



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

MARLON I. BROWN, DPA
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 29, 2024
MOAHR Docket No.: 24-001797
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 Lansing, Michigan. [REDACTED] [REDACTED] the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Ryan Clemens, Family Independence Manager (FIM).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-21.

ISSUE

Did the Department properly determine Petitioner's eligibility for Food Assistance Program (FAP) and Medical Assistance (MA) 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. The Department had been including a \$ [REDACTED] monthly medical expense in Petitioner's case since 2014. (Exhibit A, p. 9; FIM Testimony)
2. Petitioner's MA changed to having a deductible, formerly known as a spend down, in October 2023. (Petitioner Testimony)
3. Petitioner was receiving home care services through the Department until October 2023. (Petitioner Testimony)

4. The Department determined that Petitioner has a deductible, formerly known as a spend down, of \$[REDACTED] for her MA coverage. (Exhibit A, p. 20)
5. Petitioner's potential Home Help Services (HHS) authorization amount exceeds her deductible amount; however, Petitioner is unable to pay \$[REDACTED] monthly to the HHS provider. (Petitioner and FIM Testimony)
6. On January [REDACTED] 2024, the \$[REDACTED] monthly medical expense was removed from the FAP and MA budgets because this was not a verified current ongoing medical expense. (Exhibit A, pp. 17-20; FIM Testimony)
7. On January [REDACTED] 2024 a Notice of Case Action was issued to Petitioner stating the FAP monthly benefit amount would decrease to \$[REDACTED] effective March 1, 2024. (Exhibit A, pp. 9-14)
8. On February 14, 2024, Petitioner submitted hearing requests contesting the Department's determinations. (Exhibit A, pp. 4-8)

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).

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.

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.

FAP

The Department considers the gross benefit amount of Social Security Administration issued Retirement Survivors and Disability Insurance (RSDI) as unearned income. BEM 503, January 1, 2023, pp. 29-30.

For FAP, a shelter expense is allowed when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554, (January 1, 2024), p. 13. The heat/utility (h/u) standard covers all heat and utility costs including cooling, except actual utility expenses, for example, installation fees etc. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. FAP groups whose heat is included in their rent may still qualify for the h/u standard. Some additional ways include but are not limited to, receipt of the Home Heating Credit (HHC) or a Low Income Home Energy Assistance Payment (LIHEAP). The amount of either payment must be greater than \$20 in the month of application or in the immediately preceding 12 months prior to the application month. BEM 554, p. 16. FAP groups who pay for cooling (including room air conditioners) are eligible for the h/u standard if, they have the responsibility to pay for non-heat electric. BEM 554 p. 18. FAP groups not eligible for the h/u standard who have other utility expenses or contribute to the cost of other utility expenses are eligible for the individual utility standards. Use the individual standard for each utility the FAP group has responsibility to pay. BEM 554 p. 22.

The Department can also consider verified allowable medical expenses of a senior/disabled/veteran (SDV) member of the FAP group. BEM 554, pp. 9-13.

In this case, Petitioner testified that her income from Social Security benefits was \$[REDACTED] (Petitioner Testimony). The Department also included Petitioner's shelter expense, the standard deduction, and the full h/u standard in the FAP budget. (Exhibit A, pp. 17-19). The Department properly removed the \$[REDACTED] monthly medical expense from the FAP budget because Petitioner does not have a verified ongoing medical expense of \$[REDACTED] each month. Overall, the evidence supports the Department's determination that Petitioner is currently eligible for FAP benefits in the amount of \$[REDACTED] per month.

MA

The Medicaid program comprise several sub-programs or categories. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. BEM 105, January 1, 2024, p. 1.

In general, the terms Group 1 and Group 2 relate to financial eligibility factors. For Group 1, net income (countable income minus allowable income deductions) must be at or below a certain income limit for eligibility to exist. The income limit, which varies by category, is for nonmedical needs such as food and shelter. Medical expenses are not used when determining eligibility for MAGI-related and SSI-related Group 1 categories. For Group 2, eligibility is possible even when net income exceeds the income limit. This is because incurred medical expenses are used when determining eligibility for Group 2 categories. Group 2 categories are considered a limited benefit as a deductible is possible. BEM 105, p. 1.

The Department counts the gross benefit amount of Social Security Administration (SSA) issued RSDI benefits as unearned income when determining eligibility. For MA, the cost

of living (COLA) increase received in January is disregarded for January, February, and March. BEM 503, January 1, 2023, pp. 29-30.

The Department utilizes a Protected Income Level (PIL) in determining MA eligibility. The PIL is a set allowance for non-medical need items such as shelter, food and incidental expenses. BEM 544, January 1, 2020, p. 1. Washtenaw County is part of Shelter Area VI, which has a PIL of \$408.00 for a group size of one. RFT 200, April 1, 2017, p. 3 and RFT 240, December 1, 2013, p. 1.

For SSI related adults, the only deductions allowed to countable income are for court-ordered child support, blind/impairment related work expenses, allocation to non-SSI related children, a \$20.00 disregard, an earned income disregard of \$65.00 plus $\frac{1}{2}$ of the remaining earnings, and Guardianship/Conservator expenses. BEM 541, January 1, 2024, pp. 1-7.

Income eligibility exists for all or part of the month tested when there is no excess income or the medical group's allowable medical expenses equal or exceed the fiscal group's excess income. BEM 545, (July 1, 2022), p. 1-3.

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. Each calendar month is a separate deductible period. The fiscal group's monthly excess income is called a deductible amount. Meeting a deductible means reporting and verifying allowable medical expenses that equal or exceed the deductible amount for the calendar month tested. BEM 545, (July 1, 2022), p. 10-12.

RFT 242 addresses the income limits for aged or disabled MA (MA-AD). Effective April 1, 2023, for a group size of one the income limit for MA-AD including the \$20.00 disregard is \$1,235.00. RFT 242, April 1, 2023, p. 1.

BEM 545 addresses MA deductibles and in home personal care services:

EXHIBIT II - MA ELIGIBILITY AND PERSONAL CARE

Beneficiary's with excess income who are receiving personal care Home Help Services in their home, AFC, or HA may be eligible for ongoing MA coverage. MA coverage can be authorized or continued at the beneficiary's option provided all conditions in this Exhibit are met.

The beneficiary's option to pay a portion of his personal care cost works much the same as paying a patient-pay amount to a hospital or long-term care facility. When a client chooses this option, his services specialist subtracts his excess income from the MDHHS payment for personal care services. The client is then responsible for paying his excess income amount directly to his personal care provider. This ensures MA does not pay the beneficiary's liability.

Discuss this policy option with the client. Advise the client that he will be responsible for paying his excess income to his Home Help Services personal care provider, AFC provider, or HA provider. This cost may include the employer's portion of FICA taxes. The services specialist has information about what portion of the beneficiary's excess income is for the provider and what portion, if any, is for FICA taxes.

Sometimes personal care costs exceed the maximum amount services will pay. In such cases the client is responsible for the amount services will not pay. If the client chooses the policy option described in this Exhibit, he will be responsible for the amount services will not pay in addition to his excess income. Under these circumstances, this option may not be advantageous to the client.

Conditions of Eligibility

1. The client must meet all nonfinancial eligibility factors and all financial eligibility factors **except** income.
2. The client must have an active Adult Services case with Home Help or ACP services **and** be receiving personal care services in his home, AFC, or HA. Consider the services case active as soon as the services specialist begins to work with the client.

The services specialist is responsible for obtaining verification of the need for personal care services and making the ACP or Home Help eligibility determination.

3. The amount DHHS has or will approve for personal care services must exceed the beneficiary's excess income. Contact the services specialist for the following information:
 - The amount DHHS has or will approve for personal care services.
 - The amount of personal care services required but not approved by MDHHS (ACP determines the need for personal care, AFC determines the cost for the personal care).
4. The beneficiary must agree to pay his excess income to his provider.

If **all** of the above conditions exist, income eligibility begins the month DHHS reduces or will reduce its payment for personal care services by the amount of the beneficiary's excess income. The beneficiary's excess income becomes his **personal care co-payment**.

In this case, the Department determined that Petitioner was eligible for Medicaid with a monthly deductible of \$ [REDACTED] (Exhibit A, p. 20). Petitioner testified that her income from Social Security benefits was \$ [REDACTED] (Petitioner Testimony). After the \$20.00 disregard, COLA exclusion amount, and PIL of \$ [REDACTED] are considered, Petitioner has a monthly deductible of \$ [REDACTED]. There was no evidence that Petitioner had any of the other allowable deductions (court-ordered child support, blind/impairment related work expenses, allocation to non-SSI related children, an earned income disregard of \$65.00 plus ½ of the remaining earnings, or Guardianship/Conservator expenses).

Petitioner's potential Home Help Services (HHS) authorization amount exceeds her deductible amount. The FIM explained that the option of utilizing the HHS authorization to meet her monthly deductible amount was discussed with Petitioner. However, Petitioner is understandably unable to pay \$ [REDACTED] monthly to the HHS provider. (Petitioner and FIM Testimony).

This Administrative Law Judge has no authority to change or make any exceptions to the applicable regulations and policy, which require a monthly deductible when there is excess income. Overall, the evidence establishes that the Department properly determined Petitioner's eligibility for MA based upon the available information.

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 eligibility for FAP and MA benefits.

DECISION AND ORDER

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

CL/dm



Colleen Lack
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
Trista Waishkey
Washtenaw County DHHS
**MDHHS-Washtenaw-
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Via-First Class Mail :

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