

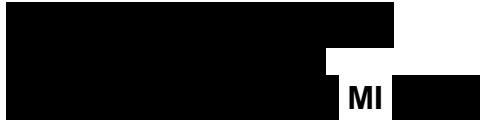


STATE OF MICHIGAN

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



Date Mailed: February 8, 2024
MOAHR Docket No.: 24-000123
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 February 5, 2024, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Shana Bush, Eligibility Specialist.

As a preliminary matter, during the hearing, Exhibit B was admitted into the record on behalf of the Department. The Department representative was instructed to submit the February 2, 2024, Health Care Coverage Determination Notice to the undersigned Administrative Law Judge following the closure of the hearing record. As of the issuance of this Hearing Decision, Exhibit B had not been submitted, and thus, will be stricken from the record.

ISSUE

Did the Department properly calculate the amount of Petitioner's Food Assistance Program (FAP) benefits and process her Medical Assistance (MA) 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. Petitioner is an ongoing recipient of FAP and MA benefits.

2. Petitioner was previously receiving Supplemental Security Income (SSI) and thus, approved for MA for SSI Recipients. On an unverified date, Petitioner's SSI ended, and she began receiving Retirement Survivors Disability Insurance (RSDI) benefits.
3. On or around September 11, 2023, the Department sent Petitioner a SSI-Terminated Medicaid Coverage letter, informing her that the Social Security Administration (SSA) notified the Department that her SSI benefit stopped. As a result, Petitioner was now receiving SSI-Terminated MA coverage and the Department was required to determine if she was eligible for any other type of MA or Medicare Savings Program (MSP) coverage by conducting a review. The letter further informed Petitioner that she was to complete and return the enclosed application (DHS 1426), the enclosed Health Care Coverage Supplemental Questionnaire (Questionnaire), and return all requested proofs listed on the forms by October 10, 2023, otherwise her MA benefits would be cancelled. (Exhibit A, pp. 9-13)
4. The Department asserted that because the requested information was not submitted timely, on November 17, 2023, the Department sent Petitioner a Health Care Coverage Determination Notice, informing her that effective December 1, 2023, her MA and MSP cases would be closed. (Exhibit A, pp. 15-18)
5. On or around November 28, 2023, Petitioner submitted a new application for MA benefits and in connection with the application, the Department sent Petitioner a verification checklist, instructing her to submit requested verifications by January 16, 2024. (Exhibit A, p. 19-21)
6. On or around November 30, 2023, the Department sent Petitioner a Notice of Case Action advising her that effective January 1, 2024, her FAP benefits were being decreased to \$1,090 monthly. (Exhibit A, p.7)
7. On or around December 28, 2023, the Department sent Petitioner a Notice of Case Action advising her that effective January 1, 2024, her FAP benefits were being increased to \$1,256 monthly.
8. On or around January 2, 2024, Petitioner requested a hearing disputing the Department's actions with respect to her 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, it was initially unclear what issue Petitioner requested a hearing to dispute, as Petitioner's testimony suggested that the Department had corrected her FAP case and increased her FAP benefits following her request for hearing. However, after some discussion, Petitioner indicated that she disputed the amount of her FAP benefits. It was determined that while the Department had sent Petitioner a Notice of Case Action on November 30, 2023, advising her that effective January 1, 2024, her FAP benefits would be reduced to \$1,090, the Department recalculated Petitioner's FAP budget and issued a Notice of Case Action on December 28, 2023, advising Petitioner that effective January 1, 2024, her FAP benefits were increased to \$1,256. A review of the benefit summary inquiry during the hearing showed that Petitioner was issued FAP benefits of \$1,256 for the month of January 2024. Although there was some discussion on the record that Petitioner's FAP benefits were increased to \$1,331 effective February 1, 2024, and will potentially be decreased to an unknown amount effective March 1, 2024, Petitioner was advised that because these actions occurred after her request for hearing date of January 2, 2024, she was required to submit a new hearing request to have those matters addressed. See BAM 600. The hearing proceeded with respect to the \$1,256 amount of Petitioner's FAP benefits for the month of January 2024.

A FAP EDG Net Income Results Budget for the month of January 2024 was thoroughly reviewed to determine if the Department properly calculated Petitioner's FAP benefits. 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 (April 2022), pp. 1 – 5. The Department considers the gross amount of money earned from Retirement Survivors Disability Insurance (RSDI) or Social Security in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (January 2023), pp. 29-32.

The Department concluded that Petitioner had unearned income of \$ [REDACTED] which the Department representative testified consisted of Petitioner's gross monthly RSDI benefits as verified through the State Online Query (SOLQ). Petitioner disputed the amount of RSDI benefits relied upon by the Department and testified that less than \$ [REDACTED] is deposited into her bank account. The Department explained that following the closure of Petitioner's MSP case, \$174.90 is now being deducted from her RSDI for Medicare premiums, however, the exact date this deduction began was unclear. Petitioner failed to provide any documentation to counter the evidence presented through the SOLQ that the gross amount of her RSDI benefits was \$ [REDACTED]. Therefore, the unearned income was properly calculated.

The deductions to income on the net income budget were also reviewed. Petitioner's FAP group includes a senior/disabled/veteran (SDV) member. BEM 550 (April 2023), pp. 1-2. Petitioner's FAP group is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- Medical expenses for the SDV member(s) that exceed \$35.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (January 2024), p. 1; BEM 556 (January 2023), p. 1-8.

In this case, Petitioner's group did not have any earned income, thus, there was no applicable earned income deduction. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support. Therefore, the budget properly did not include any deduction for dependent care or child support. As referenced above, there was some discussion that Petitioner is responsible for Medicare premiums in the amount of \$174.90, however, whether this began in January 2024 or February 2024 was unknown. There was no evidence that the Department applied a medical deduction to Petitioner's FAP budget for the month of January 2024 and the Department failed to show that Petitioner was ineligible for a medical deduction. See BEM 554.

The Department also properly applied a standard deduction of \$279 which was based on Petitioner's confirmed group size of seven. The Department determined that Petitioner was eligible for an excess shelter deduction of \$1,224, which the Department representative testified was calculated using housing expenses/mortgage of \$1,614.64 and the \$680 heat and utility (h/u) standard, which covers all heat and utility costs including cooling expenses. BEM 554, pp. 13-17. Petitioner asserted that her housing expenses are \$1,654.23 and that she submitted verification of these increased expenses to the Department. The Department did not provide any documentation supporting its calculation of Petitioner's housing expenses. Upon review, because the Department did not establish that Petitioner's housing expenses were properly determined, it follows that the excess shelter deduction was also not properly calculated. RFT 255;BEM 554.

After further review, because of the errors identified above with respect to the potential medical deduction as well as the error in the housing expenses, the Department failed to satisfy its burden of showing that Petitioner was eligible for \$1,256 in FAP benefits for January 2024.

MA/MSP

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.

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 (October 2022), 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 is the major determiner of category.

In this case, the Department representative testified that because Petitioner failed to timely submit the DHS-1426 MA application, the DHS-1004 Questionnaire and other proofs as instructed in the SSI-Terminated Medicaid Coverage letter, it sent Petitioner the November 17, 2023, Health Care Coverage Determination Notice, informing her that effective December 1, 2023, her MA and MSP cases would be closed, as the Department was unable to conduct a review of Petitioner's MA eligibility under other programs. (Exhibit A, pp. 15-18). At the hearing, the Department representative testified that after receiving Petitioner's request for hearing, the Department reviewed Petitioner's MA eligibility and determined that she should be eligible for MA under the AdCare category and MSP under the QMB category. The Department representative testified that a Health Care Coverage Determination Notice was issued on February 2, 2024, advising Petitioner that she was approved for MA effective December 1, 2023; however, the representative testified that Petitioner's MSP eligibility had not been certified. The Department was instructed to submit the February 2, 2024, Health Care Coverage Determination notice to the undersigned as it was admitted into the record as Exhibit B; however, as of the issuance of this Hearing Decision, the Department had not filed Exhibit B and thus, it will be stricken from the record. The Department did not present any documentation in support of its testimony that Petitioner's MA was approved and active as of December 1, 2023, as indicated. Based on the testimony of the Department representative during the hearing, the Department failed to establish that it properly processed Petitioner's MA and MSP eligibility for December 1, 2023, ongoing.


DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED**.

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. Recalculate Petitioner's FAP budget for January 1, 2024, ongoing;
2. Issue FAP supplements to Petitioner for any benefits she was eligible to receive but did not, if any, from January 1, 2024, ongoing, in accordance with Department policy;
3. Redetermine Petitioner's MA and MSP eligibility under the most beneficial category for December 1, 2023, ongoing;
4. If eligible, provide MA and MSP coverage to Petitioner for any MA and MSP benefits she was entitled to receive but did not from December 1, 2023, ongoing, and
5. Notify Petitioner in writing of its decisions.

ZB/ml



Zainab A. Baydoun
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
Vivian Worden
Macomb County DHHS Mt. Clemens Dist.
44777 Gratiot
Clinton Township, MI 48036
MDHHS-Macomb-12-Hearings@michigan.gov

Interested Parties

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M Holden
B Cabanaw
N Denson-Sogbaka
L Karadsheh

Via First Class Mail:

Petitioner

[REDACTED]
MI [REDACTED]