



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: October 16, 2020
MOAHR Docket No.: 20-005608
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 hearing was held via telephone conference line on October 8, 2020. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Michelle Collins, specialist.

ISSUES

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

The second issue is whether Petitioner is entitled to Medicaid eligibility following an alleged procedural error in notice.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. In October 2019, Petitioner reported to MDHHS medical expenses totaling \$364.
2. In January 2020, Petitioner reported medical expenses to MDHHS totaling \$172.43, and an expense of \$337.14 from 2016.
3. On an unspecified date, MDHHS determined Petitioner's June 2020 FAP eligibility based on an expense credit of \$1,087.

4. On June 3, 2020, MDHHS determined that Petitioner was eligible for \$16 in FAP benefits for July 2020, based on housing expenses of \$265 per month and \$0 medical expenses.
5. As of July 2020, Petitioner was a senior and/or disabled individual living with no other benefit group members.
6. As of July 2020, Petitioner's household received \$1,087 in Retirement, Survivors, Disability Insurance (RSDI) with a Medicare premium paid by MDHHS.
7. As of July 2020, Petitioner had not reported, child support, dependent care, or non-overdue medical expenses to MDHHS.
8. As of July 2020, Petitioner reported and verified \$268 in monthly housing expenses and an obligation for heating and/or cooling.
9. On August 27, 2020, Petitioner requested a hearing to dispute a reduction in FAP eligibility. Petitioner also requested a hearing alleging that MDHHS failed to send proper notice of Medicaid eligibility.

CONCLUSIONS OF LAW

The Food Assistance Program [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 requested a hearing to dispute a reduction in FAP eligibility. Exhibit A, p. 3. A Notice of Case Action dated June 3, 2020, stated that Petitioner was eligible for \$16 in FAP benefits effective August 2020 based on a net income of \$606.¹ Exhibit A, pp. 4-6.

BEM 556 outlines the factors and calculations required to determine a client's net income. FAP net income factors group size, countable monthly income, and relevant monthly expenses. MDHHS presented Petitioner's FAP budget from July 2020 which listed relevant budget factors and calculations. Exhibit A, pp. 11-14. Additionally, the notice dated June 3, 2020, listed all relevant budget factors. Exhibit A, pp. 4-6. During the hearing, all budget factors were discussed with Petitioner's AHR.

¹ Since at least April 2020, Petitioner received the maximum amount of FAP benefits for a 1-person group RFT 260 (October 2019) p. 1. Petitioner only received the maximum FAP issuance due to a temporary policy during the COVID-19 pandemic allowing FAP recipients to receive the maximum issuance amount for the group. As the policy is only temporary, an analysis of Petitioner's ongoing FAP eligibility is appropriate.

In determining Petitioner's FAP eligibility, MDHHS factored a group size of one.² Petitioner did not dispute the group size factored by MDHHS.

Petitioner's FAP eligibility was based on \$1,087 in unearned income. It was not disputed that Petitioner received monthly RSDI of \$1,087. For FAP benefits, gross RSDI is countable. BEM 503 (April 2019) p. 29. Thus, all of Petitioner's gross monthly RSDI is countable in determining FAP eligibility.

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. It was not disputed that Petitioner was senior and/or disabled.

MDHHS factored \$0 for Petitioner's medical, child support, and dependent care expenses. Petitioner only disputed medical expenses.

Petitioner contended that MDHHS should have factored an approximately \$2,000 expense for a medical-related machine. Petitioner testified that she was uncertain of the date that she submitted the expense. During the hearing, MDHHS credibly testified that Petitioner's electronic case file revealed that Petitioner submitted proof of the expense with her hearing request. Given the evidence, Petitioner submitted proof of a \$2,000 expense with her hearing request.

MDHHS is to act on a change reported by means other than a tape match within 10 days after becoming aware of the change. BAM 220 (April 2019) p. 7. As Petitioner reported medical expenses at the same time that she requested a hearing, MDHHS cannot be faulted for not processing the change as of the same date.³

Petitioner testified that she submitted other medical expenses to MDHHS but provided no corroborative evidence. MDHHS credibly testified that in October 2019, Petitioner claimed \$330 for dental work and an outstanding bill of \$34 to a medical facility. Additionally, in January 2020, Petitioner submitted medical expenses for \$19.22 from October 2019, \$131.30 in expenses from April 2019 through September 2019, \$21.91 in expenses from October 2019, and a \$337.14 bill from 2016. MDHHS further stated that Petitioner had not reported any other medical expenses until she requested a hearing.

MDHHS is to estimate an SDV person's medical expenses for the benefit period. BEM 554 (January 2020) p. 8. The estimate is to be based on verified allowable medical

² See BEM 212 for policies on determining group size for FAP benefits.

³ If Petitioner contends that MDHHS has still not processed her reported change, she can still request a hearing.

expenses, available information about the SDV member, and reasonable anticipatable changes. *Id.*, pp. 8-9. Changes should only be processed if reported and verified. *Id.*, p. 9. Acceptable verifications include current bills from the provider listing expenses to be paid by health insurance, health insurance company statements, and written statements from the health care provider. *Id.*, p. 10.

Groups that do not have a 24-month benefit period may choose to budget a one-time-only medical expense for one month or average it over the balance of the benefit period. *Id.*, p. 9. MDHHS will allow the expense in the first benefit month the change can affect. *Id.*

Medical expenses are only allowed for bills that are not overdue. *Id.*, p. 11. Medical bills that are not overdue would be those that are: incurred for the current benefit month, billed for the current month, and/or the client made a payment arrangement before the bill became overdue. *Id.*

Petitioner's bill from 2016 is too old to be countable. In other words, it is an overdue bill as Petitioner did not allege payment arrangements were in place before the bill became overdue. Assuming all of Petitioner's other expenses are countable, Petitioner is left with \$536.43. MDHHS verified that in June 2020 alone, Petitioner's FAP budget included a \$1,087 credit for medical expense. Without even considering previous months which included the same expenses, MDHHS over-budgeted Petitioner's reported medical expenses. Thus, Petitioner is not entitled to any remedy for a failure of MDHHS to credit Petitioner with medical expenses.

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 \$926.

MDHHS credited Petitioner with monthly housing expenses of \$265. Petitioner testified that she reported a housing expense of \$268. During the hearing, MDHHS acknowledged that Petitioner's housing cost verification was misread and wrongly inputted as a \$265 monthly expense.

The evidence established that MDHHS improperly factored Petitioner's housing expenses by \$3. For purposes to simplify the remaining budget analysis, Petitioner's housing costs will be accepted to be \$265, though MDHHS will be ordered to correct Petitioner's housing costs.

Petitioner was credited with 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.⁴ Adding Petitioner's housing costs and utility credit results in a total shelter obligation of \$783

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 \$320

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 \$606 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 July 2020 is \$16; the same issuance amount was calculated by MDHHS. Thus, other than \$3 in housing expense, MDHHS properly determined Petitioner's FAP eligibility.

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 Medicaid eligibility. Exhibit A, p. 3. It was not disputed that Petitioner is currently eligible for Medicaid subject to a \$692 monthly deductible. Petitioner did not dispute her ongoing Medicaid eligibility.⁵ Petitioner did dispute an alleged failure by MDHHS to send her notice of Medicaid approval.

MDHHS credibly testified that Petitioner was sent a notice on December 2, 2019, stating that Petitioner was approved for Medicaid in December 2019 and again in January 2020 for ongoing months. Petitioner testified that she did not receive the notice dated December 2, 2019. Petitioner testified that had she known of her Medicaid eligibility, she would have used it for badly needed dentures and other medical needs. Petitioner made the same argument concerning a notice of Medicaid approval for January 2020 through April 2020 which was sent to Petitioner on June 3, 2020. For purposes of this

⁴ 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.

⁵ Presumably, Petitioner is only eligible under the SSI-Related Medicaid category of AD-Care which has a monthly income limit of \$1,084 for a single person. RFT 242 (April 2020) p. 1. Petitioner's monthly RSDI exceeds the AD-Care income limit by \$3 rendering Petitioner only eligible for Medicaid subject to a monthly deductible. Deductibles are calculated from protected income levels which are much smaller than the Medicaid income limits. As a Wayne County resident, Petitioner's PIL is \$375. To calculate a deductible, MDHHS subtracts a standard \$20 unearned income credit and the PIL. Other common credits are guardianship and insurance premiums. Given Petitioner's circumstances, a monthly deductible of \$692 is unsurprising.

decision, it will be accepted that Petitioner did not receive the notice of Medicaid from December 2019.

Given Petitioner's slight excess income for Medicaid, the evidence did not establish why Petitioner would have been eligible for Medicaid in January 2020. Petitioner testified that she was hospitalized in December 2019 and incurred a large hospital bill. Under these circumstances, Petitioner likely met her deductible in December 2019 rendering her eligible for Medicaid for the entire month. BEM 545 (July 2019) p. 1. Possible reasons for ongoing eligibility could be that MDHHS applied the cost of the hospital bill to Petitioner's deductible in subsequent months. Also possible is that MDHHS erroneously approved Petitioner for Medicaid in subsequent months. Ultimately, the basis for Petitioner being approved for Medicaid after December 2019 was not established.

To correct her missed her opportunity to use her Medicaid in January 2020 or following months, Petitioner contends that she should be approved for full Medicaid. Petitioner's contention may be proper based on principles of equity. Equity is defined as a body of law that addresses concerns that fall outside the jurisdiction of common law.⁶ Equity is not a remedy available within administrative hearings. Under administrative hearing jurisdiction, the remedy for Petitioner's failure to receive a notice is for MDHHS to resend the notice. Petitioner is not entitled to an award of benefits she would not otherwise be eligible to receive. Thus, Petitioner's requested remedy of Medicaid eligibility as compensation for her lack of notice of past eligibility cannot be granted.

As discussed during the hearing, Petitioner may be eligible for Medicaid in the near future. Petitioner submitted medical expenses to MDHHS with her hearing request which exceeded \$2,000. MDHHS acknowledged that Petitioner's medical expenses have not yet been applied to Petitioner's Medicaid deductible. Once applied, Petitioner should be eligible for Medicaid. Petitioner is encouraged to again request a hearing if she is dissatisfied with MDHHS's processing of her submitted medical expenses.

⁶ <https://legal-dictionary.thefreedictionary.com/equity>

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner is not entitled to Medicaid benefits for an allegedly improperly mailed Medicaid notice from December 2019. Concerning the notice from December 2019, the actions taken by MDHHS are **AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's FAP eligibility beginning July 2020. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Redetermine Petitioner's FAP eligibility beginning July 2020 subject to the finding that Petitioner verified housing expenses of \$268 per month; and
- (2) Issue notice and , if any, supplement of benefits.

The actions taken by MDHHS are **REVERSED**.

CG/tlf



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

Via Email:

MDHHS-Wayne-55-Hearings
M. Holden
D. Sweeney
BSC4
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]