



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
DIRECTOR



Date Mailed: March 15, 2024
MOAHR Docket No.: 24-001029
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 March 6, 2024. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Shana Bush, Lead Specialist.

ISSUE

Did the Department properly determine Petitioner had excess income for Food Assistance Program (FAP) eligibility effective August 1, 2023?

Did the Department properly process Petitioner's redetermination application for Medicare Savings Program (MSP) benefits effective August 1, 2023?

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 with a certified group of four (4), consisting of himself, his wife (Spouse), and two (2) minor children (LM and AM). (Exhibit A, p. 3).
2. On August 23, 2023, Petitioner completed the redetermination process for renewal of his FAP benefits and Petitioner was found ineligible for continued FAP as of August 1, 2023. (Exhibit A, p. 7).

3. On January 10, 2024, Administrative Law Judge Danielle Harkness reversed a determination by the Department regarding Petitioner's FAP benefits and ordered the Department to redetermine Petitioner's FAP eligibility beginning August 1, 2023. (Exhibit A, pp. 3, 6 – 7; MOARH Case No. 23-009038).
4. Each member of Petitioner's household is an ongoing recipient of Retirement, Survivors, and Disability Insurance (RSDI) from the Social Security Administration (SSA) due to Petitioner's disability. Specifically,
 - a. Petitioner was receiving [REDACTED] per month, increased to [REDACTED] on January 1, 2024;
 - b. Spouse was receiving [REDACTED] per month, increased to [REDACTED] on January 1, 2024;
 - c. LM was receiving [REDACTED] per month, increased to [REDACTED] on January 1, 2024; and
 - d. AM was receiving [REDACTED] per month, increased to [REDACTED] on January 1, 2024.(Exhibit A, p. 1).
5. Petitioner and Spouse also receive [REDACTED] monthly in adoption subsidy for LM and [REDACTED] monthly in adoption subsidy for AM. (Exhibit A, p. 1).
6. Spouse earns an average of [REDACTED] net, per month from self-employment. (Exhibit A, p. 1).
7. On January 18, 2024, the Department redetermined Petitioner's eligibility for FAP benefits and issued a Notice of Case Action (NOCA) closing Petitioner's FAP case due to excess net income.
8. On January 20, 2024, the Department sent Petitioner a Health Care Coverage Determination Notice (HCDN), notifying Petitioner that effective March 1, 2024, he was not eligible for MSP coverage due to income exceeding the limit. (Exhibit A, pp. 15 – 17). Although the HCDN also stated Petitioner had not provided verifications, the Department retracted that basis for denial and issued a corrected notice to Petitioner on February 8, 2024, indicating that denial of MSP coverage was due exclusively to excess income. (Exhibit A, pp. 3, 16 – 17, 19 – 20).
9. On January 30, 2024, the Department received Petitioner's request for hearing disputing the closure of Petitioner's FAP case and denial of Petitioner for MSP. (Exhibit A, pp. 4 – 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).

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.

Petitioner requested a hearing to dispute the Department's closure of his FAP case for excess net income following the Department's redetermination of his group's eligibility following a MOAHR decision by Administrative Law Judge Danielle Harkness. (Exhibit A, pp. 3, 7 – 10). Judge Harkness ordered the Department to redetermine Petitioner's eligibility as of August 1, 2023. (Exhibit A, p. 9). In connection with its reprocessing of Petitioner's FAP redetermination after a hearing on the matter (Exhibit A, pp. 1, 7 – 10), the Department concluded that Petitioner's group's income exceeded the net income limits of the FAP program and issued a NOCA closing Petitioner's FAP case effective August 1, 2023. (Exhibit A, pp. 11 – 12). Petitioner confirmed that there were four members of his household, himself, Spouse and two minor children. For a FAP group size of four, the net income limit was \$2,313. RFT 250 (October 2022).

Here, the Department determined that Petitioner's FAP group had net monthly income totaling [REDACTED] and in support of its position presented a net income budget for January 2024, which included unearned income in amounts over that the FAP group received in 2023. (Exhibit A, pp. 13 – 14). Because the January 11, 2024 Hearing Decision ordered the Department to redetermine eligibility as of August 1, 2023, the Department failed to satisfy its burden of showing that it properly closed Petitioner's FAP case effective August 1, 2023 due to excess net income.

Furthermore, a review of the budget that was presented showed that Petitioner was receiving a medical expense deduction of \$290. Because Petitioner received RSDI benefits based on a disability, he is a senior/disabled/veteran (SDV) of his FAP group. BEM 550 (April 2023), p. 1. SDV groups who verify one-time or ongoing medical expenses in excess of \$35 for the SDV member will receive a standard medical deduction of \$165 unless the group has actual medical expenses in an amount greater than \$200 and verifies those actual expenses. BEM 554 (April 2023), p. 9. The Department may also estimate medical expenses based on information available about the SDV member's medical condition and health insurance or if there are reasonably

anticipated changes during the benefit period. BEM 554, p. 9. Groups that do not have a 24-month benefit period may choose to budget a one-time-only medical expense for one month or average it over the balance of the benefit period. BEM 554, p. 9. Groups that have 24-month benefit periods must be given the option for one-time-only medical expenses billed or due within the first 12 months of the benefit period to (i) budget it for one month, (ii) average it over the remainder of the first 12 months of the benefit period, or (iii) average it over the remainder of the 24-months benefit period. BEM 554, p. 10. The expense does not have to be paid to be allowed but it may not be overdue. BEM 554, p. 12.

At the hearing, the Department could not identify the basis for the \$290 medical expense deduction shown on the FAP budget. Petitioner testified that he incurred between \$1,200 and \$1,800 in monthly medical expenses and that he had provided verification of his expenses to the Department. The Department acknowledged receiving Petitioner's documentation in connection with the redetermination but contended that the expenses were not eligible for the medical deduction, apparently because Petitioner had not paid the expenses. However, policy requires the Department to consider expenses incurred, even if not paid, as long as they are not overdue. Here, the Department failed to establish that it properly calculated the medical expense deduction in calculating Petitioner's net income eligibility for FAP.

MA

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.

Petitioner disputes the denial of his MSP coverage. (Exhibit A, pp. 4 – 5). The Department notified Petitioner that effective March 1, 2024, he was not eligible for MSP coverage due to income exceeding the limit. (Exhibit A, pp. 15 – 17,). The HCDN also stated Petitioner had not provided verifications but the Department retracted that basis for denial and issued a corrected notice to Petitioner on February 8, 2024. (Exhibit A, pp. 3, 16 – 17, 19 – 20).

Medicare Savings Plans (MSP) are SSI-related MA categories. BEM 165 (October 2022), p. 1. There are three MSP categories: (1) QMB (Qualified Medicare Beneficiary), which pays for a client's Medicare premiums (both Part A, if any, and Part B), Medicare coinsurances, and Medicare deductibles; (2) Specified Low-Income Medicare Beneficiaries (SLMB), which pays for a client's Medicare Part B premiums; and (3) Additional Low Income Medicare Beneficiaries (ALMB), which pays for a client's Medicare Part B premiums when funding is available. BEM 165, pp. 1 – 2.

Petitioner's income determines the MSP subprogram available, which is determined based on the monthly income limits for Petitioner's fiscal group size as identified in RFT 242 (April 2023). For QMB eligibility, net income cannot exceed 100% of the federal poverty level (FPL), plus the \$20 disregard for RSDI income, which is [REDACTED]. For SLMB eligibility, net income must be more than 100% but less than 120% of the FPL, plus the \$20 disregard for RSDI income, which is \$1,663.51 - \$1,992. And, for ALMB eligibility, net income must be more than 120% but less than 135% of the FPL, plus the \$20 disregard for RSDI income, which is \$1,992.01 – \$2,238.50. RFT 242, p. 1; BEM 165, pp. 1 – 2, 8 – 10.

The fiscal group size of MSP eligibility is either one (1) or two (2) depending on the marital status of the applicant. BEM 211 (July 2019), p. 8. In this case, Petitioner and Spouse are married, and therefore Petitioner has a two (2) person fiscal group. RFT 242.

The Department determines countable income according to the SSI-related MA policies in BEM 500, 501, 502, 503, 504, and 530, except as otherwise explained in BEM 165. BEM 165, pp. 8 – 10. Adoption subsidies are excluded from unearned income for MA programs. BEM 503 (January 2023), p. 3. The Department will also reduce the countable income by applicable deductions, set forth in BEM 541 (for adults), to determine net income. BEM 165, p. 8. Deductions may include allocation of parents' income to non-SSI related children living with them, standard disregards, and other allowable expenses. BEM 541.

At the hearing, the Department testified that Petitioner's total unearned income as of March 2024 was [REDACTED] and presented an SSI-related MA budget showing this as the household's total unearned income. (Exhibit A, p. 18). Because the sum of Petitioner's RSDI income of [REDACTED] and Spouse's RSDI income of [REDACTED] was [REDACTED] the Department properly calculated gross unearned income (Exhibit A, p. 3). The adoption subsidies for LM and AM are not considered for MA programs.

Unearned income is reduced by a \$20 disregard and any unearned allocation to non-SSI related children. BEM 541, pp. 2-3. The budget showed the \$20 disregard was applied and also showed that the Department also deducted \$286 from Petitioner and Spouse's unearned income for allocation to non-SSI related children. For households with non-SSI-related children, gross income is reduced by an allocation of the parents' income to meet the needs of these children. BEM 541, p. 2. Non-SSI-related child is a child who is (i) unmarried and under age 18, (ii) not a recipient of Supplemental Security (SSI), Family Independence Program Family Independence Program (FIP), State Disability Assistance (SDA), or Title IV-E benefits; (iii) not a department ward; and (iv) not an applicant for, or recipient of, Medicaid due to disability or blindness. BEM 541, p. 2. Here, Petitioner had two minor children, LM and AM, in the household, who, based on the evidence presented were, non-SSI-related children.

If the non-SSI-related child's net income is less than \$472, the difference (\$472 minus net income) is the allocation to the non-SSI-related child. Net income is calculated by (i)

adding the child's unearned income to the child's earned income (less a \$135 deduction if the child is a full-time or half-time student) and (ii) reducing this by any court-ordered support paid by the child and \$83 for guardianship/conservator expenses if verified paid by the child. BEM 541, p. 2.

In this case, as of March 1, 2024, each child received [REDACTED] in monthly RSDI income and no earned income. There was no evidence that the children paid court-ordered support or guardianship or conservatorship expenses. Therefore, each child had net income of [REDACTED]. Because the net income for each child was less than [REDACTED], Petitioner was eligible for an allocation for each non-SSI-related child equal to the difference between \$ [REDACTED] and [REDACTED] or \$ [REDACTED]. For the two children, this results in allocation to non-SSI related children of \$ [REDACTED] as shown on the budget.

The budget also properly included Spouse's self-employment income of [REDACTED] which Petitioner did not dispute. Earned income is reduced by \$65 plus an additional 1/2 of the fiscal group's remaining earnings. In this case, the earned income disregard for [REDACTED] in earned income was [REDACTED] as shown on the budget.

When the household's gross income is reduced by the applicable deductions, the household's net income is [REDACTED]. For the months of January, February, and March, for Medicaid purposes, net income is reduced by the cost-of-living adjustment (COLA) increase that group members with RSDI received for the new year. BEM 503, p. 30. The COLA for Petitioner and his wife totaled \$71, which is consistent with the figures on the budget. [REDACTED] reduced by \$71 results in countable monthly income of [REDACTED]. Because this amount exceeds the income limit for all three MSP categories, the Department properly concluded that Petitioner was ineligible for MSP.

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 not act in accordance with Department policy when it determined Petitioner's eligibility for FAP benefits effective August 1, 2023 ongoing, but it acted in accordance with Department policy when it denied Petitioner's eligibility for MSP based on excess income.

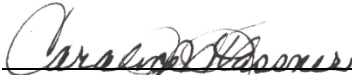
DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the Department's denial of MSP and **REVERSED IN PART** with respect to FAP.

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 eligibility for FAP benefits effective August 1, 2023 ongoing;
2. If Petitioner is eligible for any supplemental FAP benefits, issue supplemental payments to Petitioner for any FAP benefits he was eligible to receive but did not, effective August 1, 2023 ongoing;
3. Notify Petitioner of its decision in writing.

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:

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Petitioner

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