



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: November 6, 2020
MOAHR Docket No.: 20-005626
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 October 8, 2020, from Detroit, Michigan. Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by Heather Hembree, Assistance Payments Supervisor.

ISSUE

Did the Department properly deny Petitioner's applications for State Emergency Relief (SER) assistance?

Did the Department properly deny Petitioner's Medical Assistance (MA) and Medicare Savings Program (MSP) benefits?

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's household consists of himself, Ms. [REDACTED], and Ms. [REDACTED]' son, Child A.
2. Petitioner was previously an ongoing recipient of MSP benefits and MA benefits with a monthly deductible of \$820. On an unverified date, his MA and MSP cases were closed.
3. On an unverified date, a Front-End Eligibility (FEE) Investigation was initiated as the Department had questions regarding Petitioner's household income. The FEE Investigation Report indicates that Petitioner was determined to have monthly VA

disability benefits of \$3,406.04 and Retirement Survivors Disability Insurance (RSDI) of \$1,175.60 monthly. (Exhibit C)

4. On June 9, 2020, Petitioner submitted an application for MA, MSP and SER benefits. (Exhibit A, pp. 29-30; Exhibit B)
 - a. Petitioner requested SER assistance with past due water expenses in the amount of \$183.89 and past due electric expenses in the amount of \$2,995.16.
5. On June 9, 2020, the Department sent Petitioner a State Emergency Relief Decision Notice advising him that his request for assistance with electric services was denied because his countable income is higher than allowed and that his request for assistance with water was denied because the service requested is not covered under SER policy. (Exhibit A, pp. 29-30; Exhibit B)
 - a. The Department explained that because Petitioner's water is billed through a third party, it is not an eligible SER service. (Exhibit A, pp. 29-30)
6. In connection with information obtained during the FEE Investigation and in processing his MA/MSP application, on June 17, 2020, the Department sent Petitioner a Verification Checklist (VCL) instructing him to submit proof of his checking/savings account statements, most recent Direct Express statement (within the last 30 days), prepaid debit card statements, and his 2019 Federal Tax return for self-employment earnings from [REDACTED]. LLC by June 29, 2020.
7. Petitioner returned verification of his bank account asset information; however, the Department did not receive the requested verifications of direct express statements or self-employment income by the due date. (Exhibit A, pp. 29-30)
8. On July 7, 2020, the Department sent Petitioner a Health Care Coverage Determination Notice advising him that from June 1, 2020, ongoing, he was ineligible for MA and MSP benefits because he failed to return requested income verifications. (Exhibit A, pp. 29-30; Exhibit D)
9. The Department asserted that even if Petitioner timely submitted verification of his income from self-employment or proof of his prepaid debit card, he would be ineligible for MSP benefits because his monthly gross income was in excess of the limit.
10. On or around July 9, 2020, Petitioner submitted an application for SER assistance. (Exhibit A, pp. 15-25)
11. Petitioner's July 9, 2020 SER application referenced moving expenses due to medical reasons, but because it did not specify which type of assistance was

sought, the Department conducted an application interview on July 14, 2020. (Exhibit A, pp. 26-30)

- a. During the interview, Petitioner indicated that he filed an application for SER not because he was looking for assistance with moving, but because the leasing agent had charged “unnecessary” charges to his account for services not executed during the COVID pandemic and he has a medical need to move, as he is having difficulty getting to the second floor. (Exhibit A, pp. 26-30)
12. It was established that at the time of the July 2020 SER application, Petitioner was not behind on rent and did not have a court ordered eviction or judgment.
 13. On July 14, 2020, the Department sent Petitioner a State Emergency Relief Decision Notice advising him that his request for SER assistance was denied because the service he had requested is not covered under SER policy. (Exhibit A, pp. 31 – 33)
 14. On August 25, 2020, Petitioner requested a hearing disputing the Department’s actions. Petitioner’s request for hearing was unclear and did not specify which program or Department action was in dispute. At the hearing, Petitioner clarified and confirmed that at issue was the denial of his requests for SER assistance submitted on June 9, 2020 and July 9, 2020, as well as the Department’s findings concerning his MA and MSP benefits.

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).

SER

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

██████████, 2020 SER Application

In the ██████████, 2020 application, Petitioner requested SER assistance with past due water expenses in the amount of \$183.89.

SER helps to restore prevention of utility service when services necessary to prevent serious harm to SER group members. ERM 302 (October 2018), p. 1. Payments of an arrearage to maintain or restore water service is a covered utility service. The payment

must restore or continue service for at least 30 days of the current residents. However, payments recurrent charges are not allowed. Payments to residential landlords, residential management companies, billing service agencies, or collection agencies are not eligible to receive emergency service or SER funds, as they are not the actual service provider. The Department will not approve services for third party billing agencies under any circumstances. ERM 302, pp. 1-2.

At the hearing, the Department testified that Petitioner's request for assistance with his past due water bill was denied because it was billed through a third-party and thus, is not an eligible SER service. On June 9, 2020, the Department sent Petitioner a State Emergency Relief Decision Notice advising him that his request for assistance with water was denied because the service requested is not covered under SER policy. (Exhibit A, pp. 29-30; Exhibit B). The Department testified that it verified through [REDACTED] that a billing service agency is used by the management company and that the water account is not registered to the city that Petitioner lives or the Oakland County Water Commission. While Petitioner testified that the apartment complex is tied into the Oakland County water system, and that he was not aware of a billing service agency being used, there was no evidence presented to dispute the Department's conclusion that Petitioner's SER request was not a covered utility service. Therefore, the Department properly denied Petitioner's application for SER assistance with water.

In the [REDACTED], 2020 application, Petitioner requested SER assistance with past due electric expenses in the amount of \$2,995.16.

Eligible households who meet all SER eligibility requirements may receive assistance to help them with household heat and electricity costs. Funding for energy services assistance is provided through the Low Income Home Energy Assistance Program (LIHEAP). ERM 301 (April 2020), p. 1. When the group's heat or electric service for their current residence is in past due status, in threat of shutoff or is already shut off and must be restored, payment may be authorized to the enrolled provider. ERM 301, pp. 3-4. SER group members must use their available income and cash assets that will help resolve the emergency and the Department will not authorize a SER payment unless it will resolve the emergency. ERM 208 (December 2019), p. 1.

Income eligibility is required for assistance with SER energy services, including electric. All household members are included in the SER group and income of all household members is budgeted. Income verification used for current eligibility for any other Department administered program may be used, if available. ERM 301, pp. 3-5. The Department is to verify and budget all non-excluded gross income the SER group expects to receive during the 30-day countable income period. The Department will not prorate income. The Department considers the net amount of Social Security benefits (RSDI/SSI), alimony, child support, and child support participation payments and VA benefits, except the clothing allowance or the court ordered amount for aid and attendance in the calculation of unearned income for SER purposes. The Department will exclude Medicare premiums that will not be reimbursed. ERM 206 (November

2019), pp. 1-5. The household income must be at or below the LIHEAP income limit for the group to qualify for SER. See EXHIBIT II - SER INCOME NEED STANDARDS FOR ENERGY/LIHEAP SERVICES in ERM 208. The SER income need standard for energy/LIHEAP services including electricity for Petitioner's confirmed household size of three is \$2,666. ERM 208, pp. 6.

At the hearing, the Department testified that Petitioner's household was ineligible for SER assistance with past due electric services because the household income was in excess of the income limit. On June 9, 2020, the Department sent Petitioner a State Emergency Relief Decision Notice advising him that his request for assistance with electric services was denied because his countable income is higher than allowed. The Department, relying on information obtained from the FEE Investigation and other Department records, testified that it considered \$3,406.04 in VA payments for Petitioner, \$1,175.60 in RSDI for Petitioner, \$1,325.60 in RSDI for [REDACTED], a household member, and an additional \$38.49 in child support received by Ms. Echols on behalf of one child. The Department explained that it considered the full amount of Petitioner's monthly VA payments because there was no court ordered amount for aid and attendance.

Petitioner confirmed the gross amounts of unearned income relied upon by the Department, further confirmed that the payments are issued to him directly and that he does not qualify for aid and attendance. Petitioner asserted that he does not receive any of the money from his VA payments each month because it is being used to repay a loan in the amount of \$150,000 to his son, [REDACTED]. Petitioner maintained that he previously provided the Department with an affidavit from [REDACTED] verifying the monthly payments towards the loan. Petitioner testified that Ms. [REDACTED] uses her monthly Social Security payments to also repay [REDACTED] for expenses and the loan payments. Petitioner asserted that neither he nor Ms. Echols see any of their income as it all goes to repay prior debt and for ongoing medical expenses. While Petitioner's testimony was considered, the expenses identified by Petitioner are not outlined in policy as income exclusions or income expenses that can be considered. See ERM 206. Although it was unclear whether the Department excluded Petitioner's responsibility for Medicare premiums from the RSDI considered, the evidence clearly established that Petitioner's household income was greater than the income need standard for his confirmed three-person household. Therefore, the Department properly denied Petitioner's request for SER assistance with electric services, as his household had excess income.

July 9, 2020 SER Application

Based on the information obtained from Petitioner during the application interview conducted on July 14, 2020, the Department processed his SER application as a request for assistance with moving/relocation, as he indicated he was medically no longer able to get to the second floor and required assistance with moving. It was later discovered that Petitioner sought assistance with repayment of late fees and other unlawful charges from his apartment complex that he asserted were in violation of

COVID-19 executive orders. Petitioner testified that he sought assistance with late fees that are tied into his monthly rent.

SER assists individuals and families to resolve or prevent homelessness by providing money for relocation services including rent, security deposits, and moving expenses. ERM 303 (November 2019), p. 1. The Department will authorize relocation services only if one of the following circumstances exist and all other SER criteria are met: the SER group is homeless, meaning that there is no housing that the group can return to; that the SER group is at risk of homelessness; or that the SER group meets the eligibility requirements for a homeless assistance program identified in ERM 303. ERM 303, p. 2. Persons at imminent risk of homelessness must provide a court summons, order, or judgment resulting from an eviction action. A court summons, order, or judgment must be issued verifying that the SER group will become homeless. Verification of unsafe or unfit housing conditions must also be obtained, if applicable for a request for relocation services. ERM 303, p. 3.

At the hearing, the Department testified that because Petitioner was not behind on rent, did not have a court ordered eviction or judgment, and was not at risk for homelessness, he was ineligible for SER assistance relocation services. The Department testified that moving from the second floor to the first floor, even with a medical need, does not meet the criteria to receive SER assistance. Additionally, the Department testified that SER assistance does not cover assistance with late fees or other charges. On July 14, 2020, the Department sent Petitioner a State Emergency Relief Decision Notice advising him that his request for SER assistance was denied because the service he had requested is not covered under SER policy. (Exhibit A, pp. 31 – 33). Petitioner confirmed that he submitted a request for SER assistance because the apartment complex was charging him for late fees, which tie into his monthly rent. Petitioner did not dispute that at the time of the application, he was not at risk of homelessness and his home was not inhabitable. Based on the evidence presented at the hearing, the Department properly denied Petitioner's July 9, 2020 request for SER assistance, as it was not established that the request sought was for a service covered under SER policy.

MA/MSP

Although not entirely clear upon review of Petitioner's request for hearing, Petitioner testified that he disputed the Department's finding that he was ineligible for MA and MSP benefits. Petitioner raised concerns regarding the Department's failure to pay for his Medicare premiums.

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.

MSP are SSI-related MA categories. There are three MSP categories: Qualified Medicare Beneficiaries (QMB); Specified Low-Income Medicare Beneficiaries (SLMB); and Additional Low-Income Beneficiaries (ALMB). BEM 165 (January 2018), p. 1. QMB is a full coverage MSP that pays Medicare premiums (Medicare Part B premiums and Part A premiums for those few people who have them), Medicare coinsurances, and Medicare deductibles. SLMB pays Medicare Part B premiums and ALMB pays Medicare Part B premiums provided funding is available. BEM 165, pp. 1-2.

At the hearing, the Department testified that Petitioner was previously approved for MA under a Group 2 program with a monthly deductible of \$820, which was based only on his receipt of RSDI benefits. It was established that on an unverified date, Petitioner's MA case closed. The Department testified that prior to the case closure, the Department had not been budgeting Petitioner's VA Payments in determining his MA eligibility. It was unclear whether at some point Petitioner was also eligible for MSP benefits. However, it was established that in connection with his June 9, 2020 application, the Department processed Petitioner's eligibility for MA and MSP benefits and requested that he verify information regarding his income and assets.

Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130 (April 2017), p. 1. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. Although the client must obtain the required verification, the Department must assist if a client needs and requests help. If neither the client nor the Department can obtain the verification despite a reasonable effort, the Department is to use the best available information; and if no evidence is available, the Department is to use its best judgment. BAM 130, pp. 3-4. For MA cases, clients are given 10 calendar days (or other time limit specified in policy) to provide the verifications requested by the Department. BAM 130, pp. 7-9. If the client cannot provide the verification despite a reasonable effort, the Department is to extend the time limit to submit the verifications up to two times. BAM 130, pp. 7-9. Verifications are considered to be timely if received by the date they are due. BAM 130, pp. 7-9. The Department will send a negative action notice when the client indicates refusal to provide a verification, or the time period given has elapsed. BAM 130, pp. 8-9.

The Department testified that on June 17, 2020 and based on information obtained through the FEE Investigation which discovered additional income attributed to Petitioner, it sent Petitioner a VCL instructing him to submit proof of his checking/savings account statements, most recent Direct Express statement (within the last 30 days), prepaid debit card statements, and his 2019 Federal Tax return for self-employment earnings from F.W. T.L Heating & Cooling/HO Scale R.R. LLC by June 29, 2020. Although case comments presented for review showed that Petitioner returned verification of his bank account asset information, the Department did not receive the

requested verifications of direct express statements or self-employment income by the due date. (Exhibit A, pp. 29-30). As a result, the Department sent Petitioner a Health Care Coverage Determination Notice dated July 7, 2020 advising him that from June 1, 2020, ongoing, he was ineligible for MA and MSP benefits because he failed to return requested income verifications. (Exhibit A, pp. 29-30; Exhibit D).

At the hearing, Petitioner did not dispute that he received a copy of the VCL. Petitioner asserted that he could not access his direct express statement as there is no record of any accounts. Petitioner testified that he informed his caseworker in April or May that he could not access information regarding his direct express account. Petitioner asserted that he spoke with his caseworker regarding the companies registered to his name and told her that he receives no self-employment income. Petitioner testified that since 2016, he has been providing his caseworker with documentation supporting his testimony. Petitioner did not specify whether he responded to the request for income verifications in the VCL, and instead testified that he submits all documents requested within 10 days of their requested date. He gave an example and stated that if a request was dated June 9, 2020, he responded within 10 days electronically.

Petitioner could not clearly identify when he submitted the requested income verifications to the Department and did not present any documentation supporting their submission prior to the June 29, 2020 due date or the July 7, 2020 denial notice. Case comments presented for review indicate that in connection with a subsequent application involving the Food Assistance Program (FAP), on July 14, 2020, Petitioner explained to the Department that he does not file taxes under his company name as he has had no earnings since 2000. As a result, the Department reinstated his FAP case. However, because the Department did not receive the requested verifications by the due date reflected on the VCL, the Department properly denied Petitioner's June 9, 2020 application for MA and MSP benefits.

It is noted that the Department asserted that even if Petitioner timely submitted verification of his income from self-employment or proof of his prepaid debit card, he would be ineligible for MSP benefits because his monthly gross income was in excess of the limit. Income eligibility for MSP benefits may exist when net income is within the limits in RFT 242 or 247 or when below 135% of the FPL. In order to be eligible for an MSP category, an individual's net income cannot exceed \$1,456 for Petitioner's confirmed fiscal group of one, as he does not have a spouse. The Department is to determine countable income according to the SSI-related MA policies in BEM 500 and 530, except as otherwise explained in BEM 165. RFT 242, pp. 1-2; BEM 165, pp. 7-8. As discussed above, Petitioner receives gross monthly RSDI of \$1,175.60 and VA benefits of \$3,406.04. Because Petitioner's identified expenses are not applicable to MSP programs, the Department properly determined that his income would be in excess of the income limit for his one-person fiscal group size, and thus, ineligible for MSP.

Although Petitioner initially testified that at issue was the denial of his MA benefits, Petitioner raised additional concerns regarding the Department's failure to process

medical expenses and apply them to his monthly deductible. He also made reference to the waiver program and the change in his caregiver; however, the negative action associated with these statements was not established by Petitioner and thus, will not be addressed with this hearing decision.

While it was unclear when Petitioner was last approved for MA benefits with a monthly deductible, the Department testified that it received expenses from Petitioner on June 9, 2020 and July 1, 2020. With respect to the expenses received on June 9, 2020, the Department testified that these consisted of expenses from 2012 and 2013 that were previously entered and considered. Regarding the expenses from July 1, 2020, the Department testified that they included information indicating that payment was made by the VA. Thus, because it was not clear who made the payment towards the expense, the Department could not consider it.


Petitioner testified that he is responsible for monthly medical expenses and chore provider/caregiver expenses totaling \$5,675 that he pays out-of-pocket. While he stated he submitted documentation 1 month to 1 ½ months ago verifying that he met his deductible, Petitioner did not provide any specific information regarding the months in which he asserted the Department failed to apply the expenses and further did not clearly identify what expenses he submitted or the dates of their submission. It was unclear based on Petitioner's testimony when the costs were incurred and what months he asserted his deductible was met. As such, Petitioner has failed to establish that he submitted medical expenses to the Department that were not properly processed and applied to his Group 2 deductible. Petitioner is advised that he is entitled to submit a new application for MA benefits to have his eligibility determined.

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 Petitioner was ineligible for MA and MSP benefits from June 1, 2020, ongoing.

DECISION AND ORDER

Accordingly, the Department's SER, MA and MSP decisions are **AFFIRMED**.

ZB/jem



Zainab A. Baydoun
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-Oakland-6303-Hearings
EQADhearings
D. Smith
T. Bair
E. Holzhausen
MOAHR

Petitioner – Via USPS:

[REDACTED]
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