



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: January 25, 2023
MOAHR Docket No.: 22-005535
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 January 17, 2023, from Detroit, Michigan. Petitioner appeared for the hearing with his wife, [REDACTED]. Petitioner was represented by his Authorized Hearing Representative (AHR) [REDACTED] who also assisted as Bosnian interpreter. The Department of Health and Human Services (Department) was represented by Krista Kulick, Assistance Payments Worker.

ISSUE

Did the Department properly process Petitioner's eligibility for Medical Assistance (MA) benefits and calculate the amount of Food Assistance Program (FAP) 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. On or around [REDACTED] 2022, Petitioner submitted an application requesting FAP and MA benefits. (Exhibit A, pp.7-15)
2. Petitioner was approved for \$23 in monthly FAP benefits.
3. On or around September 9, 2022, the Department sent Petitioner a Health Care Coverage Determination Notice (Notice), advising him that MA benefits for himself and his wife were denied effective August 1, 2022, due to a failure to return requested information. (Exhibit A, pp. 18-20)
4. On or around September 22, 2022, Petitioner requested a hearing disputing the information contained in the September 9, 2022, Notice and the Department's

actions with respect to the MA program, as well as the calculation of his FAP benefits. (Exhibit A, pp. 23-24)

5. On September 28, 2022, Petitioner withdrew the previously filed request for hearing, as he submitted additional information, and the Department indicated it would reprocess MA eligibility. (Exhibit A, pp. 21-22)
6. On or around November 28, 2022, Petitioner submitted a second request for hearing disputing the previous denial of MA benefits and indicating that after more than one month, there has been no update on the reprocessing of the MA application after documents were submitted and several calls/emails to the Department were made. Petitioner also again disputed the amount of his FAP benefits. (Exhibit A, pp. 4-5)
7. On or around November 28, 2022, the Department received Petitioner's request for hearing and reprocessed MA eligibility for Petitioner and his wife.
8. On or around November 28, 2022, the Department sent Petitioner a Health Care Coverage Determination Notice, advising him that effective August 1, 2022, ongoing, he and his wife were approved for MA with the monthly deductible of \$1528. (Exhibit B, pp. 2-6)

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, the Department representative testified that Petitioner was determined eligible for \$23 in ongoing monthly FAP benefits effective October 1, 2022. The Department presented a FAP EDG Net Income Results Budget which was thoroughly reviewed to determine if the Department properly calculated Petitioner's FAP benefits. (Exhibit B, p. 11- 13).

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 (April 2022), pp. 1 – 5. The Department

considers the gross amount of money earned from Retirement Survivors Disability Insurance (RSDI or Social Security) in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (January 2021), pp. 28-37. The budget shows that the Department concluded Petitioner had gross unearned income in the amount of [REDACTED]. The Department representative testified that it considered [REDACTED] in gross Social Security for Petitioner and [REDACTED] in gross Social Security for Petitioner's wife. Petitioner confirmed that as of the date in which the budget was completed, the amounts relied upon by the Department were correct. Therefore, the unearned income was properly calculated.

The deductions to income were also reviewed. Petitioner's FAP group includes a senior/disabled/veteran (SDV) member. BEM 550 (January 2022), pp. 1-2. Groups with one or more SDV members are eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Medical expenses for the SDV member(s) that exceed \$35.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (January 2022), p. 1; BEM 556 (October 2021), p. 1-8.

In this case, there was no earned income and thus, no earned income deduction. There was no evidence presented that Petitioner had any out-of-pocket dependent care, or child support expenses; therefore, the budget properly did not include any deduction for dependent care or child support. The Department properly applied a standard deduction of \$193 which was based on Petitioner's confirmed group size of two. RFT 255 (October 2021), p. 1. With respect to the excess shelter deduction, the Department properly considered Petitioner's housing expense of \$445.84, which consisted of \$250 in co-op association fees, \$176.67 in monthly property taxes (which annually were confirmed by Petitioner to be \$2120) and \$19.17 in monthly home insurance. The Department also properly considered the \$620 heat and utility (h/u) standard, which covers all heat and utility costs including cooling expenses. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. Upon review, the Department properly calculated the excess shelter deduction.

With respect to the medical deduction of \$320, the Department testified that it considered total medical expenses of \$355.30 which consisted of a \$170.10 Medicare Part B premium for Petitioner's wife, \$164.90 Medicare Part B premium for Petitioner, and \$20.30 for prescription drug/over-the-counter medications. The Department representative testified that the total expenses considered of \$355.30, less \$35, results in the medical deduction of \$320.30, rounded down to \$320. (Exhibit B, p. 10)

At application and redetermination, the Department is to estimate an SDV member's medical expenses for the benefit period based on (i) verified allowable medical expenses; (ii) available information about the SDV member's medical condition and

health insurance; and (iii) changes that can reasonably be anticipated to occur during the benefit period. BEM 554, pp. 8-12.

Additionally, a FAP group is not required to, but may voluntarily report changes during the benefit period. The Department must process changes that the client voluntarily reports and verifies during the benefit period or another source reports and there is sufficient information and verification to determine the allowable amount without contacting the FAP group. BEM 554, pp. 8-12. Expenses are budgeted for the month they are billed or otherwise become due. BEM 554, p. 3. Medical bills may not be overdue, which means they are currently incurred, currently billed, or the client made a payment arrangement before the medical bill became overdue. The list of allowable medical expenses that are to be considered by the Department are found in BEM 554, at pp. 9-11. The Department will allow medical expenses when verification of the portion paid, or to be paid by insurance, Medicare, Medicaid, etc. is provided and will only allow the non-reimbursable portion of a medical expense. BEM 554, p. 11. A medical expense does not have to be paid to be allowed. BEM 554, pp. 8-12.

For FAP groups that do not have a 24-month benefit period, a one-time-only medical expense may be budgeted for one month or averaged over the balance of the benefit period. BEM 554, pp. 8-9. FAP groups that have 24-month benefit periods must be given the following options for one-time-only medical expenses billed or due within the first 12 months of the benefit period: (i) the expense can be budgeted for one month; (ii) the expense can be averaged over the remainder of the first 12 months of the benefit period; or (iii) averaged over the remainder of the 24-month benefit period. BEM 554, pp. 8-9.

Based on Petitioner's testimony at the hearing, the amount considered for Medicare Part B premiums is correct. However, Petitioner's AHR asserted that there are additional medical expenses that were not considered, specifically Medicare Part D premiums for both Petitioner and his wife, Medigap insurance of \$119 monthly, as well as other medical expenses, and prescription costs that were presented for review. (Exhibit 1). The Department testified that it could not consider an \$85.01 statement from Henry Ford Health included with Exhibit 1 because the statement did not include a date of service. Petitioner's Exhibit 1 also included an Explanation of Benefits from Priority Health for Petitioner's wife for dates of service in January 2022 and March 2022. It was unclear whether these were acceptable or reviewed by the Department. Additionally, a letter verifying Medigap coverage for Petitioner's wife in the amount of \$119.36, as well as a letter showing a prescription plan for Petitioner's wife of \$20.30 for 2022 and \$49.80 for 2023 was presented but not considered as an ongoing monthly medical expense by the Department. (Exhibit 1). Upon review, the Department failed to establish that it properly calculated the medical deduction.

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 because of the errors in the calculation of the medical deduction, the Department failed to establish that it acted

in accordance with Department policy when it calculated the amount of Petitioner's FAP benefits of \$23.

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, the Department representative testified that after reprocessing Petitioner's MA application, it sent Petitioner the November 28, 2022, Notice advising that Petitioner and his wife were approved MA with a monthly deductible of \$1,528. The Department did not present a budget showing how the \$1,528 deductible was calculated but instead provided an SSI Related MA Income Results Budget (Deductible Budget) for January 2023 showing a deductible of \$1,467. (Exhibit B, p. 9).

Petitioner and his wife, who are both enrolled in Medicare, and receive RSDI, are eligible for SSI-related MA, which is MA for individuals who are blind, disabled or over age 65. BEM 105 (January 2021), p. 1. Individuals are eligible for Group 1 coverage, with no deductible, if their income falls below the income limit, and eligible for Group 2 coverage, with a deductible that must be satisfied before MA is activated, when their income exceeds the income limit. BEM 105, p. 1. Ad-Care coverage is an SSI-related Group 1 MA category which must be considered before determining Group 2 MA eligibility. BEM 163 (July 2017), p. 1. Eligibility for Ad-Care is based on the client meeting nonfinancial and financial eligibility criteria. BEM 163, pp. 1-2. The eligibility requirements for Group 2 MA and Group 1 MA Ad-Care are the same, other than income. BEM 166 (April 2017), pp. 1-2.

Income eligibility for the Ad-Care program is dependent on MA fiscal group size and net income which cannot exceed the income limit in RFT 242. BEM 163, p. 2. Petitioner has a MA fiscal group of one. BEM 211 (July 2019), pp. 5-8. Effective April 1, 2022, an MA fiscal group with two members is income-eligible for full-coverage MA under the Ad-Care program if the group's net income is at or below \$1,546, which is 100 percent of the Federal Poverty Level, plus the \$20 disregard. RFT 242 (April 2022), p. 1.

The Department is to determine countable income according to SSI-related MA policies in BEM 500 and 530 *except* as explained in the countable RSDI section of BEM 163. The Department will also apply the deductions in BEM 540 (for children) or 541 (for adults) to countable income to determine net income. BEM 163, p. 2. The Department determined that the total unearned income for Petitioner and his wife was [REDACTED] which as discussed above was accurate.

After further review of Department policy, because Petitioner's countable income exceeds the net income limit for the Ad-Care program, the Department acted in accordance with Department policy when it determined that Petitioner and his wife were ineligible for full coverage MA benefits under the Ad-Care program without a deductible and determined that they would be eligible for MA under the Group 2 Aged Blind Disabled (G2S) program with a monthly deductible.

Additionally, deductible is a process which allows a client with excess income to become eligible for Group 2 MA if sufficient allowable medical expenses are incurred. BEM 545 (July 2022), p. 10. Individuals are eligible for Group 2 MA coverage when net income (countable income minus allowable income deductions) does not exceed the applicable Group 2 MA protected income levels (PIL), which is based on shelter area and fiscal group size. BEM 105, pp. 1-2; BEM 166, pp. 1-2; BEM 544 (January 2020), p. 1; RFT 240 (December 2013), p. 1. The PIL is a set allowance for non-medical need items such as shelter, food and incidental expenses. BEM 544, p. 1. The monthly PIL for an MA group of two living in ██████ County is \$541 per month. RFT 200 (April 2017), pp. 1-2; RFT 240, p. 1. Thus, if Petitioner's net monthly income is in excess of the \$541, he and his wife may become eligible for assistance under the deductible program, with the deductible being equal to the amount that the monthly income exceeds \$541. BEM 545, p. 1.

According to the Deductible Budget presented for review, the Department determined that Petitioner and his wife had unearned income of ██████ which was established to be correct. The Department also properly applied a \$20 unearned income exclusion to determine that Petitioner and his wife had net income for MA purposes of ██████. The Department testified that it considered insurance premiums in the amount of \$445.21 as a deduction to income on the Deductible Budget. The Department testified that it considered \$170.10 Medicare Part B premium for Petitioner's wife, \$164.90 Medicare Part B premium for Petitioner, and \$20.30 in prescription coverage. However, this totals \$355.30 and thus, the Department was unable to explain the additional insurance premiums considered. The Deductible Budget also shows a deduction of \$215 which the Department testified consisted of the cost of living adjustment (COLA), as the budget was for the month of January 2023 and this deduction is based on Petitioner's receipt of RSDI.

The Deductible Budget does not show any ongoing medical expenses, which Petitioner disputed. Based on the above discussion, Petitioner presented evidence of additional insurance premiums and medical expenses that do not appear to have been considered or reviewed by the Department.

After further review, although the Department properly determined that Petitioner and his wife would be subject to a deductible, based on the evidence presented at the hearing, the Department failed to establish that it properly calculated the amount of Petitioner's deductible or took into consideration all applicable medical expenses. Although the Department presented the Deductible Budget for January 2023, because the Health Care Coverage Determination Notice sent on November 28, 2022, indicates

that Petitioner and his wife were approved for MA subject to a deductible effective August 1, 2022, the Department will be ordered to reprocess MA eligibility and recalculate the MA deductible effective August 1, 2022.


DECISION AND ORDER

Accordingly, the Department's FAP and MA decisions are **REVERSED**.

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. Recalculate Petitioner's FAP budget from October 1, 2022, ongoing;
2. Issue FAP supplements to Petitioner for any benefits he was eligible to receive but did not from October 1, 2022, ongoing, in accordance with Department policy;
3. Recalculate the MA deductible for Petitioner and his wife effective August 1, 2022, and apply all allowable insurance premiums and verified/allowable medical expenses;
4. Provide MA coverage to Petitioner and his wife for MA benefits they were entitled to receive but did not from August 1, 2022, ongoing; and
5. Notify Petitioner in writing of its decisions.

ZB/ml



Zainab A. Baydoun
Administrative Law Judge

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 Electronic Mail :

DHHS
Chelsea McCune
Macomb County DHHS Warren Dist.
27690 Van Dyke
Warren, MI 48093
MDHHS-Macomb-20-Hearings@michigan.gov

Interested Parties

BSC4
M Holden
D Sweeney
M Schaefer
EQAD
MOAHR

Via First Class Mail :

Authorized Hearing Rep.

[REDACTED]
1 [REDACTED]
[REDACTED] MI [REDACTED]

Petitioner

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