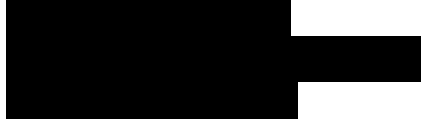




GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR



Date Mailed: June 11, 2020  
MOAHR Docket No.: 20-002635  
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 June 8, 2020, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Delores Bissell, Eligibility Specialist.

**ISSUES**

Did the Department properly deny Petitioner's State Emergency Relief (SER) application?

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

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 and MA recipient.
2. Petitioner was the only member of her household.
3. Petitioner had unearned income in the form of Retirement, Survivors and Disability Insurance (RSDI) benefits in the gross monthly amount of \$1,769.

4. Petitioner was approved for FAP benefits in the monthly amount of \$16.
5. On [REDACTED], 2020, Petitioner submitted an application for SER benefits for assistance with energy services for her gas and electric.
6. On February 26, 2020, the Department sent Petitioner a State Emergency Relief Decision Notice informing her that her SER application was denied (Exhibit A, pp. 7-8).
7. On March 11, 2020, the Department sent Petitioner a Health Care Coverage Determination Notice informing her that she was approved for MA benefits subject to a monthly deductible of \$1,201.
8. On March 11, 2020, Petitioner submitted a request for hearing disputing the Department's decisions related to her FAP, MA and SER 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 this case, Petitioner was an ongoing FAP recipient. The Department testified the most recent Notice of Case Action (NOCA) sent to Petitioner related to her FAP benefit program was on June 12, 2019. The Department stated there was not another NOCA sent to Petitioner regarding her FAP eligibility until April 29, 2020, which was after Petitioner's request for hearing. Department policy provides that a request for hearing must be received in the Department local office within 90 days of the date of the written notice of case action. BAM 600, p. 6. Petitioner did not submit her request for hearing until March 11, 2020. However, an exception applies to FAP Cases and a request for a hearing disputing the current level of benefits may be made any time within the benefit period. BAM 600, p. 7. "Current" is interpreted to refer to the client's eligibility as of the hearing request month. Based on Petitioner's hearing request submission from March 11, 2020, Petitioner may dispute March 2020 FAP eligibility ongoing.

The Department testified that Petitioner was an ongoing FAP recipient. The Department stated that Petitioner was eligible for FAP benefits in the amount of \$16 per month. The Department presented a FAP budget to establish the calculation of Petitioner's FAP benefit amount (Exhibit A, pp. 13-15).

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. For RSDI, the Department counts the gross benefit amount as unearned income. BEM 503 (January 2020), p. 28.

Per the budget provided, the Department included unearned income in the amount of \$1,769. The Department stated that Petitioner's gross RSDI benefit amount was \$1,769. Petitioner stated she believed that figure was correct. Therefore, the Department properly determined Petitioner's household 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 (January 2020), p. 1; BEM 556 (January 2020), p. 3.

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 presented Petitioner's Medical Expense Deduction page showing she was provided medical expense deductions for her Medicare Part B premium of \$144.60 and prescription expenses of \$70.26 (Exhibit A, p. 16). With the \$35 exclusion, Petitioner was provided with a medical expense deduction of \$180.

At the hearing, Petitioner testified that she submitted additional medical expenses. However, upon review of Petitioner's Electronic Case File (ECF), it appears Petitioner has not submitted medical expenses since 2019. Therefore, the Department properly determined Petitioner's medical expense deduction.

In calculating the excess shelter deduction of \$411, the Department stated that it considered Petitioner's verified housing expense of \$607.44 and that she was responsible for a monthly heating expense, entitling her 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 \$411 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 \$1,428. Petitioner's adjusted gross income subtracted by the \$411 excess shelter deduction results in a net income of \$1,017. 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 \$16. Therefore, the Department properly calculated Petitioner's FAP benefit amount.

## **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. On March 11, 2020, the Department sent Petitioner notice she was approved for MA benefits subject to a monthly deductible of \$1,201.

As a disabled and/or aged individual, Petitioner is potentially eligible to receive MA benefits through AD-Care. Ad-Care is an SSI-related full-coverage MA program. BEM 163 (July 2017), p. 1. It was not disputed that Petitioner receives \$1,769 per month in RSDI benefits. BEM 541 (January 2018), p. 3. As Petitioner is not married, per policy, Petitioner's fiscal group size for SSI-related MA benefits is one. BEM 211 (January 2016), p. 8. The Department gives AD-Care budget credits for employment income, guardianship and/or conservator expenses and cost of living adjustments (COLA) (for January through March only). Petitioner did not allege any such factors were applicable. Income eligibility for AD-Care exists when countable income does not exceed the income limit for the program. BEM 163, p. 2. The income limit for AD-Care for a one-person MA group is \$1,061. (100 percent of the Federal Poverty Level plus the \$20 disregard for RSDI income). RFT 242 (April 2019), p. 1; BEM 541 (January 2018), p. 3. Because Petitioner's monthly household income exceeds \$1,061, the Department properly determined Petitioner to be ineligible for MA benefits under AD-Care.

Petitioner may still receive MA benefits subject to a monthly deductible through a Group 2 Medicaid category. Petitioner is not the caretaker of any minor children, and therefore, does not qualify for MA through the Group 2-Caretaker MA program.

Petitioner may still receive MA benefits subject to a monthly deductible through the G2S program. G2S is an SSI-related MA category. BEM 166 (April 2017), p.1. As stated above, Petitioner's SSI-related MA group size is one. Petitioner's net income is \$1,749 (her gross RSDI reduced by a \$20 disregard). BEM 541, p. 3. The deductible is in the amount that the client's net income (less any allowable needs deductions) exceeds the applicable Group 2 MA protected income levels (PIL); the PIL is based on the client's MA fiscal group size and the county in which she resides. BEM 105, p. 1; BEM 166 (April 2017), pp. 1-2; BEM 544 (July 2016), p. 1; RFT 240 (December 2013), p. 1; RFT 200 (April 2017), p. 2. The monthly PIL for a client in Petitioner's position, with an MA fiscal group size of one living in Wayne County, is \$375 per month. RFT 200, p. 2; RFT 240, p 1. Thus, if Petitioner's monthly net income (less allowable needs deductions) is in excess of \$375, she is eligible for MA assistance under the deductible program, with the deductible equal to the amount that his monthly net income, less allowable deductions, exceeds \$375. BEM 545 (April 2018), pp. 2-3.

The Department did not provide the G2S budget to establish the calculation of Petitioner's MA deductible. The Department was also unable to provide testimony as to what factors were considered when determining Petitioner's MA deductible. In the absence of such evidence, the Department failed to establish that it properly calculated Petitioner's deductible under the G2S program. As it follows, the Department failed to establish that it properly determined Petitioner's MA eligibility.

### **SER**

In this case, Petitioner submitted an application for SER benefits on [REDACTED], 2020. On February 26, 2020, the Department sent Petitioner notice that her SER application was denied. The Department testified that Petitioner's application was denied for excess income.

SER group members must use their available income and cash assets that will help resolve the emergency. ERM 208 (December 2019), p. 1. There are no income copayments for SER energy services. ERM 208, p. 1. With respect to income, clients are either eligible or they are not. ERM 208, p. 1. For a group to be eligible for energy services, the combined monthly net income that is received or expected to be received by all group members in the 30-day countable income period, cannot exceed the standard for SER energy/LIHEAP services for the number of group members. ERM 208, p. 1. If the income exceeds the limit, the request must be denied. ERM 208, p. 1. The SER income need standard for energy/LIHEAP services for a group size of one is \$1,561. ERM 208, p. 6. Heat and electric are energy-related services. ERM 301 (December 2019), pp. 3-4).

The Department testified that Petitioner's household's unearned income placed the group over the income limit for SER benefits. Petitioner's gross RSDI amount is \$1,769. Petitioner's monthly RSDI benefit amount is reduced by her \$144.60 Medicare Part B premium amount. Therefore, Petitioner's net RSDI income is \$1,625. Petitioner confirmed that figure was correct. Petitioner's household income exceeds the limit for her group size. Therefore, the Department acted in accordance with policy when it denied Petitioner's SER 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 determined Petitioner's FAP eligibility and denied her SER application. The Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's MA eligibility.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to Petitioner's FAP and SER program benefits and **REVERSED IN PART** with respect to Petitioner's MA benefits.

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 April 1, 2020, ongoing;
2. If Petitioner is eligible for MA benefits, provide her with coverage she is entitled to receive; and
3. Notify Petitioner of its MA 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-Wayne-17-Hearings  
M. Holden  
D. Sweeney  
D. Smith  
EQAD  
T. Bair  
E. Holzhausen  
BSC4- Hearing Decisions  
MOAHR

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

