



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], MI [REDACTED]

Date Mailed: January 31, 2024
MOAHR Docket No.: 23-009542
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 via telephone conference on January 22, 2024. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Caitlin Dodge, manager.

ISSUES

The first issue is whether MDHHS properly determined Petitioner's Medical Assistance (MA) eligibility.

The second issue is whether MDHHS properly terminated Petitioner's Food Assistance Program (FAP) eligibility.

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 May 30, 2023, Petitioner submitted to MDHHS a U.S. Visa listing a date of U.S. entry in 2014 and a Permanent Residence Card (PRC) stating U.S. residency since 2023.
2. On October 5, 2023, Petitioner submitted to MDHHS redetermination documents for FAP benefits and reported a household including her spouse and two children.

3. On October 18, 2023, MDHHS approved Petitioner for MA- Emergency Services Only (MA-ESO) beginning April 2023.
4. On December 18, 2023, Petitioner requested a hearing to dispute a termination of FAP benefits and the ESO restriction to MA. Petitioner additionally disputed Child Development and Care (CDC) eligibility.
5. On December 21, 2023, MDHHS approved Petitioner for CDC benefits. MDHHS additionally terminated Petitioner's FAP eligibility beginning December 2023 due to excess gross income based on a benefit group of three persons which did not include Petitioner.
6. On January 22, 2024, during an administrative hearing, Petitioner withdrew her dispute concerning CDC benefits.

CONCLUSIONS OF LAW

The CDC program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The CDC program is implemented by 45 CFR 98.1-99.33. MDHHS administers the CDC program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020. CDC policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing, in part, to dispute CDC eligibility. Exhibit A, pp. 3-5. During the hearing, Petitioner agreed she had no current CDC dispute. Without a dispute, Petitioner withdrew her hearing request concerning CDC benefits. Based on Petitioner's withdrawal, Petitioner's hearing request concerning CDC will be dismissed.

The 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. MDHHS administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MA policies are contained in the BAM, BEM, and RFT.

Petitioner also requested a hearing to dispute MA eligibility. Exhibit A, pp. 3-5. A Health Care Coverage Determination Notice dated October 18, 2023, stated that Petitioner was eligible for MA-ESO beginning April 2023.¹ Exhibit A, pp. 37-41. Petitioner specifically disputed having MA benefits limited to ESO.

¹ The notice stated Petitioner was approved from April through June 2023. Both parties believed that Petitioner's MA-ESO continued through the date of the hearing.

To be eligible for full Medicaid coverage (i.e., unrestricted Medicaid), a person must be a United States citizen, or an alien admitted to the U.S. under a specific immigration status. BEM 225 (October 2022) p. 2. Citizenship/alien status is not an eligibility factor for MA-ESO. *Id.* Any of the following persons are considered to have an acceptable citizenship or alien status to receive full MA benefits (*Id.* pp. 3-4, 5-9, 11-12, 31-33):

- United States citizens (includes those born in Puerto Rico)
- born in Canada and at least 50% American Indian
- member of American Indian tribe
- qualified military alien, spouse, or child of qualified military alien,
- refugee under Section 207
- asylee under Section 208
- Cuban/Haitian entrant
- Amerasian
- victim of trafficking
- permanent resident alien with class code of RE, AS, SI or SQ
- deportation withheld (under certain conditions)
- granted conditional entry under 203(a)(7)
- paroled under 212(d)(5) for at least one year (under certain conditions)
- battered aliens, if more than five (5) years in the United States
- permanent resident alien with a class code other than RE, AM or AS, if in the United States for longer than five (5) years

MDHHS presented a copy of Petitioner's PRC (aka, Green Card). Exhibit C, p. 1. The PRC listed Petitioner's country of birth as Senegal and a category code of IR. Senegal is not among the countries that qualify Petitioner for unrestricted MA. A category code of IR is for relatives of United States citizens and does not confer an exception to receive unrestricted MA benefits.² Petitioner's country of birth and category code are consistent with MA eligibility limited to ESO.

Petitioner's PRC stated Petitioner was a resident since May 5, 2023. MDHHS contended that the evidence established that Petitioner was not in the U.S. for longer than five years and properly limited to MA-ESO for not meeting any other basis to receive unrestricted MA benefits. However, Petitioner's U.S. Visa stated it was issued on October 16, 2014. Exhibit B, p. 1. Petitioner contended she has been in the U.S. longer for five years and should be issued unrestricted MA benefits.

For all programs, lawful permanent residents with class codes other than RE, AM, AS, SI or SQ date of entry is the Date of Adjustment/Admission on the PRC. BEM 225 (October 2022) p. 31. However, if the client disputes the date on the PRC, MDHHS is to accept the client's statement regarding date of entry if the stated date is earlier than the date of adjustment admission on the I-551 and does not conflict with other information.³

² <https://www.justice.gov/sites/default/files/eoir/legacy/2008/03/26/fr20mr08.pdf>

³ MDHHS policy elsewhere states that MDHHS is to verify date of U.S. entry if it affects a non-citizen's eligibility status. *Id.*, p. 20.

Petitioner stated her date of U.S. entry was in 2014. Petitioner's statement was consistent with her U.S. Visa. Exhibit B, p. 1. Petitioner's stated date of U.S. entry was more than five years before the disputed MA benefit month and did not conflict with other information. Given the evidence, MDHHS incorrectly considered Petitioner's entry date from 2023. As a remedy, MDHHS will be ordered to reprocess Petitioner's MA eligibility beginning April 2023.

The 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 the FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. FAP policies are contained in the BAM, BEM, and RFT.

Petitioner lastly disputed FAP eligibility. Exhibit A, pp. 3-5. A Notice of Case Action dated December 21, 2023, stated that Petitioner's FAP eligibility was terminated beginning December 2023 due to excess gross income.⁴ Exhibit A, pp. 31-36.

To be eligible for FAP benefits, a non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. BEM 550 (January 2017) p. 1. An SDV group is one with a senior (a person over the age of 60 years), disabled, or disabled veteran. *Id.*

A traditionally categorically eligible FAP group is one whose members are all Family Independence Program (FIP) and/or State Disability Assistance (SDA) and/or Supplemental Security Income recipients (SSI). BEM 213 (January 2023) p. 1. Non-traditionally categorically eligible groups are categorically eligible based on Domestic Violence Prevention Services (DVPS) but an income and asset test are required. *Id.*, p. 2. Categorical FAP groups with three or more members that exceed the gross and/or 100 percent net income limit, but whose gross income is at or below 200% of the Federal Poverty Level (FPL) and who meet the asset limit and all other FAP eligibility requirements may be eligible for benefits as low as \$1 as determined by the Food Assistance Issuance Tables in RFT 260. *Id.*, p. 4.

Petitioner submitted to MDHHS on October 5, 2023, redetermination documents reporting four persons in the household. Exhibit A, pp. 6-8. MDHHS presented a Net-Income FAP budget indicating it factored a benefit group of three persons in terminating Petitioner's FAP eligibility. MDHHS testimony acknowledged that Petitioner was excluded from the FAP benefit group due to immigration status. Petitioner contended that MDHHS should have factored FAP eligibility based on her inclusion in the FAP benefit group.

In the MA analysis, it was found that MDHHS incorrectly determined Petitioner to be limited to MA-ESO by not accepting Petitioner's statement that she was in the U.S.

⁴ During the hearing, MDHHS stated that Petitioner's FAP eligibility was reinstated for \$495 per month. MDHHS presented no documents verifying the reinstatement.

more than five years. The applicable policy on which the MA finding is based also applies to FAP benefits. Thus, it can be inferred that Petitioner should not have been excluded from the FAP benefit group due to immigration status and that MDHHS incorrectly determined Petitioner's FAP eligibility. As a remedy, Petitioner is entitled to a redetermination of FAP benefits beginning December 2023.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner withdrew her dispute concerning a termination of CDC benefits. Concerning CDC benefits, Petitioner's hearing request is **DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's MA and FAP eligibility. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Redetermine Petitioner's MA eligibility, beginning April 2023, subject to the finding that Petitioner reported U.S. entry in 2014 to MDHHS;
- (2) Redetermine Petitioner's FAP eligibility beginning December 2023, subject to the finding that Petitioner reported U.S. entry in 2014 to MDHHS; and
- (3) Issue notice and supplements, if any, in accordance with MDHHS policy.

The actions taken by MDHHS are **REVERSED**.

CG/nr



Christian Gardocki

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
Linda Gooden
Oakland County Southfield District III
25620 W. 8 Mile Rd
Southfield, MI 48033
**MDHHS-Oakland-6303-
Hearings@michigan.gov**

Interested Parties
Oakland 3 County DHHS
BSC4
M. Holden
N. Denson-Sogbaka
B. Cabanaw
M. Schaefer
EQAD
L. Brewer-Walraven
MOAHR

Via-First Class Mail :

Petitioner
[REDACTED], MI [REDACTED]