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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 29, 2024
MOAHR Docket No.: 24-001653
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 March 20, 2024. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Lori Turner, specialist. Alaa Mohamed of Propio participated as an English-Arabic translator.

ISSUES

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

The second issue is whether MDHHS properly determined Petitioner's 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. As of November 2023, Petitioner received FAP benefits as a member of a benefit group that included his spouse, [REDACTED] [REDACTED] (hereinafter, "Spouse") and three minor children.
2. As of November 2023, Spouse received gross biweekly wages of \$ [REDACTED]

3. On December 22 and December 29, 2023, Petitioner received gross weekly wages of \$ [REDACTED] \$ [REDACTED] respectively.
4. As of January 2024, Petitioner had no child support, dependent care, or medical expenses.
5. As of January 2024, one of Petitioner's children received gross monthly Supplemental Security Income (SSI) of \$957.
6. As of January 2024, Petitioner was responsible for a heating and/or cooling obligation and had monthly housing costs of no more than \$1,693.68.
7. On January 6, 2024 determined that Petitioner was ineligible for FAP benefits due to excess income.
8. On January 6, 2024, MDHHS determined Petitioner and Spouse to be eligible for Medicaid from February 2024 through June 2024. MDHHS additionally determined that Spouse's Medicaid was restricted to emergency services only (ESO).
9. On January 12 and January 19, 2024, Petitioner received gross weekly wages of \$ [REDACTED] and \$ [REDACTED] respectively.
10. As of January 2024, Spouse met the alien status to receive Medicaid without an ESO restriction.
11. On February 6, 2024, Petitioner requested a hearing disputing the termination of FAP benefits and ESO-MA benefits for Spouse.

CONCLUSIONS OF LAW

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. MA 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 a termination of FAP benefits. Exhibit A, pp. 3-4. A Notice of Case Action dated January 6, 2024, determined Petitioner was ineligible for FAP benefits beginning January 2024 due to excess income.¹ Exhibit A, pp. 7-12.

¹ The notice was written in Arabic. However, there was no dispute that it stated Petitioner's FAP eligibility ended January 2024 due to excess income.

FAP benefit amounts are determined by a client's net income. BEM 556 outlines the factors and calculations required to determine a client's net income. FAP net income is based on group size, countable monthly income, and relevant monthly expenses. MDHHS presented budget documents listing all FAP eligibility factors and calculations. Exhibit A, pp. 24-25. A budget summary from the termination notice also listed FAP budget factors. Exhibit A, p. 8. During the hearing, all relevant budget factors were discussed with Petitioner.

MDHHS factored a FAP benefit group of five persons which included Petitioner, Spouse, and three minor children. Petitioner did not dispute the benefit group size.²

MDHHS testified it calculated gross monthly wages for Petitioner of \$ [REDACTED] MDHHS received weekly pay documents from Petitioner from December 2023 and January 2024.³ The documents listed the following gross wages: \$ [REDACTED] \$ [REDACTED] \$ [REDACTED] and \$ [REDACTED] Exhibit A, pp. 20-23. For FAP benefits, MDHHS generally counts gross wages.⁵ BEM 501 (July 2017), p. 7. MDHHS converts stable or fluctuating weekly income to a monthly amount by multiplying the average income by 4.3. BEM 505 (October 2023) p. 8. Multiplying Petitioner's average weekly wages by 4.3 results in a total gross monthly income of \$ [REDACTED] (dropping cents).

Petitioner contended that MDHHS should have counted his gross monthly wages as \$ [REDACTED] Petitioner testified he works full-time and makes \$ [REDACTED] per hour. Petitioner contended that MDHHS should have multiplied his hourly income by 40 and then his weekly income by four which would result in \$ [REDACTED] in monthly income. Petitioner's contention fails to factor that MDHHS converts weekly wages into a monthly amount using a multiplier. Also, three of Petitioner's submitted checks included overtime; thus, the documentary evidence did not establish that weekly wages including overtime were unrepresentative. Further, there was no evidence that Petitioner reported previously that submitted checks were over-representative of his wages. Given the evidence, MDHHS properly calculated Petitioner's wages.

In November 2023, Spouse received gross biweekly wages of \$ [REDACTED] MDHHS converts stable or fluctuating biweekly income to a monthly amount by multiplying the average income by 2.15. BEM 505 (October 2023) p. 8. Multiplying Spouse's average weekly wages by 2.15 results in a total gross monthly income of \$ [REDACTED] (dropping cents). MDHHS factored a lower income of \$1,687 for Spouse. Given that MDHHS factored a more favorable income for Spouse, it will be accepted that Spouse's monthly countable wages were \$ [REDACTED]

² See BEM 212 for policies on determining group size for FAP benefits.

³ The documents did not include Petitioner's wage information from January 6, 2024, reflecting income through the pay period of December 30, 2023.

⁴ Presumably, MDHHS did not factor Petitioner's January 2024 wages in the determining because the termination notice was sent before the dates on the wage documents. They are factored here because they are more favorable for Petitioner when counted.

⁵ Exceptions to using gross wages include the following: earned income tax credits, flexible benefits, striker earnings, student disregards, and census worker earnings. BEM 501 (July 2017), p. 7. None of these exceptions apply to the present case.

Adding Petitioner's and Spouse's wages results in countable wages of \$ [REDACTED] MDHHS issues a 20% credit for timely reported employment income. Multiplying the sum of Petitioner's and Spouse's wages by 80% results in countable benefit group wages of \$4,360.

It was not disputed that one of Petitioner's children received SSI of \$957. For FAP benefits, gross SSI is countable. BEM 503 (January 2023) p. 35. Adding the SSI to countable wages results in a total countable income of \$ [REDACTED]

MDHHS uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (January 2024) p. 1. For groups without a senior (over 60 years old), disabled, or disabled veteran (SDV) member, MDHHS considers the following expenses: excess shelter expenses (housing and utilities) up to a capped amount, dependent care costs, and court-ordered child support and arrearages paid to non-household members (see *Id.*). For groups containing SDV members, MDHHS additionally considers an uncapped excess shelter expense and the medical expenses above \$35 for each SDV group member(s).⁶

Petitioner did not allege having any dependent care or child support expenses. There was no evidence that Petitioner's disabled child had medical expenses. The evidence established that Petitioner's group's non-shelter expenses were \$0.

Petitioner's FAP benefit group size justifies a standard deduction of \$244 (see RFT 255). The standard deduction is given to all FAP benefit groups, though the amount varies based on the benefit group size. The standard deduction and countable non-shelter expenses are subtracted from the countable monthly income to calculate the group's adjusted gross income. Subtracting the standard deduction (\$244) and countable non-shelter expenses (\$0) from the group's countable income (\$5,317) results in an adjusted gross income of \$ [REDACTED]

MDHHS credited Petitioner with monthly housing expenses of \$1,694 (rounding up to nearest dollar); Petitioner did not allege additional housing expenses.⁷ MDHHS credited Petitioner with a standard heating/utility (h/u) credit of \$680. RFT 255 (October 2023) p. 1. Generally, the h/u credit covers all utility expenses and is the maximum credit available.⁸ Adding Petitioner's housing and utility credits results in total shelter expenses of \$2,374.

⁶ An SDV group that has a verified one-time or ongoing medical expense(s) of more than \$35 for an SDV person(s) will receive the standard medical deduction (SMD) of \$165. BEM 554 (October 2022) p. 9. If the group has actual medical expenses which are more than the SMD, the group has the option to verify their actual expenses instead of receiving the SMD. *Id.*

⁷ During the hearing, Petitioner claimed to have additional housing expenses. He then testified to expenses including a land contract payment of \$1,200 per month and insurance and taxes averaging \$425 per month. The result was lower monthly housing expenses than factored by MDHHS.

⁸ MDHHS allows additional credits for "actual utility expenses". Such expenses are only allowed for utility installation charges, water well installation and maintenance, and septic installation and maintenance. BEM 554 (October 2019) p. 15. There was no evidence of applicable exceptions.

MDHHS only credits FAP benefit groups with an “excess shelter” expense. The excess shelter expense is calculated by subtracting half of Petitioner’s adjusted gross income from Petitioner’s total shelter obligation. Petitioner’s excess shelter expenses are \$0.

The FAP benefit group’s net income is determined by subtracting the excess shelter expense from the group’s adjusted gross income; doing so results in \$5,073 in net income for Petitioner’s group. A chart is used to determine the proper FAP benefit issuance.⁹ RFT 260 (October 2023) pp. 1-5. Based on Petitioner’s group size and net income, Petitioner’s proper FAP issuance for January 2024 is \$0: the same amount calculated by MDHHS. Thus, MDHHS properly terminated Petitioner’s FAP eligibility beginning January 2024.

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 Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner also requested a hearing to dispute MA eligibility. Exhibit A, pp. 3-4. Petitioner testified he specifically disputed MA benefits for himself and Spouse. A Health Care Coverage Determination Notice dated January 6, 2024, stated that Petitioner and Spouse were eligible for Medicaid from February through June 2024 under the MA category of TMA.¹⁰ Exhibit A, pp. 13-16. The notice also stated that Spouse’s MA eligibility was restricted to ESO. Petitioner was unable to state any compliant over his own eligibility; however, Petitioner disputed the restriction of Spouse’s MA eligibility.

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 (January 2024) 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 (*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

⁹ FAP eligibility can also be calculated by multiplying the net income by 30% and subtracting the amount from the maximum FAP issuance for the group.

¹⁰ Like the FAP notice, the MA notice was written in Arabic. The content of the notice was inferred during the hearing based on Petitioner’s and MDHHS’s statements.

- 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

During the hearing, MDHHS acknowledged that the ESO restriction on Spouse's MA eligibility was improper. MDHHS also testified that it required the assistance of technical support staff before the ESO restriction was removed from Spouse's MA eligibility. MDHHS further testified that Spouse's MA eligibility was corrected and that she now receives MA with no restriction. MDHHS's testimony was credible; however, it should have been corroborated with documentation verifying that Spouse's MA eligibility is not restricted to ESO. Without documentary verification that Spouse's MA eligibility was corrected, MDHHS will be ordered to correct Spouse's MA eligibility.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined Petitioner's FAP eligibility beginning January 2024. The actions of MDHHS are **AFFIRMED**.

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

- (1) Reprocess Spouse's Medicaid eligibility, subject to the finding that Spouse's meets the qualified alien status to receive MA without an ESO restriction; and
- (2) Issue benefit supplements and notice, if any, in accordance with policy.

Concerning Medicaid under FTW, 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
Tara Roland 82-17
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Via-First Class Mail :

Petitioner
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