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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: June 11, 2020  
MOAHR Docket No.: 20-001882  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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 3-way telephone hearing was held on June 4, 2020, from Trenton, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Shaumanique Bright, specialist.

### **ISSUES**

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

The second issue is whether MDHHS properly determined Petitioner'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 February 2020, Petitioner was an ongoing recipient of FAP benefits.
2. As of February 2020, Petitioner was not certified as disabled by the Social Security Administration or another agency.
3. As of February 2020, Petitioner was unmarried, not pregnant, not a caretaker to minor children, not a Medicare recipient, and 62 years old.

4. As of February 2020, Petitioner had the following monthly expenses: \$0 for child support, \$0 for dependent care, and \$0 for medical.
5. As of February 2020, Petitioner reported housing expenses averaging \$850 per month. Petitioner was also responsible for heat and/or cooling costs.
6. On February 6, 2020, Petitioner reported to MDHHS the start of monthly Retirement, Survivor, Disability Insurance (RSDI) of \$1,399 per month. Petitioner additionally received a pension of \$90 per month.
7. On February 11, 2020, MDHHS determined that Petitioner was eligible for \$17 in monthly FAP benefits beginning March 2020.
8. On February 26, 2020, MDHHS determined Petitioner was eligible beginning March 2020 for Medicaid subject to a monthly deductible of \$1,004.
9. On [REDACTED] 2020, Petitioner requested a hearing to dispute Medicaid, FAP, and Family Independence Program (FIP) eligibility.
10. On June 4, 2020, during an administrative hearing, Petitioner withdrew her dispute concerning FIP.

### **CONCLUSIONS OF LAW**

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. MDHHS administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

On her hearing request, Petitioner check marked a dispute concerning FIP. Exhibit A, p. 6. During the hearing, Petitioner testified that she did not intend to dispute FIP eligibility. Petitioner further testified that she did not need a hearing concerning FIP benefits. MDHHS had no objections to Petitioner's partial hearing request withdrawal. Concerning FIP, Petitioner's hearing request will be dismissed.

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. MDHHS 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 Medicaid. A Health Care Coverage Determination Notice (HCCDN) dated February 11, 2020, stated that Petitioner was ineligible for various Medicaid programs.

The Medicaid program includes two categories which include several sub-programs. To receive Medicaid 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. BEM 105 (April 2017), p. 1. 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.* AD-Care is a Group 1 category.

As of the disputed benefit month, Petitioner was not a recipient of Medicare, not certified as disabled by an agency, under 65 years, not pregnant, and not a caretaker to children. Petitioner's circumstances render her only potentially eligible for Medicaid under HMP. MDHHS denied HMP to Petitioner due to excess income.

For individuals who have been determined financially-eligible for MA using the MAGI-based methods set forth in this section, a State may elect in its State plan to base financial eligibility either on current monthly household income and family size or income based on projected annual household income and family size for the remainder of the current calendar year. 42 CFR 435.603 (h)(2). In determining current monthly or projected annual household income and family size under paragraphs (h)(1) or (h)(2) of this section, the agency may adopt a reasonable method to include a prorated portion of reasonably predictable future income, to account for a reasonably predictable increase or decrease in future income, or both, as evidenced by a signed contract for employment, a clear history of predictable fluctuations in income, or other clear indicia of such future changes in income. 42 CFR 435.603 (h)(3).

As of the disputed benefit month, Petitioner was unmarried with no tax dependents. For purposes of HMP, her group size is one (see BEM 212).

Petitioner received monthly gross RSDI of \$1,399. For tax filers, all gross RSDI is countable for MAGI. BEM 503 (April 2019) p. 29. Additionally, Petitioner received a monthly pension of \$90. For all Medicaid programs, MDHHS counts the gross amount of retirement income. *Id.* Adding Petitioner's RSDI and pension results in a monthly

income of \$1,489. Multiplying Petitioner's monthly income by 12 results in an annual gross income of \$17,868.

MAGI can be defined as a household's adjusted gross income with any tax-exempt interest income and certain deductions added back.<sup>1</sup> Common deductions and disregards which should be factored in determining a person's adjusted gross income include alimony payments, unreimbursed business expenses, Health Savings Account (e.g., 401k) payments, and student loan interest.<sup>2</sup> There was no evidence of applicable deductions. Given the evidence, Petitioner's annual gross income is \$17,868 under MAGI methodology.

HMP income limits are based on 133% of the federal poverty level. RFT 246 (April 2014), p. 1. The 2020 federal poverty level is \$12,760 for a 1-person group.<sup>3</sup> For Petitioner to be eligible for HMP, countable income would have to fall at or below \$16,970.80. Petitioner's income exceeds the income limit for HMP. Thus, MDHHS properly determined Petitioner to be ineligible for HMP.

Petitioner is not disabled for purposes of Medicaid (see BEM 260). Thus, she is not eligible for any other Medicaid category. Nevertheless, MDHHS assumed that Petitioner was disabled after she reported receipt of RSDI.<sup>4</sup> After factoring that Petitioner was disabled, MDHHS sent Petitioner notice on February 26, 2020, that she was eligible for Medicaid subject to a monthly deductible of \$1,004. For purposes of this decision, it will be accepted that Petitioner is disabled. Assuming disability, Petitioner is potentially eligible for Medicaid under AD-Care.

For AD-Care, income eligibility exists when net income is within the limits in RFT 242 or 247. BEM 163 (July 2017) p. 1. MDHHS is to determine countable income according to the SSI-related MA policies in BEM 500, 501, 502, 503, 504, and 530.<sup>5</sup> *Id.* MDHHS is to apply the deductions in BEM 540 (for children) and 541 (for adults) to countable income to determine net income. *Id.*

As discussed above, Petitioner received monthly gross income totaling \$1,489 from RSDI and a pension. Generally, for SSI-related MA, MDHHS factors the gross amount of RSDI in determining Medicaid eligibility.<sup>6</sup> BEM 503 (April 2019), p. 28. Petitioner's entire income of \$1,489 is countable for purposes of AD-Care eligibility.

MDHHS gives AD-Care budget credits for employment income, and guardianship and/or conservator expenses. Cost of living adjustments (COLA) are applicable for the

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<sup>1</sup> <https://www.investopedia.com/terms/a/agi.asp>

<sup>2</sup> *Id.*

<sup>3</sup> <https://aspe.hhs.gov/2020-poverty-guidelines>

<sup>4</sup> Petitioner's testimony acknowledged that she receives RSDI for retirement, not disability.

<sup>5</sup> For the benefit months of January through March, MDHHS disregards the COLA increase in RSDI.

<sup>6</sup> Exceptions to counting gross RSDI include the following: certain former SSI recipients (e.g. disabled-adult children, 503 individuals, and early widowers), retroactive RSDI benefits, Medicare premium refunds, fee deductions made by qualified organizations acting as payee, and "returned benefits" (see BAM 500). No exceptions were applicable to the present case.

benefit months of January through March only. BEM 503 (January 2019), p. 29. None of the credits are applicable to Petitioner.<sup>7</sup>

AD-care income limits are 100% of the Federal Poverty Level + \$20. RFT 242 (April 2019), p. 1. The income limit for a one-person AD-Care group is \$1,061. *Id.* Petitioner's countable income exceeds the AD-Care income limit; therefore, Petitioner is not eligible for Medicaid under AD-Care.

Petitioner may still be eligible for Medicaid under a Group 2 category. For Group 2 Medicaid categories, 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.* For aged/disabled persons, G2S is the applicable Group 2 Medicaid category.

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.* Clients can meet their deductible by submitting to MDHHS medical expenses which exceed the deductible amount.

As it was for AD-Care, a client's monthly gross RSDI is counted. Petitioner's countable income for purposes of G2S is \$1,489. MDHHS indicated that Petitioner's pension was not factored. For purposes of this decision, Petitioner's gross income will be \$1,399 for purposes of G2S.

The G2S budget allows a \$20 disregard for unearned income and various earned income disregards.<sup>8</sup> The G2S budget also factors ongoing medical expenses (which are applied toward a deductible), insurance premiums, and remedial services. There was no evidence of relevant expenses.

A client's deductible is calculated by subtracting the protected income level (PIL) from the 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 \$375. RFT 240 (December 2013), p. 1.

Subtracting the PIL and \$20 disregard from Petitioner's countable income results in a monthly deductible of \$1,004. MDHHS calculated the same deductible. It is found that MDHHS properly determined Petitioner's Medicaid eligibility.

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<sup>7</sup> Though the present case concerns a disputed benefit month from January through March, the COLA disregard is inapplicable because Petitioner did not receive RSDI the previous year.

<sup>8</sup> MDHHS also factors a \$20 disregard for unearned income in AD-Care. For AD-Care, the \$20 disregard is factored by adding it to the income limit rather than subtracting it from a client's countable income.

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. MDHHS 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 also requested a hearing to increase her FAP eligibility. A Notice of Case Action dated February 11, 2020, stated that Petitioner was eligible to receive \$17 in monthly FAP benefits beginning March 2020. Exhibit A, pp. 11-13. This notice listed all relevant budget factors. During the hearing, all budget factors were discussed with Petitioner.

BEM 556 outlines the factors and calculations required to determine FAP eligibility. MDHHS provided budget pages listing its calculations to determine Petitioner's FAP eligibility. Exhibit A, pp. 22-24 To determine FAP eligibility, group size, monthly countable income, and relevant monthly expenses are factored.

In determining Petitioner's FAP eligibility, MDHHS factored a group size of one (see BEM 212). Petitioner's testimony acknowledged that her group size is one.

In determining Petitioner's FAP eligibility, MDHHS factored only Petitioner's gross RSDI of \$1,399. For FAP, MDHHS is to count gross RSDI. BEM 503 (April 2019), p. 28. Though Petitioner also received a pension, for purposes of the FAP analysis, only her RSDI will be factored.

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. Countable expenses are subtracted from a client's monthly countable income.

For purposes of FAP, Petitioner is a senior. Petitioner's testimony acknowledged having no child support or dependent care expenses. Petitioner testified that she has medical expenses but acknowledged that she had not yet reported them to MDHHS as of her hearing request date. Due to her lack of reporting, Petitioner's medical expenses were properly budgeted to be \$0.

Petitioner's FAP benefit group size justifies a standard deduction of \$161 (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 and countable expenses are subtracted from the countable monthly income to calculate the group's

adjusted gross income. Subtracting the standard deduction and countable expenses from Petitioner's income results in an adjusted gross income of \$1,238.

MDHHS budgeted \$850 for Petitioner's housing costs. Petitioner acknowledged her housing expenses were properly budgeted.

MDHHS credited Petitioner with a responsibility for heating costs and issued a standard heating/utility (h/u) credit of \$518. RFT 255 (October 2019) p. 1. Generally, the h/u credit covers all utility expenses and is the maximum credit available.<sup>9</sup> Adding Petitioner's housing and utility credits results in a total shelter obligation of \$1,368.

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 \$749.

The FAP benefit group's net income is determined by subtracting the excess shelter expense from the group's adjusted gross income; doing so results in \$489 in net income for Petitioner's group. 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 proper FAP benefit issuance for March 2020 is \$17; the same issuance amount was calculated by MDHHS. Thus, MDHHS properly determined Petitioner's FAP eligibility.


Petitioner should be aware that the only errors committed by MDHHS were favorable errors. Petitioner's Medicaid and/or FAP eligibility may further decrease if these errors are corrected.

### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner withdrew her hearing request concerning FIP. Concerning FIP, Petitioner's hearing request is **DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined Petitioner's Medicaid and FAP eligibility for March 2020. The actions taken by MDHHS are **AFFIRMED**.

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**Christian Gardocki**  
Administrative Law Judge  
for Robert Gordon, Director  
Department of Health and Human Services

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<sup>9</sup> MDHHS allows additional credits for "actual utility expenses". Such expenses are only allowed for utility installation charges, water well installation and maintenance, and septic installation and maintenance. BEM 554 (October 2019) p. 15. There was no evidence of applicable exceptions.

**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-Wayne-57-Hearings  
B. Sanborn  
B. Cabanaw  
M. Holden  
D. Sweeney  
D. Smith  
EQAD  
BSC4- Hearing Decisions  
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**Petitioner – Via First-Class Mail**

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