



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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: January 4, 2024
MOAHR Docket No.: 23-008797
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION

On November 20, 2023, Petitioner, [REDACTED] requested a hearing to dispute her Medical Assistance (MA) eligibility and her Food Assistance Program (FAP) benefit amount. As a result, a hearing was scheduled to be held on January 3, 2024, pursuant to MCL 400.9; 42 CFR 431.200 to 431.250; 7 CFR 273.15; and Mich Admin Code, R 792.11002. Petitioner appeared and represented herself. Respondent, Department of Health and Human Services (Department) had Brad Reno, Hearing Facilitator, appear as its representative. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 23-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUES

Did the Department properly determine Petitioner's MA eligibility?

Did the Department properly determine Petitioner's FAP benefit amount?

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 is aged or disabled.
2. Petitioner has a household size of three: Petitioner, [REDACTED] and [REDACTED]
3. Petitioner's son, [REDACTED] is a full-time student at [REDACTED]

4. Petitioner receives gross pay of [REDACTED] per month from Social Security, [REDACTED] receives gross pay of [REDACTED] per month from Social Security, and [REDACTED] receives gross pay of [REDACTED] per month from Social Security.
5. Petitioner was employed as a home help provider until October 23, 2023. Petitioner received the following gross pay from her employment:
 - a. [REDACTED] in September 2023;
 - b. [REDACTED] in October 2023; and
 - c. [REDACTED] in November 2023.
6. Petitioner has Medicare coverage, and Petitioner's Part B Medicare premium is covered by Medicare Savings Program coverage.
7. Petitioner pays a housing expense of \$1,175.00 per month, and Petitioner is responsible for paying for utilities (including heating/cooling).
8. On November 14, 2023, the Department removed group member [REDACTED] from Petitioner's group size because the Department determined that [REDACTED] was an ineligible student. The Department determined that [REDACTED] was an ineligible student because he was enrolled in college full-time, he was not working at least 20 hours per week, he was not working in a federal work-study program, and he was not the primary caretaker of a child under six years of age. When the Department removed [REDACTED] from Petitioner's group size, it caused Petitioner's FAP benefit to be reduced to \$556.00 per month beginning December 1, 2023.
9. The Department determined Petitioner's FAP benefit amount of \$556.00 per month based on a group size of three, a household unearned income of [REDACTED], a household earned income of [REDACTED] per month, a standard deduction of \$198.00 per month, a medical deduction of \$165.00 per month, a housing cost of \$1,175.00 per month, and a heat and utility standard of \$680.00 per month.
10. On November 14, 2023, the Department mailed Petitioner a notice of case action to notify Petitioner that she was eligible for a \$556.00 monthly FAP benefit effective December 1, 2023.
11. On November 14, 2023, the Department also mailed Petitioner a health care coverage determination notice to notify Petitioner that she was no longer eligible for Medicare Savings Program coverage, and she was only eligible for limited coverage through the Plan First program.
12. The Department closed Petitioner's MA in error, and the Department took action to reinstate Petitioner's MA when it became aware of its error. The Department reinstated Petitioner's MA with no lapse in coverage.

13. On December 12, 2023, Petitioner reported to the Department that she was no longer working as a home help provider.
14. On December 26, 2023, the Department mailed Petitioner a health care coverage determination notice to notify Petitioner that she was eligible for full coverage MA through the AD Care program, and she was eligible for Medicare Savings Program (QMB) coverage.
15. Petitioner requested a hearing to dispute Petitioner's MA and FAP benefit amount.

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).

MEDICAL ASSISTANCE

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 administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Petitioner requested a hearing to dispute the Department's MA eligibility determination after the Department mailed Petitioner a health care coverage determination notice to notify Petitioner that she was no longer eligible for Medicare Savings Program coverage, and she was only eligible for limited coverage through the Plan First program. The Department has since acknowledged that it did not properly determine Petitioner's MA eligibility, and the Department reinstated Petitioner's full coverage MA and Medicare Savings Program coverage with no lapse in coverage. Since the Department has reinstated Petitioner's MA with no lapse in coverage, Petitioner's MA dispute has been resolved.

FOOD ASSISTANCE

The Food Assistance Program (FAP) 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 administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

Petitioner requested a hearing to dispute her FAP benefit amount. The Department determined that Petitioner was eligible for a FAP benefit amount of \$556.00 per month effective December 1, 2023, and Petitioner disagrees with the FAP benefit amount. Petitioner disagrees with the Department's decision to remove [REDACTED] from her group, the Department's decision to budget household unearned income of [REDACTED] and the Department's decision to budget household earned income of [REDACTED] per month.

A full-time student is ineligible for FAP benefits unless the student meets one of the following criteria: receiving Family Independence Program (FIP) assistance; enrolled as a result of a Job Training Partnership Act (JTPA) program; enrolled as a result of a program under Section 236 of the Trade Readjustment Act of 1974; enrolled in a FAE&T or FAE&T plus and either part of a career and technical education program as defined under the Perkins Strengthening Career and Technical Education Act and a course of study that will lead to employment or the student is limited to remedial courses, basic adult education, literacy, or English as a second language; participating in an employment and training program for low-income households operated by state and local government where one or more components of such program is at least equivalent to an acceptable FAP employment and training program component such as a program under the Carl D. Perkins Career and Technical Education Improvement Act of 2006; participating in another state or local government employment and training program; physically or mentally unfit for employment; employed for at least an average of 20 hours per week and paid for such employment; self-employed for at least an average of 20 hours per week and earning an average weekly income at least equivalent to the federal minimum wage multiplied by 20; participating in an on-the-job training program; participating in a state or federally funded work study program; providing more than half of the physical care of a group member under the age of six, or providing more than half of the physical care of a group member age six through eleven if the local office has determined that adequate child care is unavailable to enable the student to participate in work or work study. BEM 245 (July 1, 2023), p. 5-6.

Petitioner asserted that [REDACTED] is participating in a work study program, so he should be an eligible full-time student. A full-time student who is participating in a state or federally funded work study program is an eligible group member. However, Petitioner did not present sufficient evidence to prove that [REDACTED] is participating in a state or federally funded work study program, and the Department did not have any information to indicate that he was participating in a state or federally funded work study program. Thus, in the absence of information showing that [REDACTED] was participating in a state or federally funded work study program, the Department properly determined that [REDACTED] was an ineligible full-time student. Therefore, the Department properly removed [REDACTED] from Petitioner's group size.

Petitioner disagrees with the Department's decision to budget household unearned income of [REDACTED]. Petitioner asserted that the Department should not budget the gross amount that her household receives from Social Security because the gross amount is offset by an overpayment recoupment. Amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross

income. BEM 500 (April 1, 2022), p. 6. However, deductions for the following overpayments are included as gross income: any portion of an overpayment that was excluded income when received; cash assistance recoupment amounts due to Intentional Program Violation (IPV); and Supplemental Security Income (SSI) amounts recouped due to IPV. *Id.* at p. 6-7. Thus, when a gross Social Security payment is offset by an overpayment recoupment, the gross Social Security payment is generally not countable. However, Petitioner did not present sufficient evidence to prove that a portion of her household unearned income of [REDACTED] was offset and should not be considered gross income. The Department did not have any information to indicate that a portion of her household unearned income of [REDACTED] was offset and should not be considered gross income either. Thus, in the absence of information showing that a portion of her household unearned income of [REDACTED] was offset and should not be considered gross income, the Department properly determined that gross amount of Petitioner's household unearned income was countable. Therefore, the Department properly budgeted a household unearned income of [REDACTED].

Petitioner disagrees with the Department's decision to budget household earned income of [REDACTED] per month. Petitioner asserted that she stopped working in October 2023, so the Department should not budget her earned income. Petitioner was required to report any change in her employment or income to the Department within 10 days from the date of the change. BAM 105 (October 1, 2023), p. 10. Based on the evidence presented, Petitioner did not report her change in employment to the Department until December 12, 2023. The Department was unable to process Petitioner's change until Petitioner reported it to the Department. Once Petitioner reported the change, the Department had 10 days to act on the reported change. BAM 220 (November 1, 2023), p. 7. When the reported change results in a FAP benefit increase, the increase is effective no later than the first allotment issued 10 days after the date the change was reported, provided that any necessary verification is returned by the due date. *Id.* Based on the evidence presented, the Department properly budgeted Petitioner's household earned income of [REDACTED] per month until Petitioner reported the change, and the Department had an opportunity to act on the reported change.

The Department determines a client's monthly FAP benefit amount by determining the client's group size and net household income, and then looking that information up in its applicable Food Issuance Table. BEM 212 (January 1, 2022), BEM 213 (January 1, 2023), BEM 550 (April 1, 2023), BEM 554 (April 1, 2023), BEM 556 (January 1, 2023), RFT 255 (October 1, 2023), and RFT 260 (October 1, 2023). Here, there is no evidence that the Department did not properly determine Petitioner's FAP benefit amount.

Based on Petitioner's household size of three, Petitioner's monthly gross unearned income of [REDACTED], Petitioner's monthly gross earned income of [REDACTED] Petitioner's housing expense \$1,175.00, and Petitioner's obligation to pay utilities (including heating/cooling), Petitioner's net income was [REDACTED] per month. This is higher than the net income amount of [REDACTED] per month determined by the Department because the Department granted Petitioner a \$165.00 medical deduction for a premium that

Petitioner does not pay. Since the net income amount determined by the Department is lower, the Department's determination will be affirmed. Based on Petitioner's net income of [REDACTED] per month and Petitioner's group size of three, the maximum FAP benefit amount that Petitioner is eligible for is \$556.00 per month. Thus, the Department properly determined Petitioner's FAP benefit amount. However, this amount will change as a result of the Department removing Petitioner's earned income, and this amount will change if the Department removes the medical deduction.

If Petitioner has documentation that shows that [REDACTED] is participating in a state or federally funded work study program, or if Petitioner has other documentation that shows that [REDACTED] meets one of the other criteria to be an eligible full-time student, then Petitioner should provide that documentation to the Department as soon as possible so the Department can determine whether it should add [REDACTED] back to Petitioner's group size. Additionally, if Petitioner has documentation that shows that a portion of her household unearned income of [REDACTED] was offset and should not be considered gross income, Petitioner should provide that documentation to the Department as soon as possible so the Department can determine the proper amount of Petitioner's household unearned income that should be budgeted.

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 did act in accordance with its policies and the applicable law when it determined Petitioner's Medical Assistance eligibility and Food Assistance Program benefit amount.

IT IS ORDERED, the Department's decision is **AFFIRMED**.

JK/ml



Jeffrey Kemm
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

Janice Collins
Genesee County DHHS Union St District Office
125 E. Union St 7th Floor
Flint, MI 48502
MDHHS-Genesee-UnionSt-Hearings@michigan.gov

Interested Parties

BSC2
M Schaefer
EQAD
M Holden
B Cabanaw
N Denson-Sogbaka
MOAHR

Via First Class Mail:

Petitioner

[REDACTED]
MI [REDACTED]