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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 21, 2023
MOAHR Docket No.: 23-007921
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Linda Jordan

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 on December 14, 2023, via teleconference. Petitioner appeared and represented himself. [REDACTED] appeared as a witness for Petitioner. Chantae Moore, Eligibility Specialist, and Latora Giles, Assistance Payments Worker, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUES

1. Did MDHHS properly determine Petitioner's eligibility for Medicaid (MA) coverage?
2. Did MDHHS properly determine Petitioner's Food Assistance Program (FAP) benefit rate.

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 recipient of FAP benefits.
2. On September 12, 2023, Petitioner filed an application for MA (Exhibit A, p. 8).
3. On September 20, 2023, MDHHS sent Petitioner a Health Care Coverage Determination Notice indicating that he was approved for Plan First, a limited MA coverage category, and MA with a \$1,087.00 deductible, beginning September 1, 2023 (Exhibit A, p. 23).
4. On November 9, 2023, Petitioner filed a Request for Hearing regarding his MA coverage and his FAP benefit rate (Exhibit A, pp. 3-5).

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).

Medicaid (MA)

Medicaid (MA) 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 MA pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MA is also known as Medical Assistance. BEM 105 (January 2021), p. 1.

In this case, MDHHS determined that Petitioner was eligible for Plan First MA, a limited MA coverage category, and Group 2 Aged, Blind, Disabled (G2S) MA with a monthly deductible of \$1,087.00, effective September 1, 2023 ongoing.

MA includes several sub-programs or categories. BEM 105, p. 1. To receive MA under a Supplemental Security Income (SSI)-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* MA eligibility for children under 19, parents or caretakers of children, pregnant or recently pregnant women, former foster children, MOMS, MICHild, Flint Water Group and Health Michigan Plan (HMP) is based on Modified Adjusted Gross Income (MAGI) methodology. *Id.* The terms Group 1 and Group 2 relate to financial eligibility factors. *Id.* For Group 1, net income (countable income minus allowable income deductions) must be at or below a certain income limit for eligibility to exist. *Id.* The income limit, which varies by category, is for nonmedical needs such as food and shelter. *Id.* Medical expenses are not used when determining eligibility for MAGI-related and SSI-related Group 1 categories. *Id.* For Group 2, eligibility is possible even when net income exceeds the income limit. *Id.* This is because incurred medical expenses are used when determining eligibility for Group 2 categories. *Id.* Group 2 categories are considered a limited benefit because a deductible is possible. *Id.*

G2S MA is an SSI-related MA category available to a person who is aged (65 or older), blind, or disabled. BEM 166 (April 2017), p. 1. Income eligibility exists when net income does not exceed the Group 2 needs in BEM 544. *Id.* If net income exceeds the Group 2 needs, MA eligibility is still possible with a deductible. *Id.* Plan First MA is a MAGI-related limited coverage MA category, that covers services related to family planning and reproductive health. To be eligible for Plan First, a person must meet all non-financial eligibility factors and their income cannot exceed 195% of the Federal Poverty Level (FPL). BEM 124 (July 2023), p. 1. Persons may qualify under more than one MA category. *Id.*, p. 2. Federal law gives them the right to the most beneficial category. *Id.* The most beneficial category is the one that results in eligibility, the least amount of excess income or the lowest cost share. *Id.*

To evaluate Petitioner's eligibility for MA, MDHHS must determine Petitioner's MA fiscal group size, net income and assets. MDHHS determines fiscal and asset groups separately for each person requesting MA. BEM 211 (July 2019), p. 5. In this case, MDHHS based Petitioner's income calculation on the receipt of \$ [REDACTED] in Retirement, Survivors, Disability Insurance (RSDI) income (Exhibit A, p. 14).

RSDI is a federal benefit administered by the Social Security Administration that is available to retired and disabled individuals, their dependents, and survivors of deceased workers. BEM 503 (January 2023), p. 29. MDHHS counts the gross benefit amount as unearned income. *Id.* Gross income is the amount of income before any deductions such as taxes or garnishments. *Id.* This may be more than the actual amount an individual receives. *Id.* Gross income includes amounts withheld to repay a debt or meet a legal obligation. *Id.*

Petitioner reported that there was a court-ordered deduction of \$70.00 from his RSDI check each month. On the MA application, Petitioner reported that the amount of his monthly RSDI income was \$ [REDACTED] (Exhibit A, p. 11). Because the deduction was to meet a legal obligation, it is not excluded from Petitioner's unearned income for the purposes of MA. Thus, MDHHS properly determined that his monthly unearned income was \$ [REDACTED]. Petitioner was entitled to the \$20.00 disregard, which would bring his net earned income to \$ [REDACTED]. BEM 541 (January 2023), p. 3. There was no evidence of other SSI-related MA income deductions.

Based on Petitioner's circumstances, he was potentially eligible for Ad-Care MA. The Ad-Care program is a group 1, full-coverage SSI-related MA program for disabled individuals who are income-eligible based on their MA fiscal group size. BEM 163 (July 2017), p. 1. However, net income for this program cannot exceed 100% of the Federal Poverty Level (FPL). *Id.* To be income eligible for this program, Petitioner's income would have had to be \$1,235.00 or less for a fiscal group-size of one. RFT 242 (April 2023), p. 1. Petitioner's income exceeded this amount and therefore, he was not eligible for Ad-Care MA.

MDHHS alleged that Petitioner was eligible for G2S MA, which is an SSI-related Group 2 MA category. BEM 166, p. 1. MDHHS considers eligibility under this category only when eligibility does not exist under BEM 155 through 164, 170 or 171. *Id.* Income eligibility exists for G2S MA when net income does not exceed the Group 2 needs in BEM 544. *Id.*, p. 2. If the net income exceeds Group 2 needs, MA eligibility is still possible with a deductible, per BEM 545. *Id.* The deductible is equal to the amount the individual's net income, calculated in accordance with the applicable Group 2 MA policy, minus the applicable Group 2 MA protected income level (PIL). The PIL is a set allowance for non-medical need items such as shelter, food and incidental expenses that is based on the county in which the client resides and the client's fiscal MA group size. BEM 544 (January 2020), p. 1. The PIL for [REDACTED] County, where Petitioner resides, for a one-person MA group, is \$375.00. RFT 200 (April 2017), p. 2; RFT 240 (December 2013), p. 1.

In determining the monthly deductible, net income is reduced by health insurance premiums paid by the MA group and remedial service allowances for individuals in adult foster care or homes for the aged. BEM 544, pp. 1-3. In this case, no evidence was

presented that Petitioner resided in an adult foster care home or home for the aged. Therefore, he was not eligible for any deductions for remedial service allowances. MDHHS presented evidence that Petitioner's Medicare Part B premium was paid through his Medicare Savings Program (MSP) coverage, and therefore, he was not entitled to a deduction for health insurance premiums. Accordingly, Petitioner's countable income was \$[REDACTED]. Subtracting the PIL of \$375.00 equals \$[REDACTED]. Therefore, MDHHS properly determined that Petitioner was eligible for G2S MA with a monthly deductible of \$1,087.00.

Additionally, Petitioner was eligible for Plan First MA, because his annual income of \$[REDACTED] was less than 195% of FPL, or \$28,431.00. See ASPE, Poverty Guidelines, available at <<https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>> (last accessed December 15, 2023).

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 MDHHS acted in accordance with Department policy when it determined Petitioner's eligibility for MA.

The Food Assistance Program (FAP)

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. MDHHS 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, MDHHS approved Petitioner for FAP benefits in the amount of \$[REDACTED] per month. Petitioner filed a Request for Hearing to dispute the calculation of his FAP benefit rate. FAP beneficiaries are entitled to a hearing regarding their current benefit rate whenever they believe that the rate is incorrect. BAM 600 (March 2021), p. 5.

To determine whether MDHHS properly calculated Petitioners' FAP benefit amount, all countable earned and unearned income available to the client must be considered. BEM 500 (April 2022), pp. 1-5. MDHHS budgeted \$[REDACTED] for Petitioner's unearned income, based on his receipt of RSDI. There was no evidence of any other income.

After income is calculated, MDHHS must determine applicable deductions. Petitioner's FAP group is considered a Senior/Disabled/Disabled Veteran (SDV) group. BEM 550 (January 2022), pp. 1-2. SDV groups are eligible for the following deductions.

- Earned income deduction
- Dependent care expense
- Court ordered child support and arrearages paid to non-household members
- Standard deduction based on group size
- Medical expenses for SDV members that exceed \$35
- Excess shelter up to the maximum in RFT 255

BEM 550, p. 1-2; BEM 554 (October 2022), p. 1; BEM 556 (October 2022), pp. 1-7.

No evidence was presented that Petitioner had earned income, dependent care expenses, or verified medical expenses. MDHHS budgeted \$67.00 for Petitioner's child support deduction (Exhibit A, p. 21). In calculating the excess shelter deduction of \$72.00, MDHHS testified that it budgeted \$0.00 for Petitioner's property taxes, because he did not report them when he submitted the MA application. MDHHS further acknowledged that it budgeted the property taxes previously. Petitioner disputed the removal of his property taxes from the budget and testified that he reported his property taxes to his caseworker. Given this discrepancy, it is unclear whether MDHHS properly calculated Petitioner's excess shelter deduction. When information regarding an eligibility factor is unclear or incomplete, MDHHS is required to verify the information with the client. BAM 130 (January 2023), p. 1.

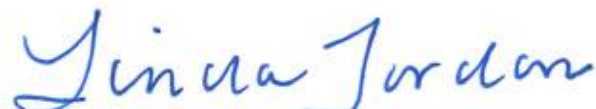
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's FAP benefit rate. Because Petitioner's Request for Hearing for FAP was to challenge his current benefit rate and not based on a recent negative action, MDHHS is ordered to recalculate his FAP budget from the date the Request for Hearing was received.

DECISION AND ORDER

Accordingly, MDHHS decision is **AFFIRMED IN PART** with respect to MA and **REVERSED IN PART** with respect to FAP.

MDHHS 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 benefit rate, from November 9, 2023 ongoing, requesting additional information from Petitioner, if necessary;
2. Issue supplemental payments to Petitioner for any FAP benefits that he was eligible to receive but did not, from November 9, 2023 ongoing; and
3. Notify Petitioner of its decision in writing.



Linda Jordan
Administrative Law Judge

LJ/tm

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
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Via-Electronic Mail :

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Authorized Hearing Rep.

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Petitioner

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