



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

MI 48386

Date Mailed: February 16, 2024
MOAHR Docket No.: 23-009944
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Caralyce M. Lassner

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 by telephone on February 8, 2024. Petitioner appeared and was represented by their Authorized Hearing Representative (AHR), [REDACTED]. The Department of Health and Human Services (Department) was represented by Jacob Frankmann, Assistant Payments Supervisor.

ISSUE

Did the Department properly determine Petitioner's monthly Food Assistance Program (FAP) benefits effective January 2024 ongoing?

Did the Department properly close Petitioner's Medical Assistance (MA) 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 recipient of FAP under Department case number [REDACTED]. (Exhibit B, pp. 1 – 2).
2. Petitioner was an ongoing recipient of MA for Supplemental Security Insurance (SSI) recipients under Department case number [REDACTED] (Exhibit A, p. 9).

3. On January 1, 2023, Petitioner started receiving Retirement, Survivors, and Disability Insurance (RSDI) from the Social Security Administration (SSA) due to disability.
4. On October 9, 2023, the Department issued a notice to Petitioner that his MA coverage was changed to SSI-Terminated Medicaid Coverage due to termination of his SSI. The notice also advised Petitioner that an Application for Health Coverage & Help Paying Costs (DCH-1426) (Application) and Healthcare Coverage Supplemental Questionnaire (DHS-1004) (Questionnaire) were enclosed with the notice and needed to be completed and returned with proofs to the Department by November 13, 2023. (Exhibit A, p. 9).
5. On November 13, 2023, Petitioner completed and returned the Questionnaire to the Department. (Exhibit 1, pp. 1 – 4).
6. On December 11, 2023, the Department received information from SSA that Petitioner's RSDI payments had increased to [REDACTED] and issued a Notice of Case Action (NOCA) to Petitioner decreasing his FAP benefits to \$243.00 monthly, effective January 1, 2024, due to a change in his net unearned income and his shelter deduction. (Exhibit A, pp. 6-8; Exhibit B, pp. 1-2).
7. On December 15, 2023, the Department issued a Health Care Coverage Determination Notice (HCN) stating Petitioner was not eligible for MA coverage effective January 1, 2024 due to his failure to return a form or provide required proofs and that he did not meet program requirements. (Exhibit A, p. 10).
8. On December 27, 2023, Petitioner submitted a request for hearing, disputing the reduction in his FAP benefits and closure of his MA case. (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).

Petitioner's AHR requested a hearing on December 27, 2023 to dispute the decrease of Petitioner's FAP benefits to \$243.00 monthly effective January 1, 2024, and closure of Petitioner's MA case. (Exhibit A, pp. 3 – 5). The Department issued a NOCA decreasing Petitioner's FAP benefits to \$243 monthly effective January 1, 2024, based on an increase in Petitioner's unearned income. (Exhibit B, pp. 1 – 2). The Department issued an HCN closing Petitioner's MA case, effective January 1, 2024, based on Petitioner's failure to return an application and/or verifications requested by the Department and deeming Petitioner ineligible. (Exhibit A, pp. 10 – 12).

Each program will be addressed separately.

Food Assistance Program

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.

When the Department is aware of a change in income that will affect eligibility or benefit level, the Department must complete a budget calculation. BEM 505 (October 2023), p. 10. In calculating Petitioner's FAP benefit amount, the Department must consider all countable earned and unearned income available to the Petitioner. BEM 500 (April 2022), pp. 1-5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. For RSDI, the Department counts the gross benefit amount as unearned income. BEM 503 (January 2023), pp. 29, 35.

In this case, on or about December 11, 2023, the Department became aware of an increase in Petitioner's RSDI to [REDACTED] (Exhibit A, p. 7). This information was confirmed by the Department from the State On-Line Query (SOLQ), the data exchange the Department uses to access information from the Social Security Administration (SSA) concerning individual's federal benefits. (Exhibit A, pp. 6 – 8). In light of the increase in Petitioner's unearned income from RSDI, the Department completed an updated budget.

The Department budgeted [REDACTED] in countable unearned income, which is the amount Petitioner's RSDI benefit has been since January 1, 2023. (Exhibit B, p. 2, Exhibit A, p. 7). The AHR did not dispute the amount of Petitioner's RSDI.

After countable income is calculated, the Department must determine which deductions are available to Petitioner. Specific and limited deductions are permitted, depending on the source of countable income and the group's composition. Because Petitioner is disabled, he is considered a senior/disabled/veteran (SDV) household. BEM 550 (April 2023), p. 1. Households with SDV members with unearned income may be eligible for the following deductions only:

- Standard deduction based on group size.
- Dependent care expense.
- Medical expense deduction for medical expenses of the SDV member in excess of \$35.
- Court ordered child support and arrearages paid to non-household members.
- Excess shelter deduction.

BEM 554 (April 2023) p. 1; BEM 556 (January 2023) pp. 3 – 6.

All groups are entitled to a standard deduction in an amount determined by the group size. BEM 550, p. 1. Groups of 1 to 3 receive a standard deduction of \$198.00 RFT 255 (October 2023). The Department deducted \$198.00 from Petitioner's countable income, as shown on the NOCA budget summary. (Exhibit B, p. 2).

Neither the Department nor the AHR assert Petitioner has any dependent care expenses or court ordered child support expenses and therefore, no deduction for those expenses are reflected on the budget. (Exhibit B, p. 2). It is important to note however that the AHR did raise a concern related to out of pocket medical expenses in excess of \$35.00 that Petitioner may now be responsible for, from January 1, 2024 on, based on the closure of his MA case, and therefore may be eligible for a deduction for those expenses if he is not eligible for MA. However, no medical expenses were presented to the Department at the time the budget was calculated. Therefore, the budget properly reflected no medical expense deduction.

The Department must then determine Petitioner's adjusted gross income (AGI) by subtracting the available deductions from the total countable income. Based on Petitioner's monthly unearned income of [REDACTED] minus his standard deduction of \$198.00, Petitioner's AGI was [REDACTED].

Next, the Department determines any excess shelter expense deduction. BEM 554, p. 13. To calculate this amount, the Department reviews Petitioner's housing and utility expenses, if any. BEM 556, pp. 5 – 6. The budget summary reflects that Petitioner has housing and heat and electric expenses. (Exhibit B, pp. 1 – 2).

A FAP group that has heating and other utility expenses, separate from the rental payment, is entitled to a heat and utility (h/u) standard amount to be included in the calculation of the excess shelter deduction. BEM 554, p. 17. The h/u standard is the most favorable utility standard available to a client, and FAP groups that receive the h/u standard do not receive any other individual utility standards. BEM 554, p. 16. The standard amount is \$680.00. RFT 255 (October 2023). The Department used the amount of \$680.00 for h/u when calculating Petitioner's excess shelter expense. (Exhibit B, p. 2).

Once Petitioner's housing and the applicable utility expense standard have been determined, the Department adds those amounts together for a total shelter amount. The Department then subtracts 50% of Petitioner's AGI from the total shelter amount. BEM 556, p. 5. The result of that calculation determines Petitioner's excess shelter deduction. BEM 556 p. 6. In FAP groups with an SDV member, the excess shelter amount is not limited. BEM 556, p. 6.

In Petitioner's case, Petitioner's monthly housing expense of \$700.00 and \$680.00 h/u standard added together equal a total shelter amount of \$1,380.00. Subtracting 50% of Petitioner's AGI, in the amount of [REDACTED] from the total shelter amount of \$1,380.00 equals an excess shelter amount of \$867.00.

Subtracting the excess shelter deduction of \$867.00 from Petitioner's AGI of [REDACTED] equals a monthly net income, for purposes of FAP, of [REDACTED] which is consistent with the Department's budget summary. (Exhibit B, p. 2). The Department's calculations were made consistent with policy.

Once the net monthly income has been determined under the FAP program, the Department determines what benefit amount Petitioner is entitled to, based on the group size, according to the Food Assistance Issuance Table found in RFT 260. Based on Petitioner's one person FAP group size and net income of [REDACTED] Petitioner's monthly benefit effective January 1, 2024 is \$243.00. RFT 260 (October 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 the Department acted in accordance with policy when it determined Petitioner's monthly FAP benefit effective January 1, 2024 ongoing.

Medical Assistance Program

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.

Supplemental Security Income (SSI) is a cash benefit for needy individuals who are aged (at least 65), blind or disabled. The Social Security Administration (SSA) determines SSI eligibility. BEM 150 (July 2021), p. 1. SSI recipients are eligible for MA benefits, provided certain criteria are met. The Department administers MA for SSI recipients, including a continued MA eligibility determination when SSI benefits end. BEM 150, p. 1. When SSI benefits stop, the Department is to evaluate the reason based on the SSA's negative action code and either: close MA-SSI if SSI stopped for a reason that prevents continued MA eligibility (for example: death, or recipient moved out of state); or transfer the case to the MA-Terminated SSI Termination (SSIT) type of assistance and set a redetermination date for the second month after the transfer to allow for an ex parte review. BEM 150, p. 6.

An ex parte review (BPG (January 2022), p. 25) is required before MA closures when there is an actual or anticipated change, unless the change would result in closure due to ineligibility for all Medicaid. When possible, an ex parte review should begin at least 90 days before the anticipated change is expected to result in case closure. The review includes consideration of all MA categories BEM 150, pp. 6 – 7. The Department is to initiate a redetermination by sending the client a packet which includes an assistance application (DCH-1426) and a verification checklist (VCL). BEM 150, p. 6 – 7. The Department then processes the application, initiates interview and intake, and

determines eligibility after sending out the appropriate disability forms and documenting all factors including disability and blindness. BEM 150, p. 7. When the ex parte review shows that an MA recipient is eligible for MA under another category, the Department must change the coverage. BAM 220 (November 2023), pp. 19 – 20. If the client is not eligible for any type of MA, the Department sends timely notice of the MA case closure. BEM 150, p. 7; BAM 220, pp. 19 – 20.

In this case, the Department testified that Petitioner's MA eligibility was due for review, as his SSI benefits were terminated, and he began receiving RSDI from the SSA. The Department issued a notice to Petitioner on October 9, 2023 notifying him that his MA coverage was changed to SSI-Terminated Medicaid Coverage due to termination of his SSI. The notice also advised Petitioner that an Application for Health Coverage & Help Paying Costs (DCH-1426) and Healthcare Coverage Supplemental Questionnaire (DHS-1004) were enclosed with the notice and needed to be completed and returned with proofs to the Department by November 13, 2023. (Exhibit A, p. 9)

The Department testified that although Petitioner timely submitted the Questionnaire on November 9, 2023, Petitioner did not submit the completed Application and therefore his ongoing MA eligibility could not be determined. The Department initiated the closure of Petitioner's MA case by sending the HCN on December 15, 2023. (Exhibit A, p. 10). The HCN states the basis for closure of Petitioner's MA case is due to failure to return required forms and/or verification documents to the Department. (Exhibit A, p. 10).

At the hearing, Petitioner's AHR testified that she submitted the only form she received with the Department's letter of October 9, 2023: the Questionnaire, and that she did not receive any other documents for completion from the Department. Petitioner's AHR's testimony was credible and is supported by a copy of the completed Questionnaire she submitted to the Department. (Exhibit 1).

When asked whether the Questionnaire and Application were included with the letter, the Department testified that those forms were automatically generated and enclosed through an automated central printing location in or near Lansing and therefore there is no affirmative record of the Application ever being sent to Petitioner for completion. Because the AHR credibly testified that the only document enclosed with the letter was the Questionnaire and the Department was unable to verify that the Application was also enclosed, the closure of Petitioner's MA cases based on a failure to return the Application and complete a redetermination/ex parte review is improper.

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 determined Petitioner's monthly FAP benefits effective January 2024; and that the Department did not act in accordance with Department policy when it closed Petitioner's MA case.

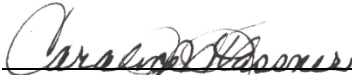
DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to Petitioner's FAP benefits and **REVERSED IN PART** with respect to Petitioner's MA case.

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 MA eligibility under the most beneficial category for January 1, 2024 ongoing;
2. If eligible, provide MA coverage to Petitioner for any MA he was entitled to receive but did not from January 1, 2024 ongoing;
3. Notify Petitioner in writing of its decision.

CML/ml



Caralyce M. Lassner
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
Yaita Turner
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Interested Parties

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Via First Class Mail:

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Petitioner

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