



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]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: August 9, 2024
MOAHR Docket No.: 24-007271
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 July 31, 2024. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Avery Smith, Assistance Payments Supervisor.

ISSUE

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

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 Food Assistance Program (FAP) and MA.
2. Petitioner is single, [REDACTED] years old, and without dependents. She receives Retirement Survivors and Disability Insurance (RSDI) of \$1,087.70 per month, minus her Medicare Part B, in the amount of \$174.70.
3. Petitioner also receives approximately \$625 per month in real estate income.
4. On January 4, 2024, the Department received a copy of a land contract Petitioner and her sister entered into as sellers on September 3, 2015. (Exhibit A, pp. 13 – 24).

5. On January 20, 2024, the Department sent Petitioner a Notice of Case Action (NOCA) closing Petitioner's FAP case effective January 1, 2024, due to excess net income. (Exhibit A, pp. 25 – 29).
6. Although the Department sent Petitioner a March 2, 2024 Health Care Coverage Determination Notice (HCCDN) approving her for full coverage MA effective April 1, 2024, the Department changed Petitioner's MA coverage to Group 2 Aged, Blind and Disabled (G2S) MA with the following deductibles:
 - a. April 2024, \$ [REDACTED] per month,
 - b. May 2024, \$ [REDACTED] per month, and
 - c. June 2024 ongoing, \$ [REDACTED] per month.

The Department did not issue a HCCDN to Petitioner regarding the changes.

7. On June 21, 2024, the Department received a request for hearing from Petitioner, disputing the Department's calculation of her income and deductible amounts for MA and disputing closure of her FAP case. (Exhibit A, pp. 3 – 5).
8. On June 26, 2024, the Department certified Petitioner for G2S MA with a deductible of \$1,093, effective August 1, 2024 ongoing. (Exhibit A, pp. 1, 30). The Department did not issue a HCCDN to Petitioner regarding the change.

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 Department's calculation of her income and deductible amount for MA. Petitioner also requested a hearing regarding FAP.

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.

Pursuant to Department policy, a client's request for hearing must be received by the Department within 90 days of the date of the written notice of case action (NOCA). BAM 600 (February 2024), pp. 6 – 7.

In this case, Petitioner disputes a NOCA issued January 20, 2024, closing her FAP case. (Exhibit A, pp. 25 – 29). The Department testified that there were no additional NOCAs issued in Petitioner's case between January 21, 2024 and June 21, 2024. The Department received the hearing request from Petitioner on June 21, 2024, which is more than 90 days after the Department's decision. Therefore, Petitioner's hearing request concerning her FAP coverage is untimely.

Petitioner's hearing request concerning FAP was not timely filed and does not present a hearable issue and is, therefore, **DISMISSED** for lack of jurisdiction as to her FAP.

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.

Petitioner requested a hearing to dispute her MA coverage. Although Petitioner was notified that she was approved for full coverage MA effective April 1, 2024 ongoing, the Department testified that it changed Petitioner's MA coverage to G2S subject to a monthly deductible, effective April 1, 2024 ongoing.

Whether the Department properly determined each member's MA eligibility requires consideration of all MA categories. Under federal law, an individual is entitled to the most beneficial category, which is the one that results in a) eligibility, b) the least amount of excess income, or c) the lowest cost share. BEM 105 (January 2024), p. 2. All MA category options must be considered in order for the Petitioner's right of choice to be meaningful. BEM 105, p. 2.

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. Because Petitioner is over age 65 and is not the caretaker of a minor child, Petitioner is eligible for MA under only SSI-related categories.

The AD-Care program is a Group 1, full-coverage, SSI-related MA program for disabled individuals who are income-eligible based on their MA fiscal group size. BEM 163 (July 2017), p. 1. Net income for this program cannot exceed 100% of the federal poverty level (FPL) for the fiscal group size. BEM 163, p. 1. For SSI-related MA purposes, adults who do not live with a spouse are a fiscal group size of one. BEM 211 (October 2023), p. 8. Petitioner testified that she is not married; therefore, she is a fiscal group of one. Because she is a fiscal group of one, to be income eligible for this program,

Petitioner's monthly income would have had to be \$1,275 or less. RFT 242 (April 2024).

In this case, Petitioner testified that she receives RSDI in the amount of \$1,087.70 per month, plus one half of a monthly land contract payment she and her sister receive. The land contract payment is \$1,216.10 per month. (Exhibit A, p. 15). The gross amount of RSDI and income from land contract proceeds (less allowable expenses) are unearned income. BEM 503 (April 2024), pp. 30 – 31, 33; BEM 541 (January 2024), p. 3; see also BEM 163, p. 2. Petitioner did not report any expenses associated with her one-half ownership of the land contract, such as taxes, insurance, or secured liens against the property. BEM 503, p. 33. Therefore, Petitioner's gross RSDI plus one half of the land contract payments equals \$1,696. For SSI-related MA, unearned income is reduced by a \$20 disregard. BEM 541 (January 2024), p. 3. Petitioner's income reduced by \$20 equals \$1,676 in net unearned income. Other deductions to determine net income, such as expenses related to non-SSI children or court-appointed guardian and/or conservator expenses, do not apply in this case. See BEM 541, pp. 1, 3. Therefore, Petitioner's countable net income was \$1,676 and because \$1,676 is more than the \$1,275 limit for AD-Care MA, the Department properly determined Petitioner was not eligible for AD-Care MA.

Clients who are ineligible for full-coverage MA under AD-Care because of excess income may still be eligible for SSI-related MA under the G2S program, which provides for MA coverage with a monthly deductible. BEM 105, p. 1; BEM 166 (April 2017), p. 1.

The deductible for G2S MA is equal to a) the amount the individual's net income, calculated in accordance with the applicable Group 2 MA policy, b) minus allowable needs deductions set forth in BEM 544, and c) minus the applicable Group 2 MA protected income level (PIL). BEM 166, p. 2; BEM 541, pp. 1, 3 – 4; BEM 544 (January 2020). The PIL is a set allowance for non-medical need items such as shelter, food, and incidental expenses that is based on the county in which the client resides and the client's fiscal MA group size. BEM 544, p. 1. The PIL for Oakland County, where Petitioner resides, is \$408 for a one-person fiscal group. RFT 200 (April 2017), p. 3; RFT 240 (December 2013).

In this case, the Department presented a budget for Petitioner's G2S eligibility for August 2024 ongoing. (Exhibit A, p. 30). From Petitioner's net income of \$1,676, the Department subtracted \$174.70 per month for Petitioner's Medicare Part B premiums. For G2S, other deductions, such as expenses related to remedial services for those living in adult foster care (AFC) or other group living situations, do not apply in this case. BEM 544, p. 2. Therefore, Petitioner was entitled to a \$174.70 deduction from her net income. \$1,696 minus \$174.70 reduced Petitioner's countable net income to \$1,521.30. Lastly, Petitioner was entitled to a \$408 PIL deduction from her \$1,521.30 net income, which left \$1,113.30, which becomes the monthly G2S deductible. The Department's calculations were correct. Therefore, the Department properly determined Petitioner's G2S deductible for August 2024 ongoing.

Notwithstanding the foregoing, the Department testified that the last HCCDN issued to Petitioner regarding her MA coverage was sent on March 2, 2024 and stated Petitioner was approved for full coverage MA effective April 1, 2024 ongoing. (Exhibit A, pp. 32 – 34). During the hearing, the Department also testified that a review of the eligibility summary in Petitioner's case reflected that the Department changed Petitioner's MA coverage after the HCCDN was issued and that she was subject to a monthly deductible of \$1,079 in April 2024, \$1,771 in May 2024, and \$1,121 in June 2024; and that on June 26, 2024, the Department certified Petitioner for MA coverage subject to a monthly deductible of \$1,093 effective August 1, 2024. There was no evidence of what prompted the changes in Petitioner's MA coverage between March 2, 2024 and the date of the hearing or why there were so many changes. Additionally, no HCCDNs were sent to Petitioner regarding any of the changes reported by the Department during the hearing. Therefore, the Department did not act in accordance with Department policy when it determined Petitioner's MA eligibility from April 1, 2024 through July 31, 2024, and changed her coverage multiple times and failed to send her notice of any of the changes.

Additionally, during the hearing, the Department testified that a HCCDN was issued to Petitioner on June 25, 2024 regarding MSP. The Department's testimony was unclear as to whether it approved or denied Petitioner for MSP. Because Petitioner's request for hearing pre-dates any HCCDN regarding MSP, this decision does not address any determination made by the Department regarding that program.

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 did not act in accordance with Department policy when it determined Petitioner's MA eligibility from April 1, 2024 to July 31, 2024 and failed to send her notice of any of changes to her coverage from April 1, 2024 ongoing.

DECISION AND ORDER

Accordingly, Petitioner's request for hearing with respect to FAP is **DISMISSED**, and the Department's decision is **REVERSED** with respect to 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. Redetermine Petitioner's eligibility for MA for April 1, 2024 through July 31, 2024;
2. If eligible, provide Petitioner with the most beneficial MA coverage she was eligible to receive for April 1, 2024 through July 31, 2024; and
3. Notify Petitioner of its decision in writing as to Petitioner's MA eligibility for April 1, 2024 ongoing.



Caralyce M. Lassner
Administrative Law Judge

CML/nr

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

Yaita Turner
Oakland County Southfield District III
25620 W. 8 Mile Rd
Southfield, MI 48033

MDHHS-Oakland-6303-Hearings@michigan.gov

Interested Parties

BSC4
M. Schaefer
EQAD
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Via-First Class Mail :

Petitioner

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