



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
DIRECTOR



Date Mailed: March 26, 2024
MOAHR Docket No.: 24-001693
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 March 21, 2024, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Veronica Robinson, Eligibility Specialist and Corlette Brown, Hearing Facilitator.

ISSUE

Did the Department properly determine Petitioner's eligibility for Medical Assistance (MA) benefits and calculate the amount of her Food Assistance Program (FAP) benefits?

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 and MA benefits.
2. Petitioner was approved for FAP benefits in the amount of \$23 monthly.
3. Petitioner was previously a recipient of Medicare Savings Program (MSP) benefits under the Additional Low-Income Beneficiaries (ALMB) category.

4. On February 8, 2024, the Department sent Petitioner a Health Care Coverage Determination Notice (Notice) advising her that effective February 1, 2024, her MSP case would be closed. Although not reflected on the Notice, the Department asserted that Petitioner was ineligible for MSP benefits because her income exceeded the income limit.
 - a. Despite the information contained in the Notice, a review of the eligibility summary indicates that Petitioner's MSP case was to close effective April 1, 2024.
5. Effective April 1, 2024, Petitioner was approved for MA under the Group 2 Aged, Blind, Disabled (G2S) category with a monthly deductible of \$982.
6. Petitioner is over age [REDACTED] Petitioner confirmed that her household size is one and that she received gross monthly Retirement Survivors Disability Insurance (RSDI or Social Security) benefits in the amount of [REDACTED] Petitioner is also employed part time and paid biweekly.
7. On or around February 21, 2024, Petitioner requested a hearing disputing the Department's actions with respect to her FAP and MA benefits.

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, Petitioner disputed the calculation of her FAP benefits. The Department representative testified that Petitioner had been approved for \$23 in FAP benefits monthly, with no change in her FAP allotment for the past several months. The Department presented a FAP EDG Net Income Results Budget for the January 2024 benefit period which was thoroughly reviewed to determine if the Department properly calculated Petitioner's FAP benefits. (Exhibit B).

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

determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (October 2023), pp. 1-2. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, pp. 5-6. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 7-8. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. BEM 505, pp. 7-9. An employee's wages include salaries, tips, commissions, bonuses, severance pay, and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (January 2024), pp. 6-7.

According to the January 2024 budget presented for review, the Department determined that Petitioner had gross earned income in the amount of [REDACTED] which the Department representative testified consisted of Petitioner's earnings from her part time employment. The Department presented a Work Number for review, identifying the pay amounts and pay dates considered in the earned income calculation. (Exhibit A, pp. 18-19). Petitioner confirmed that the pay amounts reflected on the Work Number were accurate. Upon review, and based on the above prospective budgeting policy, the Department properly calculated Petitioner's earned income of [REDACTED]

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. Petitioner confirmed the amount and thus, 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.

The budget does not include a 20% earned income deduction; however, the Department failed to explain why Petitioner's earnings would not be eligible for an earned income deduction. In consideration of Petitioner's gross income of [REDACTED] an

earned income deduction of \$230.20 is applied for purposes of this review. There was no evidence presented that Petitioner had any out-of-pocket dependent care, child support, or medical expenses. Therefore, the budget properly did not include any deduction for dependent care, child support, or medical expenses. See BEM 554.

The Department properly applied a standard deduction of \$198 which was based on Petitioner's confirmed group size of one. RFT 255 (October 2023), p. 1. With respect to the calculation of the excess shelter deduction, the Department properly considered Petitioner's confirmed housing expenses of \$480 and applied the \$680 heat and utility (h/u) standard, which covers all heat and utility costs including cooling expenses. BEM 554, pp. 13-17.

Upon review, although it was determined that Petitioner's income exceeded the income limits identified in RFT 250, the Department properly found that Petitioner was eligible for \$23, based on her status as an SDV member and categorical eligibility status. See BEM 213.

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.

MA is available (i) under SSI-related categories to individuals who are aged (65 or older), blind or disabled, (ii) to individuals who are under age 19, parents or caretakers of children, or pregnant or recently pregnant women, (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage, and (iv) to individuals who meet the eligibility criteria for Plan First Medicaid (PF-MA) coverage. 42 CFR 435.911; 42 CFR 435.100 to 435.172; BEM 105 (October 2023), p. 1; BEM 137 (June 2020), p. 1; BEM 124 (July 2023), p. 1. Under federal law, an individual eligible under more than one MA category must have eligibility determined for the category selected and is entitled to the most beneficial coverage available, which is the one that results in eligibility and the least amount of excess income or the lowest cost share. BEM 105, p. 2; 42 CFR 435.404.

In this case, Petitioner disputed the Department's determination that she was eligible for MA under a deductible based program and the Department's determination that she had excess income for the MSP.

Because Petitioner is over age [REDACTED] and enrolled in Medicare, the Department properly concluded that Petitioner was eligible for SSI-related MA, which is MA for individuals who are blind, disabled or over age 65. BEM 105, p. 1. Individuals are eligible for Group 1 coverage, with no deductible, if their income falls below the income limit, and

eligible for Group 2 coverage, with a deductible that must be satisfied before MA is activated, when their income exceeds the income limit. BEM 105, p. 1. Ad-Care coverage is a SSI-related Group 1 MA category which must be considered before determining Group 2 MA eligibility. BEM 163 (July 2017), p. 1. Eligibility for Ad-Care is based on the client meeting nonfinancial and financial eligibility criteria. BEM 163, pp. 1-2. The eligibility requirements for Group 2 MA and Group 1 MA Ad-Care are the same, other than income. BEM 166 (April 2017), pp. 1-2.

Income eligibility for the Ad-Care program is dependent on MA fiscal group size and net income which cannot exceed the income limit in RFT 242. BEM 163, p. 2. Petitioner has a MA fiscal group of one. BEM 211 (October 2023), pp. 5-8. Effective April 1, 2023, an MA fiscal group with one member is income-eligible for full-coverage MA under the Ad-Care program if the group's net income is at or below \$1,235, which is 100 percent of the Federal Poverty Level, plus the \$20 disregard. RFT 242 (April 2023), p. 1.

The Department is to determine countable income according to SSI-related MA policies in BEM 500 and 530 *except* as explained in the countable RSDI section of BEM 163. The Department will also apply the deductions in BEM 540 (for children) or 541 (for adults) to countable income to determine net income. BEM 163, p. 2. The Department asserted that Petitioner had excess income for the Ad-Care program. The Department representative testified that it considered Petitioner's unearned income which totaled [REDACTED] and was based on gross monthly RSDI/Social Security benefits. The Department also properly considered the unearned income general exclusion of \$20 to determine that Petitioner had net unearned income of [REDACTED]. The Department also properly calculated Petitioner's earned income for MA purposes of [REDACTED] based on the pay dates and pay amounts reflected in the Work Number and applied a \$547.50 disregard for earned income.

After further review of Department policy and based on the testimony provided at the hearing, because Petitioner's countable income exceeds the net income limit for the Ad-Care program, the Department acted in accordance with Department policy when it determined that Petitioner was ineligible for full coverage MA benefits under the Ad-Care program without a deductible and determined that he would be eligible for MA under the Group 2 Aged Blind Disabled (G2S) program with a monthly deductible.

Additionally, deductible is a process which allows a client with excess income to become eligible for Group 2 MA if sufficient allowable medical expenses are incurred. BEM 545 (July 2022), p. 10. Individuals are eligible for Group 2 MA coverage when net income (countable income minus allowable income deductions) does not exceed the applicable Group 2 MA protected income levels (PIL), which is based on shelter area and fiscal group size. BEM 105, pp. 1-2; BEM 166, pp. 1-2; BEM 544 (January 2020), p. 1; RFT 240 (December 2013), p. 1. The PIL is a set allowance for non-medical need items such as shelter, food and incidental expenses. BEM 544, p. 1. The monthly PIL for an MA group of one living in Wayne County is \$375 per month. RFT 200 (April 2017), pp. 1-2; RFT 240, p. 1. Thus, if Petitioner's net monthly income is in excess of the \$375, he may become eligible for assistance under the deductible program, with the

deductible being equal to the amount that his monthly income exceeds \$375. BEM 545, p. 1. To meet a deductible, a MA client must report and verify allowable medical expenses (defined in Exhibit I) that equal or exceed the deductible amount for the calendar month being tested. The group must report expenses by the last day of the third month following the month in which client wants MA coverage. BEM 545, p. 11. The Department is to add periods of MA coverage each time the group meets its deductible. BEM 545, p.11.

The Department determined that effective April 1, 2024, Petitioner was eligible for MA under the under the G2S category with a monthly deductible of \$982. The Department produced an SSI-Related Medicaid Income Budget to show how it calculated the deductible. As referenced above, the Department properly calculated Petitioner's earned and unearned income and applied a \$20 unearned income exclusion to determine that Petitioner had net income for MA purposes of [REDACTED]. There was no evidence presented that Petitioner submitted any verification of ongoing medical expenses and no evidence that Petitioner was entitled to any additional deductions to income such as guardianship/conservator expenses or remedial services. Although Petitioner's MSP case was closed, Petitioner confirmed that she continued to receive the full amount of her [REDACTED] RSDI benefit, suggesting that Medicare premiums are not being withheld from her monthly benefit. Should this change and Petitioner become responsible for her own Medicare premiums, the Department is to include the premiums as an insurance premium deduction on the deductible budget.

Upon review, the Department properly considered Petitioner's unearned income and took into consideration the appropriate deductions to income. Based on the evidence presented because Petitioner's countable income of [REDACTED] for MA purposes exceeds the monthly protected income level of \$375 by \$982, the Department properly calculated Petitioner's monthly \$982 MA deductible in accordance with Department policy. Therefore, based on the information relied upon by the Department, the Department properly determined that effective April 1, 2024, Petitioner was eligible for MA under the G2S program with a monthly deductible of \$982.

The Department also determined that Petitioner was not eligible for MSP benefits under the ALMB category.

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. The monthly income limits for Petitioner's fiscal group size of one are identified in RFT 242 (April 2023). For QMB eligibility, net income cannot exceed \$1,235, which is 100% of the poverty level, plus the \$20

disregard for RSDI income. For SLMB eligibility, net income is between \$1,235.01 and \$1,478, which is over 100% but not over 120% of the poverty level, plus the \$20 disregard for RSDI income. For ALMB eligibility, net income must be between \$1,478.01 and \$1,660.25, which is over 120% but not over 135% of the poverty level, plus the \$20 disregard for RSDI income. RFT 242, p.1; BEM 165, pp. 1-2, 8-10. The Department is to determine 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. RFT 242, pp. 1-2; BEM 165, pp. 8-10. The Department will also apply the deductions in BEM 540 (for children) and BEM 541 (for adults) to countable income to determine net income. BEM 165, pp. 8-10.

At the hearing, the Department representative testified that Petitioner was ineligible for MSP based on excess income. However, the Department failed to present a budget for review in support of its determination that based on Petitioner's net income or based on another reason, she was ineligible for MSP benefits under all MSP categories. However, because the Department is to calculate income for MSP in the same manner as that described above for SSI-related MA programs, the above referenced income amounts can be relied upon. Based on the above income amounts, specifically, Petitioner's countable income of [REDACTED] it is possible that Petitioner is eligible for MSP benefits under one of the MSP categories. The Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's MSP case effective April 1, 2024.

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 although the Department acted in accordance with Department policy when it calculated the amount of Petitioner's MA deductible under the G2S program, the Department failed to establish that Petitioner was ineligible for MSP benefits effective April 1, 2024.


DECISION AND ORDER

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

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 Medicare Savings Program benefits under the most beneficial category effective April 1, 2024;
2. Provide Petitioner with MSP coverage under the most beneficial category from April 1, 2024, ongoing, if otherwise eligible, and
3. Notify Petitioner in writing of its decision.

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

Keisha Koger-Roper
Wayne-District 31 (Grandmont)
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Via First Class Mail:

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