



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN DPA
DIRECTOR

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Date Mailed: May 1, 2024
MOAHR Docket No.: 24-003166
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 April 29, 2024. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Shyla Coleman, Eligibility Specialist and Hearings Facilitator.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefit rate?

Did the Department properly determine Petitioner's Medical Assistance (MA) Program 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. On June 7, 2023, the Department received Petitioner's completed FAP and MA Redetermination indicating that Petitioner had a disability, was receiving Retirement Survivors Disability Insurance (RSDI) benefits in the amount of \$██████████ per month, and had expenses including her mortgage, heat, electric, water, sewer, phone, and Medicare Part A and B premiums.
2. On July 11, 2023, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner advising Petitioner that effective August 1, 2023, she was eligible for Plan First (PF), Medicare Savings Program (MSP)-Specified Low-

Income Medicare Beneficiary (SLMB), and MA with a deductible of \$865.00 per month.

3. Effective December 1, 2023, Petitioner's RSDI benefit increased to \$[REDACTED] per month with the first payment being issued January 1, 2024.
4. On December 9, 2023, the Department issued a Notice of Case Action to Petitioner advising her that effective January 1, 2024, her FAP benefit rate was decreasing to \$123.00 per month based upon \$1,301.00 per month in unearned income, the \$198.00 standard deduction, a housing expense of \$416.53, and finally the heat and utility standard deduction (H/U) of \$680.00.
5. At some point in 2024, although the date of the decision and effectiveness date are unclear, Petitioner's MA deductible increased to \$906.00 per month.
6. On March 22, 2024, the Department received Petitioner's request for hearing disputing her MA coverage and FAP benefit rate.

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).

Food Assistance Program (FAP)

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. 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 disputes the Department's calculation of her FAP benefit rate. To determine whether the Department properly calculated Petitioner's FAP benefit rate, the evaluation first starts with consideration of all countable earned and unearned income available to the group. 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), p. 1. 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. 4-9. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. The only household income is Petitioner's RSDI benefit. Policy requires that the Department consider the gross benefit as unearned income. BEM 503 (January 2023), p. 29. Petitioner's gross benefit as of January 2024 is \$[REDACTED].

After consideration of income, the Department considers all appropriate deductions and expenses. Petitioner is disabled; therefore, she is eligible for the following deductions to income:

- Medical expense deduction for the disabled individual.
- Dependent care expense.
- Excess shelter deduction.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.

BEM 550 (April 2023), pp. 1; BEM 554 (January 2024), p. 1; BEM 556 (January 2023), pp. -6.

Petitioner is eligible for the standard deduction of \$198.00. RFT 255 (October 2023), p. 1; BEM 556, p. 4. No evidence was presented that Petitioner has dependent care or child support expenses. Next, Petitioner is disabled so verified medical expenses may be considered in determining her FAP benefit rate. Petitioner testified that she had provided some medical expenses to the Department prior to the December 2023 Notice of Case Action, but the Department found none in her case file which could be considered either because they were too old (from 2019), did not have a date of service, or they were submitted after the Notice of Case Action. Therefore, these expenses are not considered here. Per policy 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 SMD. BEM 554, p. 9. The SMD is \$165. *Id.* If the group has actual medical expenses which are more than the SMD, they have the option to verify their actual expenses instead of receiving the SMD. *Id.* In addition, groups that do not have a 24-month benefit period may choose to budget a one-time-only expense for one month or average it over the balance of the benefit period. BEM 554, p. 9. Groups with a 24-month benefit period are given the option to budget the expense for one month, average it over the remainder of the first 12 months of the benefit period, or average it over the remainder of the 24-month benefit period. BEM 554, p. 10. Each of these expenses is deducted from Petitioner's gross income to equal her Adjusted Gross Income (AGI) of \$[REDACTED].

Once the AGI is calculated, the Department must then consider the Excess Shelter Deduction. BEM 554, p. 1; 7 CFR 273.9(d)(6). The Excess Shelter Deduction is calculated by adding Petitioner's housing costs to any of the applicable standard deductions and reducing this expense by half of Petitioner's AGI. BEM 556, pp. 4-7; 7 CFR 273.9(d)(6)(ii). Petitioner is responsible for housing expenses of \$417 per month in addition to her heat and electric expenses. The heat and utility standard deduction (H/U) of \$680.00 covers all heat and utility costs including cooling except actual utility expenses (repairs or maintenance). BEM 554, p. 16. When a client is not responsible for heating and/or cooling costs, the client may receive utility standard deductions for non-heat electric, water and/or sewer, telephone, cooking fuel, and trash as applicable. BEM 554, p. 22-25. The Department is required to annually review these standards and make adjustments to reflect changes in costs. 7 CFR 273.9(d)(6)(iii)(B). The expenses and

factors outlined here are the only expenses considered for purposes of calculating the FAP budget and determining eligibility. After each item is considered, Petitioner's total housing cost is added together (\$1,097.00) and reduced by 50% of Petitioner's AGI (\$551.00) resulting in an excess shelter cost of \$546.00. *Id.*

Next, Petitioner's excess shelter cost is deducted from her AGI to equal her Net Income, of \$[REDACTED]. *Id.* A review of the Food Assistance Issuance Table shows that Petitioner is eligible for \$123.00 in FAP benefits for a group size of one. BEM 556, p. 6; RFT 260 (October 2023), p. 21. The Department properly calculated Petitioner's FAP benefit rate effective January 2024.

Medical Assistance (MA) Program

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. 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 also disputed her MA eligibility. The Department failed to present evidence on when it made its most recent decision increasing Petitioner's MA deductible to \$906.00 per month or the effectiveness date of the increased deductible. Therefore, the Petitioner's eligibility effective January 2024, ongoing is evaluated here.

MA is available (i) to individuals who are aged (65 or older), blind or disabled under SSI-related categories, (ii) to individuals who are under age 19, parents or caretakers of children, or pregnant or recently pregnant women, and (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage. BEM 105 (January 2024), p. 1. HMP provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income at or below 133% of the federal poverty level (FPL) under the Modified Adjusted Gross Income (MAGI) methodology; (iii) do not qualify for or are not enrolled in Medicare; (iv) do not qualify for or are not enrolled in other MA programs; (v) are not pregnant at the time of application; and (vi) are residents of the State of Michigan. BEM 137 (January 2024), p. 1; Modified Adjusted Gross Income (MAGI) Related Eligibility Manual, § 1.2.

Since Petitioner is a Medicare recipient, she is ineligible for HMP. Because Petitioner is a Medicare and RSDI recipient and there was no evidence that Petitioner was the parent or caretaker of a minor child, Petitioner was eligible for MA under an SSI-related category. In determining the SSI-related MA category Petitioner is eligible for, MDHHS must determine Petitioner's MA fiscal group size and net income. As an unmarried individual, Petitioner has fiscal group size for SSI-related MA purposes of one. BEM 211 (October 2023), p. 8.

The AD-Care program, an SSI-related MA category, requires that net group income cannot exceed one hundred percent of the federal poverty level plus \$20.00. BEM 163, pp. 1-2.

The 2024 federal poverty level for a one-person household was \$15,060 annually or \$1,255.00 per month. <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

Countable income is calculated by adding the amounts of income actually received or reasonably anticipated within the month. BEM 530 (April 2020), p. 2. RSDI is considered countable income. BEM 503 (January 2023), pp. 29, 37. Pursuant to policy, countable RSDI for a group is the gross amount for the previous December when the month being tested is January, February, or March. BEM 503, p. 30. Federal law requires the cost-of-living increase received in January to be disregarded for these three months. *Id.* For all other months, countable RSDI is the gross amount for the month being tested. *Id.* In December 2023, Petitioner was receiving \$ [REDACTED] per month and her increased rate of \$ [REDACTED] began with the first payment in January 2024. Therefore, Petitioner's RSDI benefit of \$ [REDACTED] is used for April 2024, ongoing for purposes of this decision. Next, \$20.00 is subtracted for the general exclusion and Petitioner's Net Income is \$ [REDACTED] respectively. BEM 541 (January 2023), p. 3. Petitioner does not have any expenses for child support, work-related expenses, nor guardianship or conservator expenses. BEM 541, pp. 1-7. Therefore, Petitioner's Net Income is greater than the net income limit for April 2024, ongoing. Petitioner is not eligible for the full coverage AD-Care program for April 2024, ongoing.

Since Petitioner has excess income for eligibility under the AD-Care program for April 2024, ongoing, an evaluation of Petitioner's eligibility for MA coverage under the Group 2 program follows. Group 2 provides MA coverage with a deductible. BEM 105, p. 1. The deductible is the amount that the client's net income (less any allowable deductions) exceeds the applicable Group 2 MA protected income level (PIL). PIL is a set allowance for non-medical need items such as shelter, food, and incidental expenses. BEM 544 (January 2020), p. 1. It is based on the client's MA fiscal group size and the county in which the client resides. *Id.* Petitioner resides in Wayne County and has a group size of one; therefore, she is in shelter area IV, and her PIL is \$375.00. RFT 200 (April 2017), p. 3; RFT 240 (December 2013), p. 1. Thus, if Petitioner's monthly net income (less allowable needs deductions) is in excess of \$375.00, Petitioner is eligible for MA assistance under the G2S program with a deductible equal to the amount of income remaining after the appropriate and allowed deductions which is greater than \$408.00.

As discussed above, Petitioner's net income was \$ [REDACTED] for April 2024, ongoing. In calculating the deductible, allowances are made for health insurance premiums and remedial services. BEM 544, pp. 1-2. Petitioner is not responsible for her Medicare premiums because she is a MSP SLMB recipient. No evidence was presented of remedial services which produce the maximum reduction of physical and mental limitations and restore an individual to their best possible functioning level. BEM 544, p. 2. Remedial care services include basic self-care and rehabilitation training which teach and reinforce dressing, grooming, eating, bathing, toileting, and following simple instructions. BEM 544, p. 2. Remedial services do not include personal care services as defined in BEM 545. Therefore, the PIL is subtracted to reach a deductible of \$906.00.

Despite the Department's calculation of the MA G2S deductible being correct, because the Department presented no evidence of an HCCDN being issued or of the effectiveness date of the increased deductible, the Department has not satisfied its burden of proof in showing that it acted in accordance with Department policy when it calculated and applied Petitioner's increased MA deductible.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the calculation of Petitioner's FAP benefit rate and **REVERSED IN PART** with respect to Petitioner's Medical Assistance (MA) Program increased deductible.

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 MA eligibility effective January 2024, ongoing;
2. Notify Petitioner in writing of its decision of her MA eligibility effective January 2024 through March 2024, and April 2024, ongoing.

AMTM/cc



Amanda M. T. Marler
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 :

Interested Parties

MDHHS-Wayne-18-Hearings
BSC4-HearingDecisions
EQADHearings
M. Schaefer
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B. Cabanaw
M. Holden
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Via-First Class Mail :

Petitioner

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