



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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Date Mailed: December 18, 2019  
MOAHR Docket No.: 19-012054  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris**

**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 December 9, 2019, from ██████████ Michigan. The Petitioner was represented by her Authorized Hearing Representative, ██████████. The Department of Health and Human Services (Department) was represented by Dina Grifo, Eligibility Specialist.

**ISSUE**

1. Did the Department properly reduce the Petitioner's group size and Food Assistance Program (FAP) benefits?
2. Did the Department properly determine the Petitioner's eligibility for Medical Assistance (MA) with a spenddown?

**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 recipient of FAP and MA with a \$508 monthly spenddown.
2. The Petitioner is disabled and receives Retirement, Survivors and Disability Insurance (RSDI) income from the Social Security Administration (SSA) in the amount of \$1,070 monthly.

3. The Petitioner pays rent of \$1,000 and received a utility allowance of \$518 and a medical expense deduction of \$99 monthly when calculating her FAP benefits.
4. Petitioner's daughter was removed from Petitioner's FAP group effective November 1, 2019, as she had not met the Time Limited Food Assistance (TLFA) for three countable months and was removed as an ineligible member of Petitioner's FAP group because she did not work at least 20 hours a week/80 hours a month. The daughter was paid biweekly.
5. The Department sent a Notice of Case Action to Petitioner on October 17, 2019, advising Petitioner that her FAP benefits were reduced and her group size was reduced from a group size of two to a group size of one, effective November 1, 2019. Exhibit G.
6. The Department issued a Health Care Coverage Determination Notice on August 26, 2019, advising the Petitioner that she had MA with a \$508 deductible. Petitioner lives in ██████ County and had a protected income level of \$408. Exhibit A.
7. Petitioner requested a timely hearing on October 31, 2019.

### **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 requested a hearing after her daughter, who lives with her, was removed from her FAP group due to not maintaining the 20 hours a week of

employment as required by time limited food assistance (TLFA). The requirements of TLFA are as follows:

TLFA individuals who are not deferred must satisfy the TLFA work requirement to maintain FAP benefits for more than 3 months within the 36-month period. There are several ways these individuals can satisfy the work requirement.

For a FAP benefit month not to be countable, a TLFA individual must perform one of the following:

1. Work at least 80 hours monthly (20 hours/week on average).

Work includes:

- Work in exchange for money, including self-employment.
- Work in exchange for goods or services (in-kind).
- Unpaid (volunteer) work. BEM 620 (November 2019), pp.8-9.

Employed TLFA individuals must work at least 80 hours monthly (20 hours/week on average) in order to satisfy the TLFA work requirement.

This activity cannot be combined with self-initiated community service/workfare to meet the work requirement.

The Department presented evidence that Petitioner's daughter was employed and did not meet the 20 hours/week on average as established by the Work Number. Exhibit D. No evidence of good cause such as personal illness, lack of work, unavailability of transportation or temporarily unfit for work or other emergency was presented at the hearing. Thus, the Department correctly removed the Petitioner's daughter from the FAP group, effective November 1, 2019. Prior to the Department reducing Petitioner's FAP group size to one, the Petitioner was receiving FAP benefits of \$■■■■ a month. After the group size reduction, Petitioner received FAP benefits in the amount of \$■■■■ a month.

The Petitioner's FAP budget was reviewed at the hearing. The Department in the first budget for November 2019 included the Petitioner's unearned income from RSDI of \$1,070; and the Department testified that it must include the last 30 days of income from Petitioner's daughter, so it also included earned income from her daughter of \$■■■■. Exhibit F. See BEM 620, p. 21, which provides that if a TLFA group becomes ineligible, a pro-rata share of their income counts toward the remaining eligible group members.

The Department was questioned at the hearing why the \$■■■■ earned income continued beyond November 1, 2019, as it was included in the December 2019 FAP budget when the daughter was removed from the group and was not sure why. Based upon Department policy, because the daughter was working and enrolled in TLFA, but did not complete her 20 hours per week/80 hours a month requirement, she was disqualified as a member of the Petitioner's FAP group. BEM 550 provides **that a disqualified or**

**ineligible person living with the FAP group who is disqualified for TLFA, must include a pro-rata share of the disqualified person's income.** Each source of income is prorated individually as follows:

1. The number of eligible FAP group members is added to the number of disqualified persons that live with the group.
2. Next the disqualified/ineligible person's income is divided by the number of persons in Step 1.
3. Then the result in Step 2 is multiplied by the number of eligible group members.

Do **not** apply these rules to the income of eligible group members, or non-group members. (See BEM 212). BEM 550 (January 2017), p. 4.

The pro-rata earned income shown and included in the FAP budgets for both November 2019 and December 2019 for Petitioner's daughter was \$[REDACTED]. The Department was correct to continue to include the disqualified members income based upon department policy. The Petitioner's daughter was removed, effective November 1, 2019; and thus, the last 30 days of income should be used to determine the pro-rata income and apply the formula set forth above. The Department did not identify which pay stubs were used and the work number pay reporting ends on November 19, 2019. Exhibit D, p. 11. The Department did not address how the pro rata income for the disqualified members earned income was determined and which pay stubs were used, thus it cannot be determined if the pro rata income included in Petitioner's FAP budget was correctly determined. No calculation of how the monthly pro rata income was determined was provided, thus it cannot be determined if the FAP budget as calculated is correct as regards the daughter's earned income from employment. Based upon this review, it is determined that the Department did not meet its burden of proof to show that it accurately determined the FAP group pro-rata income when recalculating Petitioner's FAP benefits after her daughter was removed from the group and disqualified for FAP.

The remainder of the deductions in the FAP budgets for November 2019 and December 2019 were reviewed, and the Standard deduction of \$161 is correct based upon a group size of one member. The medical deduction was not challenged by Petitioner. The Department did not include the excess shelter calculation but testified that rent of \$1,000 was credited to Petitioner and a heat-and-utility allowance of \$518 was also included. However, the excess shelter deduction could not be verified because of the group income discrepancy due to the calculation of Petitioner's daughter's pro-rata earned income. Exhibit F. Thus, the FAP budget must be recalculated to determine the proper group income.

#### Medical Deductible Amount

In this case, the Petitioner also challenged the Department's determination that she was eligible for MA subject to a \$508 monthly spenddown (deductible) amount. The

Department issued a Health Care Coverage Determination Notice on August 26, 2019, imposing a \$508 monthly deductible beginning October 1, 2019.

Medicaid is available (i) under Supplemental Security Income (SSI)-related categories to individuals who are aged (65 or older), blind or disabled, (ii) to individuals who are under age 19, parents or caretakers of children, or pregnant or recently pregnant women, and (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage. BEM 105 (April 2017), p. 1. HMP provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income at or below 133 percent of the federal poverty level (FPL) under the Modified Adjusted Gross Income (MAGI) methodology; (iii) do not qualify for or are not enrolled in Medicare; (iv) do not qualify for or are not enrolled in other MA programs; (v) are not pregnant at the time of application; and (vi) are residents of the State of Michigan. BEM 137 (January 2019) p. 1; MPM, Healthy Michigan Plan, § 1.1.

Petitioner is not under age 19 or pregnant. No evidence was presented that Petitioner is a parent or caretaker of a minor child, or former foster child. Therefore, the programs for each of these groups are inapplicable to the Petitioner. Since Petitioner is a Medicare Recipient and is disabled, she is not eligible for HMP.

In determining the SSI-related MA category Petitioner is eligible to receive, the Department must determine the MA fiscal group size and net income. Petitioner has a group for SSI-related MA purposes of one individual, herself. BEM 211 (February 2019), p. 8. Income for Petitioner must be considered in determining her MA eligibility. The Ad-Care program, an SSI-related MA category, requires that net group income cannot exceed one hundred percent of the federal poverty level. BEM 163, pp. 1-2. The 2019 federal poverty level for a one-person household was \$12,490, effective April 1, 2019. <https://aspe.hhs.gov/poverty-guidelines>; <https://aspe.hhs.gov/2018-poverty-guidelines>. The 2019 monthly federal poverty level for a one-person household was \$1,040.

The net income limit is established through policy by subtracting \$20 from the amount shown in RFT 242 at \$1,061 for a group size of one, effective April 1, 2019. RFT 242 (April 2019), p. 1. Thus, the net income limit for AD care (full coverage MA) is \$1,040.

Policy provides that countable RSDI for fiscal group members is the gross amount received for the previous December when the month being tested is January, February, or March. BEM 503 (January 2019), p. 29. In this case, the month being tested was September 2019. Federal law requires the cost-of-living (COLA) increase received in January to be disregarded for these three months. *Id.* The Department properly considered Petitioner's RSDI benefit for each month under evaluation.

Based upon the Unearned Income Budget Summary and Petitioner's confirmation of her monthly income for Social Security to be \$1,070, the Petitioner's gross income exceeded the MA income limit of \$1,061. The Petitioner's net income was \$ [REDACTED] once

the \$20 general exclusion was deducted and exceeded the 100 percent Federal Poverty Limit for MA of \$1,040. See Exhibit A, pp. 3-4. Since Petitioner has excess income for eligibility under the full coverage Ad Care program, Petitioner's eligibility for Group 2 coverage with a deductible is correct.

The deductible is the amount that the client's net income (less any allowable deductions) exceeds the applicable Group 2 MA protected income level (PIL). PIL is a set allowance for non-medical need items such as shelter, food, and incidental expenses. BEM 544 (July 2016), p. 1. It is based on the client's MA fiscal group size and the county in which the client resides. *Id.* Petitioner resides in ██████ County and has a group size of one; therefore, she is in shelter area VI; and the PIL is \$408. RFT 200 (April 2017), p. 3; RFT 240 (December 2013), p. 1. Thus, if Petitioner's monthly net income (less allowable needs deductions) is in excess of \$408, Petitioner is eligible for MA under the G2S program with a deductible equal to the amount of income remaining after the appropriate and allowed deductions which are greater than \$408.00.

Petitioner's net income is \$█████ after the \$20 income exclusion. In calculating the deductible, allowances are made for health insurance premiums and remedial services. BEM 544, pp. 1-2. The Department deducted the cost of a Medicare premium of \$134 for Petitioner's Medicare Part B premium. Next, the PIL (protective income level) for ██████ County of \$408 is subtracted from Petitioner's remaining countable income to reach a deductible of \$508. (\$████████████████████ (countable income). Countable income of \$█████ minus protected income level \$██████████ deductible.

Based upon the foregoing analysis and application of Department policy, it is determined that the Department properly imposed a spenddown on Petitioner's medical benefit coverage due to her income exceeding the Medicaid income limit, and the spenddown in the amount of \$508 is correct as calculated by the Department.

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 that the Petitioner was eligible for medical assistance with a deductible of \$508.

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 failed to satisfy its burden of proof that it acted in accordance with Department policy when it reduced the Petitioner's FAP benefits and specifically how it calculated pro-rata earned income of the disqualified FAP group member.

### **DECISION AND ORDER**


Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the determination of the Petitioner's MA deductible amount and **REVERSED IN PART** with respect to the calculation of Petitioner's FAP benefit reduction and the determination of

the pro-rata earned income of the Petitioner's disqualified FAP group member due to noncompliance with TLFA.

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. The Department shall redetermine the Petitioner's FAP benefits and recalculate the pro-rata income used for the disqualified group member to determine if it was correctly calculated.
2. The Department shall determine if a FAP supplement, if any, is due to Petitioner, based upon its recalculation and Department policy.
3. The Department shall provide the Petitioner and her AHR written notice of its determination.

LMF/jaf



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**Lynn M. Ferris**  
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)

Kara Gubancsik  
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