



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 16, 2019  
MOAHR Docket No.: 19-003471  
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 11, 2019, from Monroe, Michigan. Petitioner was present and represented himself. The Department of Health and Human Services (Department) was represented by Rick Merrill, Assistance Payments Supervisor.

**ISSUE**

Did the Department properly deny Petitioner's Medical Assistance (MA), Medicare Savings Program (MSP) and Food Assistance (FAP) benefit application?

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED] 2019, Petitioner submitted an application for FAP, MA and MSP benefits (Exhibit A, pp. 5-19).
2. On March 19, 2019, Petitioner submitted verification of the assets in his checking/savings bank accounts and his IRA (Exhibit A, p. 23).
3. On March 18, 2019, the Department sent Petitioner a Notice of Case Action (NOCA) informing him that his FAP application was denied (Exhibit A, pp. 27-28).
4. On March 18, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice (HCCDN) informing him that his MA and MSP benefit application was denied (Exhibit A, pp. 29-32).

5. On [REDACTED] 2019, Petitioner submitted a request for hearing disputing the Department's actions.

### **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).

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.

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 submitted an application for FAP, MA and MSP benefits on [REDACTED] 2019. On March 18, 2019, Petitioner submitted verification of the assets in his checking/savings bank accounts and his IRA. Petitioner had \$28,956.29 in his checking account alone. Petitioner advised the Department that the funds in his checking account were a result of a successful appeal related to his Retirement, Survivors and Disability Insurance (RSDI) benefit case. Petitioner was awarded accumulated benefits from the date of his application. Petitioner stated he received around \$28,000. On March 18, 2019, the Department sent Petitioner a NOCA informing him that his FAP application was denied and an HCCDN informing him that his MA and MSP benefit cases were denied.

As Petitioner is a Medicare recipient and is not the caretaker of any minor children, he is only eligible for the SSI-related MA programs. For SSI-related MA programs, countable assets cannot exceed the limit under BEM 400. BEM 165 (January 2018), p. 8. Countable assets are determined based on MA policies in BEM 400, 401 and 402. BEM 165, p. 8. MSPs are also SSI-related MA categories. BEM 165, p. 1. For SSI-Related MA the department will utilize an asset verification program to electronically detect unreported assets belonging to applicants and beneficiaries. BEM 400 (January 2018), p. 1. Asset detection may include the following sources at financial institutions: checking, savings, and investment accounts, IRAs, treasury notes, certificates of deposit (CDs), annuities and any other asset that may be held or managed by a

financial institution. BEM 400, p. 1. All types of assets are considered for SSI-related MA categories. BEM 400, p. 3. As Petitioner was not married, his SSI-related MA group is one. BEM 211 (January 2016), p. 8. The asset limit for a group of one for SSI-related MA is \$2,000. BEM 400, p. 8. Effective January 1, 2018, the asset limit for a group of one for MSP benefits is \$7,560. BEM 400, p. 8.

FAP eligibility also requires that the group's countable assets are less than, or equal to, the application asset limit at least one day during the month being tested. BEM 400, p. 3. For FAP cases, the asset limit is \$5,000 or less. BEM 400, p. 5. Assets include checking and savings accounts. BEM 400, p. 15.

An accumulated benefit is a one-time payment of accumulated non-Department benefits issued to cover a retroactive period of time or to cover a future period of time. BPG (July 2018), p. 1. Examples include RSDI, Veterans Benefits, UI benefits, and Workers Compensation. BPG, p. 1. For certain benefit programs, such as the Family Independence Program (FIP), State Disability Insurance (SDA) and FAP, accumulated benefits are assets starting the month they are received. BEM 400, p. 16. For the G2C and SSI-related MA programs, policy states that only income tax refunds, nonrecurring proceeds from the sale of assets, payments that are excluded assets, and Medical Loss Ration Rebates are considered assets. BEM 400, p. 17. However, for retroactive RSDI, the benefit is only excluded for nine calendar months after the payment is received. BEM 400, p. 23. The exclusion only applies to any unspent portion of the retroactive RSDI payment. BEM 400, p. 24.

Per policy, for FAP benefits, Petitioner's entire accumulated benefit amount is a countable asset. Therefore, the Department acted in accordance with policy when it denied his FAP application. However, for SSI-related benefit programs, policy excludes retroactive RSDI benefits for nine months. According to the case comments provided, the Department determined from Petitioner's State Online Query (SOLQ) report that he had exceeded the nine-month limit (Exhibit A, p. 24). However, upon review of the SOLQ, the report does not contain the disbursement date of the retroactive RSDI benefits. Therefore, the Department failed to establish that it properly followed policy when it included the accumulated benefits in Petitioner's asset total.

The Department testified that had the Department excluded the retroactive RSDI benefits, Petitioner's assets would still exceed the asset limit for MA and MSP benefits. It was unclear as to the amount of Petitioner's RSDI benefit award. Petitioner testified he was unsure as to the exact amount of the payment and there was no evidence presented that he was asked to verify that information. Additionally, the Department stated that it believed Petitioner's cash assets were reduced by his income, as required by policy, but it is unclear from the budget presented whether the Department actually deducted the income (Exhibit A, p. 26). BEM 400, p. 22. Additionally, Petitioner stated he would be subject to significant early withdrawal penalties from his IRA. Per policy, the Department is to deduct any early withdrawal penalties from the total asset amount for an IRA. BEM 400, p. 28. It is unclear as to whether the Department deducted those amounts. Also, Petitioner stated he was not asked to verify that information. Therefore,

the Department failed to establish that Petitioner's assets exceeded the limit under the SSI-related MA and MSP benefit program. Thus, the Department did not act in accordance with policy when it denied Petitioner's MA and MSP benefit application.

### **DECISION AND ORDER**

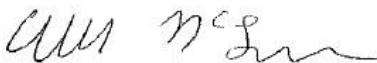
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it denied Petitioner's FAP application and did not act in accordance with policy when it denied Petitioner's MA and MSP benefit application.

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's MA and MSP benefit cases.

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 and reprocess Petitioner's [REDACTED], 2019 MA and MSP benefit application;
2. If Petitioner is eligible for MA benefits, provide him with coverage he is entitled to receive;
3. If Petitioner is eligible for MSP benefits, issue supplements he is entitled to receive in accordance with Department policy; and
4. Notify Petitioner of its decision in writing.

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

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

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