



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

[REDACTED], MI [REDACTED]

Date Mailed: June 7, 2024
MOAHR Docket No.: 24-004154
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 May 28, 2024. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Megan latonna, Hearings Facilitator and Eligibility Specialist. Translation services were provided by Mona Sayed, an independent English-Arabic translator engaged by the Department.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefits effective April 1, 2024?

Did the Department properly determine Petitioner's eligibility for Medicaid (MA) coverage effective April 1, 2024?

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 is an ongoing recipient of FAP benefits for a group of one and an ongoing recipient of MA benefits.
2. Petitioner is unmarried and is [REDACTED] years old and not disabled or a disabled veteran for purposes of FAP or MA.

3. On [REDACTED] 2024, Petitioner submitted a renewal application for his FAP and MA benefits, which was due to the Department on March 31, 2024. (Exhibit A, pp. 8 – 10).
4. Petitioner's sole source of income is from insurance payments made to him from Progressive Insurance (Insurance) in the amount of \$2,336.57 per month. (Exhibit A, pp. 1, 13 – 14).
5. On March 6, 2024, the Department sent Petitioner a Notice of Case Action (NOCA), approving Petitioner for FAP benefits in the amount of \$23 per month, effective April 1, 2024. (Exhibit A, pp. 19 – 20).
6. On March 6, 2024, the Department sent Petitioner a Health Care Coverage Determination Notice (MA Notice) stating Petitioner was eligible for full coverage MA for March 2024 and eligible for Plan First (PFFP) MA effective April 1, 2024 ongoing. (Exhibit A, pp. 26 – 29).
7. On April 11, 2024, the Department received Petitioner's request for hearing in which Petitioner disputed closure of his MA benefits and amount of his FAP benefits. (Exhibit A, pp. 5 – 6).

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).

Petitioner requested a hearing to dispute the amount of his FAP benefits and his approval for PFFP MA coverage.

Food Assistance Program

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's primary concern with the Department's determination of his FAP benefits was the inclusion of his income, which is from Insurance.

To determine whether the Department properly calculated Petitioner's FAP benefit amount, the Department begins by considering all countable earned and unearned income available to the Petitioner. 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. For recipients of income from sources other than employment, the Department counts the gross benefit amount as unearned income unless specifically excluded under policy. BEM 503 (April 2024), p. 1. Insurance payments that are specifically made as reimbursement for incurred medical expenses are excluded as income, including automobile insurance payments for medical expenses. BEM 503, p. 23 – 24. Federal regulations state that, for purposes of FAP, countable unearned income includes, but is not limited to, annuities; pensions; retirement, veterans, or disability benefits; worker's or unemployment compensation; and old-age, survivors, or social security benefits. 7 CFR 273.9(b)(2)(ii).

The Department testified, and Petitioner confirmed, that Petitioner's current income is [REDACTED] per month from Insurance. (Exhibit A, pp. 1, 13 – 14). Petitioner testified that the income is from insurance coverage from an auto accident he was involved in [REDACTED] 2023. During the hearing, the basis for Petitioner's receipt of payments from Insurance was not clear; specifically, it was unclear whether any or all of the proceeds are payable to Petitioner for lost wages, injury or disability, or on some other basis. There was no evidence that Insurance was paid to Petitioner to reimburse him for medical expenses. Therefore, under federal regulations, Petitioner's payments received from Insurance must be included in the calculation of his FAP budget. Because Petitioner does not earn the payments through employment, the Department properly included [REDACTED] (dropping cents) from Insurance as countable unearned income in calculating Petitioner's FAP budget.

After countable income is calculated, the Department must determine whether Petitioner is entitled to any deductions from that income. Petitioner did not report that he is a senior (over age 60 for FAP purposes), disabled, or a disabled veteran (SDV). FAP groups with only unearned income and no SDV members are entitled to the following deductions: (1) a standard deduction, (2) day care expense deduction, (3) child support expense deduction, and (4) an excess shelter deduction. BEM 554 (February 2024), p. 1. For groups without an SDV member, the excess shelter deduction is limited to \$672. BEM 554, p. 1; RFT 255 (October 2023).

First, all FAP groups are entitled to a standard deduction in an amount determined by the group size. BEM 550 (February 2024), p. 1. Petitioner's certified group size is one and groups of one receive a standard deduction of \$198. RFT 255. The Department properly subtracted the standard deduction of \$198. (Exhibit A, pp. 15 – 16).

Petitioner testified that he did not have any child care expenses or make payments for child support. Therefore, no additional deductions were taken from Petitioner's total income amount. Petitioner's gross countable income of [REDACTED] reduced by the standard deduction of \$198, results in an adjusted gross income (AGI) of [REDACTED].

Next, the Department must determine any excess shelter expense deduction available to Petitioner. To calculate the excess shelter deduction, the Department must review Petitioner's housing and utility expenses, if any. Petitioner confirmed that his housing

expense is rent in the amount of \$1,100 per month. The Department budgeted Petitioner's reported rent for his housing expense. (Exhibit A, p. 17). Petitioner also confirmed that he pays all heat, electric, and other utilities. When a FAP group has heating and other utility expenses, separate from the housing expense, it is entitled to a heat and utility (h/u) standard amount to be included in the calculation of the excess shelter deduction, which is the highest amount available to FAP groups who pay utilities. BEM 554, p. 17. The h/u standard amount is \$680.00 (RFT 255), and the Department properly used that amount when calculating Petitioner's excess shelter expense. (Exhibit A, p. 17).

Once Petitioner's housing and utility expenses were determined, the Department added the housing expense and h/u standard together for a total shelter amount of \$1,780. The Department then subtracted 50% of Petitioner's [REDACTED] AGI [REDACTED] in this case), from the total shelter amount to determine Petitioner's excess shelter deduction of \$711. Because Petitioner's adjusted excess shelter amount exceeds the maximum expense, and there are no SDV members in Petitioner's group, Petitioner's excess shelter deduction is limited to \$672. The Department properly subtracted an excess shelter deduction of \$672 (Exhibit A, p. 17) from Petitioner's AGI of [REDACTED] which determines Petitioner's net monthly income, for purposes of FAP, to be [REDACTED] (Exhibit A, pp. 15 – 16). Because this is the net monthly income amount reached by the Department, the Department's calculation was in accordance with policy.

Once the net monthly income has been determined under the FAP program, the Department determines what benefit amount Petitioner is entitled to, based on the group size, according to the Food Assistance Issuance Table of RFT 260. Based on Petitioner's one person FAP group size and net income of [REDACTED] Petitioner's monthly FAP benefit is \$23. RFT 260 (October 2023), p. 21. This amount is consistent with the evidence presented. Therefore, the Department acted in accordance with Department policy in calculating Petitioner's monthly FAP benefit.

Medicaid

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's primary concern with the Department's determination of his MA coverage was the inclusion of his income from Insurance, thereby making him ineligible for full coverage MA. The Department approved Petitioner for PFFP, effective April 1, 2024 ongoing.

When an individual applies for MA coverage, they are not applying for a specific type of MA coverage, but for the MA category that is most beneficial for them. The most beneficial category is the one that results in eligibility, the least amount of excess income, or the lowest cost share. BEM 105 (January 2024), p. 3. Determining whether the Department properly determined an individual's MA eligibility requires consideration of all MA categories. Individuals may qualify under more than one MA category and Federal law gives them the right to the most beneficial category. BEM 105, p. 3. All MA category options must be considered in order for the Petitioner's right of choice to be meaningful. BEM 105, p. 3. 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, and (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage. 42 CFR 435.911; 42 CFR 435.100 to 435.172; BEM 105, p. 1; BEM 137 (January 2024), p. 1; BEM 124 (July 2023), p. 1.

In this case, Petitioner is ■ years old, not blind or disabled, and not a caretaker of a minor child. (Exhibit A, pp. 8 – 10). Petitioner did not testify that he is pregnant. Therefore, Petitioner is potentially eligible for HMP or PFFP. PFFP is a limited coverage MAGI-related MA category (BEM 124, p. 1), while HMP provides broader coverage and is, therefore, a more beneficial coverage for individuals.

To qualify for health care coverage under HMP, the individual must:

- be 19 – 64 years of age,
- not qualify for or be enrolled in Medicare,
- not qualify for or be enrolled in other Medicaid programs,
- not be pregnant at the time of application,
- meet Michigan residency requirements,
- meet Medicaid citizenship requirements, and
- have income at or below 133 percent Federal Poverty Level (FPL).

BEM 137, p. 1.

An individual is eligible for HMP if their Modified Adjusted Gross Income (MAGI)-income does not exceed 133% of the FPL applicable to the individual's group size. An individual's group size for MAGI purposes requires consideration of the client's tax filing status. Here, Petitioner filed his own taxes and claimed no dependents. (Exhibit A, p. 8). Therefore, for HMP purposes, Petitioner has a household size of one. BEM 211 (October 2023), pp. 1 – 2.

To determine Petitioner's MAGI-income, the Department must calculate the countable income of the group. BEM 500, p. 1. To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. 42 CFR 435.603(e); BEM 500, p. 3. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500, p. 3. To determine income in accordance with MAGI, a client's tax-exempt foreign income, tax-exempt Social Security benefits, and tax-exempt interest, if any, are added to the client's adjusted gross income (AGI)

from the client's tax return. AGI is found on line 11 of IRS tax forms 1040, 1040-SR, and 1040-NR. Alternatively, if the income is earned income, it is calculated by taking the "federal taxable wages" for each income earner in the household, as shown on the paystub or, if not shown on the paystub, by using gross income before taxes reduced by any money the employer takes out for health coverage, child care, or retirement savings. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>. The Department determines HMP eligibility based on current monthly income. (MAGI-Based Income Methodologies (SPA 17-0100), eff. 11/01/2017, app. 03/13/2018); 42 CFR 435.603(h). The Internal Revenue Code provides that gross income does not include amounts received for personal injuries or sickness paid through a) workers' compensation acts, b) periodic payments for damages (other than punitive damages), c) non-employment accident or health insurance, among other specific sources. 26 USC 104(a)(1) – (6).

The Department must verify income information provided by a client at redetermination. BEM 500, p. 14; BEM 503, p. 44. The Department must obtain verification when information, provided by the client or a third party, regarding an eligibility factor is unclear, inconsistent, incomplete, or contradictory. BAM 130 (October 2023), p. 1. Verification is also required when a change, affecting eligibility or benefit level, is reported. BAM 130, p. 1. In this case, Petitioner was approved for HMP through March 31, 2024; his coverage was changed to PFFP only effective April 1, 2024 ongoing based on Petitioner's income from Insurance. (Exhibit A, pp. 26 – 29).

As set forth previously, The Department testified, and Petitioner confirmed, that Petitioner's current income is ██████████ per month from Insurance. (Exhibit A, pp. 1, 13 – 14). Petitioner testified that the income is from insurance coverage from an auto accident he was involved in in ██████████ 2023. Neither the Department or Petitioner provided evidence or testimony as to the basis for Petitioner's receipt of payments from Insurance; specifically, it was unclear whether any or all of the proceeds are payable to Petitioner on account of personal injury or sickness payable to him for through a workers compensation policy, for non-punitive damages, or on account of non-employment accident or health insurance. Because, under federal tax laws, gross income does not include certain amounts paid to Petitioner based on personal injury or sickness, and Petitioner testified that he receives payment from Insurance arising from an auto accident in ██████████ 2023, the Department must first determine if said payments must be included in the calculation of Petitioner's AGI in order to properly determine Petitioner's MAGI-income, and therefore, Petitioner's eligibility for HMP. This requires the Department to verify Petitioner's federal tax information and determine whether the Insurance payments he receives are included in the calculation of his AGI for tax purposes and properly included in his MA budget in accordance with MAGI under federal tax law.

Based on the foregoing, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it failed to establish that it calculated Petitioner's income in accordance with MAGI under federal tax law in determining his eligibility for MA.

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 FAP benefit amount but that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it failed to establish that it calculated Petitioner's income in accordance with MAGI under federal tax law.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to Petitioner's FAP benefit for April 1, 2024 ongoing and **REVERSED IN PART** with respect to Petitioner's MA.

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. Recalculate Petitioner's income in accordance with MAGI under federal tax law for April 1, 2024 ongoing;
2. Provide Petitioner with the most beneficial MA coverage available to him, if any, that he is eligible to receive, effective April 1, 2024 ongoing; and
3. Notify Petitioner of its decision in writing.

CML/nr



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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