. G2C is a Group 2 MA program. Group 2 eligibility for MA coverage is possible even when net income exceeds the income limit for full MA coverage. BEM 105, p. 1. In such cases, the client is eligible for MA coverage with a deductible, with the deductible equal to the amount the individual's net income (countable income minus allowable income deductions) exceeds the applicable Group 2 MA protected income level (PIL), which is based on the client's shelter area (county in which the client resides) and fiscal group size. BEM 135, p. 2; BEM 544 (July 2016), p. 1; RFT 240 (December 2013), p. 1.

For purposes of Group 2 MA eligibility, Petitioner, who is married, has an MA fiscal group size of two. BEM 211 (January 2016), p. 8. Because she lives in [REDACTED], her PIL is \$541. RFT 200 (December 2013); RFT 240, p. 1. Thus, if her household's net

income, calculated in accordance with BEM 536 (April 2017), pp. 1-7, exceeds \$541, Petitioner is eligible for MA assistance under the deductible program, with the deductible equal to the amount that her monthly net income exceeds \$541.

The Department presented a copy of the G2-FIP-related MA net income budget showing the calculation of Petitioner's monthly deductible for July 2017 and August 2017 for both Petitioner and her husband (Exhibit F). The budget shows that Petitioner's prorated income is \$413, and her husband's prorated income is \$202 for both July and August 2017. An adult's prorated income is determined by dividing monthly budgetable income, calculated in accordance with BEM 536, pp. 1-4, by the adult's applicable prorate divisor, which is the sum of 2.9 and the number of dependents living with the adult. BEM 536, p. 4.

For purposes of determining an adult's eligibility for Group 2 MA, only the income for the adult and her spouse, if any, is considered. BEM 211, p. 5. The Department testified it used the figure of \$2,277 for Petitioner's monthly income from employment that it calculated when determining Petitioner's FAP eligibility, as discussed above. Under BEM 536, the earned income is reduced by \$90 to arrive at net individual income of \$2,187. BEM 536, p. 4. For purposes of determining the prorate divisor, dependent means the adult's spouse and unmarried children under age 18. BEM 536, p. 4. In this case, Petitioner is married and she and her husband live with their one minor child. Therefore, Petitioner has two dependents and her prorate divisor is 2.9 plus two, or 4.9. Petitioner's prorated income is \$2,187 divided by 4.9, or \$446. However, the Department's budget indicates Petitioner's prorated income is \$413. Petitioner's spouse's prorated income from his gross RSDI benefits of \$993 divided by 4.9 was properly calculated to be \$202.

As Petitioner's prorated income was not properly calculated, it follows that the \$1,856 deductible for July 2017 and the \$1,732 deductible for August 2017 calculated by the Department is also incorrect. Also, the Department failed to include a deduction for the cost of Petitioner's husband's Medicare Part B insurance premiums when it calculated the deductible for July 2017. Net income is reduced by allowable needs deductions for health insurance premiums (which includes Medicare premiums paid by the household) or remedial services for individuals in adult foster care home or home for the aged. BEM 544, pp. 1-2. The budget for Petitioner's husband contained the same errors. Therefore, the Department failed to establish that it acted in accordance with policy when determining Petitioner and Petitioner's husband's MA eligibility.

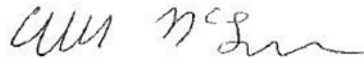
### **DECISION AND ORDER**

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 policy when denying Petitioner's application for FAP benefits. The Department did not act in accordance with Department policy when it determined Petitioner's MA eligibility.

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

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. Redetermine Petitioner and Petitioner's husband's MA eligibility as of July 1, 2017;
2. Provide Petitioner and her husband with MA coverage they are eligible to receive for July 1, 2017, ongoing; and
3. Notify Petitioner of its MA decision in writing.



EM/jaf

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**Ellen McLemore**  
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) 335-6088; 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

**DHHS**

MDHHS-Oakland-Southfield-Hearings

**Petitioner**



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