



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

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

Date Mailed: December 8, 2023
MOAHR Docket No.: 23-007632
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 December 6, 2023, via conference line. Petitioner was present and was unrepresented. The Department of Health and Human Services (Department) was represented by Princess Ogundipe, Assistance Payments Supervisor.

ISSUES

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

Did the Department properly close Petitioner's Medical Assistance (MA) benefit case?

Did the Department properly close Petitioner's Medicare Savings Program (MSP) benefit case?

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 MA, MSP and FAP recipient.
2. On October 5, 2023, Petitioner completed a redetermination related to his MA benefit case (Exhibit A, pp. 27-29).

3. Petitioner reported that his household consisted of himself and his minor child.
4. Petitioner and his son both received unearned income in the form of Retirement, Survivors and Disability Insurance (RSDI).
5. On October 20, 2023, the Department sent Petitioner a Notice of Case Action informing him that his FAP benefit amount was decreasing to \$█ per month effective November 1, 2023, ongoing (Exhibit A, pp. 30-34).
6. On October 20, 2023, the Department sent Petitioner a Health Care Coverage Determination Notice informing him that his MA and MSP benefit cases were closing effective November 1, 2023, ongoing.
7. On October 31, 2023, Petitioner submitted a request for hearing disputing the Department's actions regarding his FAP and MA 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 completed a redetermination related to his MA benefit case. As a result, Petitioner's FAP benefit case was updated. The Department testified that Petitioner's FAP benefits decreased, as his household income increased, and he was no longer eligible for the heat/utility standard. The Department determined that Petitioner was eligible for FAP benefits in the amount of \$█ per month. The Department presented a FAP budget to establish the calculation of Petitioner's FAP benefit amount (Exhibit A, pp. 41-42).

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 \$[REDACTED] in unearned income when determining Petitioner's FAP budget. The Department testified that Petitioner receives \$[REDACTED] in gross RSDI benefits and his minor child receives \$[REDACTED] in gross RSDI benefits.

At the hearing, Petitioner disputed receiving RSDI benefits on behalf of his son. Petitioner conceded that his son receives RSDI benefits as a result of his designation as a survivor attached to his own benefit case. However, Petitioner stated that his child's mother receives the income. The Department reviewed Petitioner's son's State Online Query report and acknowledged that Petitioner's child's mother is designated as the payee. Therefore, the Department did not act in accordance with policy when it included Petitioner's son's RSDI income in the FAP budget.

It was also revealed at the hearing, that Petitioner has legal custody of his child, but that the child's mother had absconded with his child. Petitioner acknowledged that his child has not resided in his home for several months. Petitioner reported on the redetermination that his child was still in his household because he still has legal custody of the child.

FAP budget calculations require the consideration of the group size. The Department will determine who must be included in the FAP group prior to evaluating the non-financial and financial eligibility of everyone in the group. BEM 212 (January 2022), p. 1. The FAP group composition is established by determining all of the following: who lives together, the relationship(s) of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the person(s) resides in an eligible living situation. BEM 212, p. 6. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212, p. 1.

Although Petitioner may have legal custody of his child, FAP groups include individuals that live together. Per policy, Petitioner's child does not live with Petitioner and should not be included in his FAP group.

Additionally, the Department determined that Petitioner was not eligible for the h/u standard when determining his excess shelter deduction. Petitioner was provided with the non-heat electric standard. The heat/utility (h/u) standard covers all heat and utility costs including cooling expenses. BEM 554, p. 15. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. BEM 554, p. 15. FAP groups whose heat is included in the cost of their monthly rent may still be eligible for the h/u standard if: they are billed for excess heat payments from their landlord; they have received a home heating credit in an amount greater than \$20 for the applicable period; or they have received a Low-Income Home Energy Assistance Payment (LIHEAP) or a LIHEAP payment was made on their behalf in an amount greater than \$20 for the applicable period. BEM 554, pp. 15-19. Additionally, FAP groups who pay cooling (including room air conditioners) are eligible for the h/u standard if they verify their responsibility to pay for non-heat electric expenses. BEM 554, p. 16. FAP groups not eligible for the h/u standard who have other utility expenses or contribute to the costs of other utility expenses are eligible for the individual utility standards. BEM 554, p. 21.

The Department presented a redetermination that Petitioner submitted related to his FAP benefit case that was submitted on July 8, 2023 (Exhibit A, pp. 24-26). The Department also provided the redetermination Petitioner submitted related to his MA benefit case on October 5, 2023 (Exhibit A, pp. 27-29). Petitioner indicated in both redeterminations that his expenses only included non-heat electric. Although Petitioner testified at the hearing that he pays for both electric and gas heat, based on the information provided by Petitioner on the redeterminations, the Department acted in accordance with policy when it only provided Petitioner with the non-heat electric standard.

Based on the above findings of fact, the Department did not act in accordance with Department policy when it determined Petitioner's income and group size. As it follows, the Department did not act in accordance with policy when it determined Petitioner's FAP eligibility.

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. Effective November 1, 2023, the Department closed Petitioner's MA benefit case. The Department conceded at the hearing that Petitioner was determined to be a disabled individual but had not had his eligibility determined under the SSI-related MA benefit cases.

As a disabled and/or aged individual, Petitioner is potentially eligible to receive MA benefits through AD-Care and the group 2 SSI-related (G2S) MA program. BEM 166 (April 2017), p. 1 and BEM 163 (July 2017), p. 1. As the Department did not properly consider Petitioner's eligibility under the SSI-related MA cases, the Department did not act in accordance with policy when it closed Petitioner's MA benefit case.

MSP

In this case, Petitioner was an ongoing MSP recipient. The Department sent Petitioner notice that his MSP benefit case was closing effective November 1, 2023, ongoing. The Department testified that Petitioner exceeded the income limit for MSP benefits.

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. Income eligibility for MSP benefits exists when net income is within the limits in RFT 242 or 247. 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, pp1-2; BEM 165, pp. 7-8.

The Department testified that based on Petitioner's household income, he was not eligible for MSP benefits under any of the three categories. Effective April 1, 2023, for QMB, the monthly income limit for a group size of one is \$1,235, which is 100 percent of the Federal Poverty Level, plus the \$20 disregard. RFT 242, p. 1. For SLMB the monthly income limit for Petitioner's group size of one is \$1,478, which is 120 percent of the Federal Poverty Level, plus the \$20 disregard. RFT 242, p. 2. For ALMB, the monthly income limit for Petitioner's group size of one is \$1,660, which is 135 percent of the Federal Poverty Level, plus the \$20 disregard. RFT 242, pp. 1-3. RFT 242, p. 3.

Although the Department erred when determining Petitioner's FAP income, based on the inclusion of his son's RSDI income, Petitioner conceded that he receives \$[REDACTED] in gross RSDI, which would be countable in his MSP benefit case. Petitioner's gross RSDI benefit income alone exceeds the income limit for MSP benefits. Therefore, the Department acted in accordance with policy when it closed Petitioner's MSP benefit case.

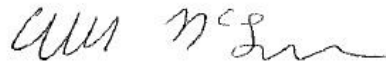
DECISION AND ORDER

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 closed Petitioner's MSP benefit case. The Department did not act in accordance with Department policy when it determined Petitioner's FAP and MA eligibility.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to Petitioner's MSP program benefits and **REVERSED IN PART** with respect to Petitioner's MA and FAP 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 FAP and MA eligibility as of November 1, 2023, ongoing;
2. If Petitioner is entitled to additional FAP benefits, issue supplements he is entitled to receive;
3. If Petitioner is eligible for MA benefits, provide coverage he is eligible to receive; and
4. Notify Petitioner of its decisions in writing.



EM/tm

Ellen McLemore
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

