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GOVERNOR

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

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DIRECTOR

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Date Mailed: October 8, 2019
MOAHR Docket No.: 19-009650
Agency No.: ██████████
Petitioner: ██████████

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 October 3, 2019, from ██████████ Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Tinika Harris, supervisor, and Tangye Wright, specialist.

ISSUES

The first issue is whether MDHHS properly determined Petitioner's Food Assistance Program (FAP) eligibility.

The second issue is whether MDHHS determined Petitioner's spouse's Medicaid 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. As of August 2019, Petitioner was an ongoing recipient of FAP benefits as a member of a two-person household which included his spouse, ██████████ (hereinafter, "Spouse").
2. As of August 2019, Spouse was married, a recipient of Medicare, aged, not a caretaker to minor children, and not pregnant.
3. As of August 2019, Petitioner and Spouse received a combined \$2,354/month in gross unearned income.

4. As of August 2019, Petitioner reported to MDHHS \$139.36/month for housing and \$381.10/month for medical expenses. Petitioner also reported no dependent care or child support expenses. A responsibility for heating and/or cooling was reported.
5. On August 2, 2019, MDHHS determined that Petitioner was eligible for \$█ in FAP benefits beginning September 2019.
6. On an unspecified date, MDHHS determined that Spouse was eligible to receive Medicaid subject to a \$1,411/month deductible.
7. On August 29, 2019, Petitioner requested a hearing to dispute the determination of FAP benefits for September 2019 and Spouse's Medicaid eligibility. Exhibit A, p. 6.

CONCLUSIONS OF LAW

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 requested a hearing to dispute a reduction in FAP benefits beginning September 2019. MDHHS presented a Notice of Case Action dated August 1, 2019, stating that Petitioner was eligible to receive \$█ in FAP benefits beginning September 2019. Exhibit A, pp. 18-19.

Petitioner received more than \$█ in FAP benefits before September 2019. MDHHS testimony explained that Petitioner's FAP eligibility decreased after discovering that thousands of dollars in medical expenses were improperly budgeted. After MDHHS corrected Petitioner's medical expenses, Petitioner's FAP eligibility decreased. MDHHS' explanation for why Petitioner's FAP eligibility decreased beginning was insightful; but a full benefit calculation is required to determine if Petitioner's FAP eligibility was properly determined.

The Notice of Case Action dated August 1, 2019, included a summary of all relevant FAP budget factors. MDHHS also provided a FAP budget for the disputed benefit month. Exhibit A, pp. 14-16. During the hearing, all relevant budget factors were discussed with Petitioner. BEM 556 outlines the factors and calculations required to determine FAP eligibility.

In determining Petitioner's FAP eligibility, MDHHS factored a benefit group of two persons. Petitioner agreed that the group size was proper.

MDHHS factored that Petitioner's and Spouse's combined gross unearned income was \$2,354. Petitioner agreed that the income amount was correct.

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: childcare, 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. Medical, day care, and child support expenses are to be subtracted from the group's countable income.

Petitioner acknowledged having no child support or dependent care expenses. For medical expenses, MDHHS factored Petitioner's Medicare Part B premium (\$135.50), Spouse's Medicare Part B premium (\$135.50), and Spouse's Part D Medicare premium (\$110.10). Petitioner testified he had additional medical expenses.¹ After applying a \$35 copayment. Petitioner's countable medical expenses are \$346 (rounding to nearest dollar). Subtracting the expenses from the countable income results in a running income total of \$2,008.

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. Subtracting the standard deduction from Petitioner's countable income results in an adjusted gross income of \$1,850.

MDHHS factored Petitioner's monthly housing costs to be \$139.36. Petitioner's testimony agreed that the amount was correct. MDHHS credited Petitioner with the standard heat/utility credit of \$543. RFT 255 (October 2018), p. 1. The standard heat/utility credit is the maximum credit available. Adding Petitioner's housing cost and utility credit results in total shelter cost of \$682 (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 \$0.

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 \$1,850. 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 gross FAP benefit issuance is \$█, which was the same issuance determined by MDHHS. Thus, MDHHS properly determined Petitioner's FAP eligibility beginning September 2019.

¹ Petitioner's hearing request noted a responsibility for diabetic expenses. The evidence did not establish that Petitioner previously reported or verified the expenses to MDHHS. Without a reporting and/or verification of expenses, the expenses cannot be factored.

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 also requested a hearing to dispute a determination of Spouse's Medicaid. MDHHS did not present a written notice of Spouse's Medicaid but credibly testified that she was determined to be eligible for Medicaid subject to a \$1,411/month deductible.

It was not disputed that Spouse received full Medicaid (i.e., Medicaid without a deductible) before MDHHS determined that Spouse was eligible for Medicaid subject to a deductible. MDHHS explained that Spouse was previously eligible for Medicaid subject to a deductible but received the benefit of full Medicaid because non-existent medical expenses exceeding the deductible amount were budgeted. Like with Petitioner's FAP eligibility, correction of the budget resulted in a reduction in benefits. Despite evidence supporting a reduction in Medicaid eligibility, a full Medicaid evaluation is necessary to determine if MDHHS' actions were proper.

Medicaid is also known as Medical Assistance (MA). BEM 105 (April 2017), p. 1. The Medicaid program includes several sub-programs or categories. *Id.* To receive MA under a Supplemental Security Income (SSI)-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Medicaid eligibility for children under 19, parents or caretakers of children, pregnant or recently pregnant women, former foster children, MOMS, MICHild and Healthy Michigan Plan is based on Modified Adjusted Gross Income (MAGI) methodology. *Id.*

Persons may qualify under more than one MA category. *Id.*, p. 2. Federal law gives them the right to the most beneficial category. *Id.* The most beneficial category is the one that results in eligibility, the least amount of excess income or the lowest cost share. *Id.*

MA categories are also split into categories of Group 1 and Group 2. *Id.*, p. 1. For Group 1, a group's net income must be at or below a certain income level for eligibility. *Id.*

As of the disputed benefit month, Spouse was aged, married, not a caretaker to minor children, not pregnant, and a recipient of Medicare. Spouse's circumstances render her ineligible for all MAGI-related categories. As an aged and/or disabled individual, Spouse is potentially eligible for Medicaid through the category of Aged-Disabled-Care (AD Care). AD-Care is a Group 1 category. BEM 163 outlines the procedures for determining AD-Care eligibility.

As a married individual with no minor children, Spouse's group size is two (see BEM 211). As a group size of two, Petitioner's and Spouse's incomes are factored.

AD-Care budgets factor a client's monthly income. In determining Petitioner's AD-Care eligibility, MDHHS factored Petitioner's and Spouse's unearned income as \$2,354; Petitioner acknowledged the amount to be correct.

MDHHS gives AD-Care budget credits for employment income, guardianship and/or conservator expenses; no such credits were applicable. Cost of living adjustments (COLA) are applicable for the benefit months of January through March only. No AD-Care budget credits are applicable.

AD-care income limits are 100% of the Federal Poverty Level + \$20. RFT 242 (April 2018), p. 1. The income limit for a two-person AD-Care group is \$1,430. *Id.* Spouse's countable income exceeds the AD-Care income limit. Therefore, Spouse is not eligible for Medicaid through the Group 1 category of AD-Care.

For Group 2 categories, MA eligibility is possible even when net income exceeds the income limit for a Group 1 category; this is possible because incurred medical expenses are used when determining eligibility. *Id.* Group 2 categories are considered a limited benefit because a deductible is possible. *Id.*

Clients with a deductible may receive Medicaid if sufficient allowable medical expenses are incurred. BEM 545 (April 2018), p. 11. Each calendar month is a separate deductible period. *Id.* The fiscal group's monthly excess income is called the deductible amount. *Id.* Meeting a deductible means reporting and verifying allowable medical expenses that equal or exceed the deductible amount for the calendar month. *Id.*

The corresponding Group 2 category for AD-Care is G2S. SSI-related Group 2 budgets are outlined in BEM 530 and BEM 541.

A G2S budget begins with determining countable income. For G2S, Petitioner's and Spouse's Retirement, Survivors and Disability Insurance (RSDI) of \$2,354 is counted. The G2S budget allows a \$20 disregard for unearned income and various earned income disregards.

The G2S budget factors ongoing medical expenses (which are applied toward a deductible), insurance premiums, cost of living adjustments (COLA) (for January-March only), and remedial services. MDHHS credited Petitioner with a \$381.10 in Medicare insurance costs. No other expenses were applicable.


A client's deductible is calculated by subtracting the protected income level (PIL) from the MA net income. A PIL is a standard allowance for non-medical need items such as shelter, food and incidental expenses. The PIL for Petitioner's shelter area and group size is \$541 (see RFT 240 (December 2013), p. 1).

Subtracting the PIL, insurance premiums, and \$20 disregard from the group's countable income results in a monthly deductible of \$1,411 (rounding down to nearest dollar). MDHHS calculated the same deductible. Thus, MDHHS properly determined Spouse's Medicaid eligibility.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined Petitioner to be eligible for \$█/month in FAP benefits beginning September 2019. MDHHS also properly determined Spouse to be eligible for Medicaid subject to a \$1,411/month deductible. The actions taken by MDHHS are **AFFIRMED**.

CG/jaf



Christian Gardocki
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

DHHS (via electronic mail)

Renee Swiercz
MDHHS-Oakland-IV-Hearings
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M Holden
D Sweeney
D Smith
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Petitioner (via first class mail)

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