



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: February 3, 2020  
MOAHR Docket No.: 19-013429  
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 January 27, 2020, from Detroit, Michigan. Petitioner was present with his father, [REDACTED]. The Department of Health and Human Services (Department) was represented by Melissa Stanley, Hearing Facilitator and Natalie McLaurin, Hearing Facilitator.

### **ISSUE**

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefit amount?

Did the Department properly determine Petitioner'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 was an ongoing FAP recipient and an ongoing MA recipient under the full-coverage Ad-Care program.
2. On [REDACTED], 2019, Petitioner completed a semi-annual review related to his FAP benefit case (Exhibit A, pp. 3-6).
3. Petitioner was the sole member of his household.
4. Petitioner had income from employment (Exhibit A, pp. 7-8).

5. Petitioner had unearned income in the form of Retirement, Survivors, and Disability Insurance (RSDI) benefits in the gross monthly amount of \$885.
6. On December 2, 2019, the Department sent Petitioner a Notice of Case Action informing him that he was approved for FAP benefits in the monthly amount of \$ [REDACTED] effective December 1, 2019, ongoing (Exhibit A, pp. 15-21).
7. December 2, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice informing him that he was approved for MA benefits under the Freedom to Work (FTW) category with a monthly premium of \$37.15 effective January 1, 2020, ongoing (Exhibit A, pp. 29-33).
8. On December 16, 2019, 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.

In the present case, Petitioner was an ongoing FAP recipient. On [REDACTED], 2019, Petitioner completed a semi-annual review and reported receiving new earned income. As a result, the Department redetermined Petitioner's FAP eligibility. The Department determined that Petitioner was eligible for FAP benefits in the monthly amount of \$ [REDACTED]. The Department presented a FAP budget to establish the calculation of Petitioner's FAP benefit amount (Exhibit A, pp.24-25).

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. 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 (October 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. BEM 505, pp. 7-9. Income received weekly is multiplied by a 4.3 multiplier. BEM 505, pp. 7-9. Income received twice per month is added together. 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. The Department counts gross wages in the calculation of earned income. BEM 501 (October 2019), pp. 6-7. For RSDI, the Department counts the gross benefit amount as unearned income. BEM 503 (October 2019), p. 28.

Per the budget provided, the Department included \$885 in unearned income in Petitioner's FAP budget. The Department testified that Petitioner received RSDI benefits in the gross monthly amount of \$885. Petitioner testified that figure was correct. Therefore, the Department properly determined Petitioner's unearned income amount.

The Department also included \$[REDACTED] in earned income. The Department presented Petitioner's Work Number report showing his earnings from employment. The Department testified that it used the pay date of October 18, 2019, in the gross amount of \$[REDACTED]; November 1, 2019, in the gross amount of \$[REDACTED]; and November 15, 2019, in the gross amount of \$[REDACTED]. When averaging the figures and multiplying by the 2.15 multiplier, it results in a standard monthly income of \$[REDACTED].

At the hearing, Petitioner disputed the Department's calculation of his earned income. Petitioner stated he does not normally work as much as the pay statements reflect that were utilized by the Department.

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. The Department can use income from the past 60 or 90 days for fluctuating or irregular income if: the past 30 days is not a good indicator of future income and the fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month. BEM 505, p. 6.

Petitioner began working on October 31, 2019. Therefore, it is not possible to use the previous 60 or 90 days of income to calculate Petitioner's earned income. Petitioner was advised at the hearing he could submit his earnings after November 2019. Upon review of Petitioner's income statement, his earnings in December 2019 and January 2020 were very similar to the income included in the budget. Therefore, the Department acted in accordance with policy when it determined Petitioner's earned 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; BEM 556 (August 2017), p. 1; BEM 556 (April 2018), 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 is entitled to an earned income deduction of \$120. Petitioner's FAP benefit group size of one 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 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. The Department testified that for December 2019, Petitioner did not have a medical expense deduction, as he did not submit any verified medical expenses. The Department presented Petitioner's Electronic Case File (ECF) (Exhibit A, pp. 38-39). The ECF consists of scanned documents, arranged by category and identified by a client name, recipient ID or case number, established for a particular client group. BAM 300 (October 2016), p. 1. The ECF contains all forms, documents and other evidence to the group's current and past eligibility. BAM 300, p. 1. The ECF revealed Petitioner has not submitted any recent medical expenses.

Additionally, Petitioner submitted some of his medical expenses subsequent to the hearing (Exhibit A, p. 4). The document shows that between February 28, 2019 and July 10, 2019, Petitioner's out-of-pocket medical expenses were only \$42.95. Also, the expenses were not current. The Department will allow medical expenses when verification of the portion paid, or to be paid by insurance, Medicare, Medicaid, etc. is provided. BEM 554, p. 11. The Department will allow only the non-reimbursable portion of a medical expense. BEM 554, p. 11. As there was no evidence that Petitioner submitted any current out-of-pocket medical expenses, the Department acted in accordance with policy when it did include a deduction for medical expenses in December 2019.

In calculating the excess shelter deduction of \$412, the Department stated that it considered Petitioner's verified housing expense of \$495 and that he was responsible for a monthly heating expense, entitling him to the heat/utility standard of \$518. 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 \$412 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 \$[REDACTED]. Petitioner's adjusted gross income subtracted by the \$412 excess shelter deduction results in a net income of \$[REDACTED]. 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 is \$[REDACTED]. Therefore, the Department properly calculated Petitioner's FAP benefit amount for December 2019.

The Department also presented Petitioner's FAP budget for January 2020, ongoing. The document shows that Petitioner's FAP budget changed slightly, in that he was provided with a medical expense deduction of \$2. Effective January 1, 2020, Petitioner was approved for MA benefits with a monthly premium of \$37.15. With the \$35 exclusion, it results in a medical expense deduction of \$2. The added medical expense deduction reduced Petitioner's net income to \$[REDACTED]. However, per RFT 260, Petitioner is still only entitled to a FAP benefit amount of \$[REDACTED]. Therefore, the Department properly calculated Petitioner's FAP benefit amount for January 1, 2020, ongoing.

## 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 was an ongoing MA recipient under the Ad-Care program. As a result of the newly reported earned income, the Department redetermined Petitioner's MA eligibility. The Department determined that Petitioner was eligible for MA benefits subject to a monthly premium of \$37.15. The Department presented a budget to establish the calculation of Petitioner's premium.

FTW is an SSI-related full-coverage MA program. BEM 174 (January 2017), p. 1. However, individuals with a Modified Adjusted Gross Income (MAGI) over 138 percent of the Federal Poverty Line (FPL) for a group size of one will be subject to a premium. BEM 174, p. 3; MCL 400.106(a). Individuals with MAGI income less than 138 percent of the FPL will not have a premium. BEM 174, p. 3. A premium of 2.5 percent will be charged for an individual with MAGI income between 138 percent of the FPL and \$75,000 annually. BEM 174, p. 3. 138% of the annual FPL in 2019 for a household with one member is 17,236.20 annually or 1,436.35 per month. See <https://www.federalregister.gov/documents/2019/02/01/2019-00621/annual-update-of-the-hhs-poverty-guidelines>. Therefore, if Petitioner's income exceeds \$1,436.35 per month, he will be subject to a monthly premium of 2.5 percent of his income.

In order to determine income in accordance with MAGI, a client's adjusted gross income (AGI) is added to any tax-exempt foreign income, Social Security benefits, and tax-exempt interest. AGI is found on IRS tax form 1040 at line 37, form 1040 EZ at line 4, and form 1040A at line 21. Alternatively, it is calculated by taking the "federal taxable wages" for each income earner in the household as shown on the paystub or, if not shown on the paystub, by using gross income before taxes reduced by any money the employer takes out for health coverage, childcare, or retirement savings. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>. For MAGI MA benefits, if an individual receives RSDI benefits and is a tax filer, all RSDI income is countable. BEM 503 (January 2019), p. 29.

Effective November 1, 2017, when determining eligibility for ongoing recipients of MAGI related MA, the State of Michigan has elected to base financial eligibility on currently monthly income and family size. See:

[https://www.michigan.gov/documents/mdhhs/MAGI-Based\\_Income\\_Methodologies\\_SPA\\_17-0100\\_-\\_Submission\\_615009\\_7.pdf](https://www.michigan.gov/documents/mdhhs/MAGI-Based_Income_Methodologies_SPA_17-0100_-_Submission_615009_7.pdf)

As stated above, Petitioner's gross RSDI benefit amount is \$885 per month. Per policy, the entire RSDI benefit amount is included in a MAGI-based calculation. The Department testified that it used the pay date of October 18, 2019, in the gross amount of \$135; November 1, 2019, in the gross amount of \$350; and November 15, 2019, in the gross amount of \$350. There was no evidence that Petitioner had any deductions for medical insurance premiums, dependent care or retirement savings. When averaging the figures and multiplying by two it results in a monthly income of \$556. Petitioner's total household income is \$[REDACTED]. However, 2.5 percent of \$[REDACTED] results in a monthly premium amount of \$36.03.

It evident that the Department calculated the premium of \$37.15 based on the annual MAGI-based income figure of \$[REDACTED] that is listed in the Health Care Coverage Determination Notice (Exhibit A, p. 30). However, it is unclear as to how the Department calculated the yearly income figure of \$[REDACTED]. It is possible the Department annualized the monthly income to obtain a yearly income figure of \$[REDACTED]. Per the State of Michigan MA plan, the Department is to use current monthly income, not annualized income. As stated above, utilizing Petitioner's current monthly income, it results in a premium amount of \$36.03. Although the error in calculating Petitioner's premium amount is small, it is still incorrect. Therefore, the Department did not act in accordance with policy when it determined Petitioner'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 Department policy when it determined Petitioner's FAP eligibility. The

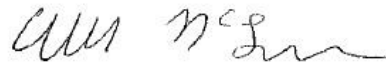
Department did not act in accordance with policy when it determined Petitioner's MA eligibility.

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 benefit case.

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's MA eligibility as of January 1, 2020;
2. Provide Petitioner with MA coverage he is entitled to receive; and
3. Notify Petitioner of its MA decision in writing.

EM/cg



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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-Saginaw-Hearings  
M. Holden  
D. Sweeney  
D. Smith  
EQAD  
BSC2- Hearing Decisions  
MOAHR

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

