



GRETCHEN WHITMER  
GOVERNOR

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

MARLON BROWN  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: August 16, 2024  
MOAHR Docket No.: 24-008138  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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 August 14, 2024. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Sunshine Simonson, Eligibility Specialist.

### **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. Petitioner is [REDACTED] years old and receives Retirement Survivors Disability Insurance (RSDI) benefits in the amount of \$ [REDACTED] per month.
2. Petitioner has an annual homeowner's insurance expense of \$1,239.92 and annual property tax expense of \$2,542.97.
3. On March 26, 2024, the Department issued a Notice of Case Action to Petitioner advising him that he was eligible for \$46.00 per month in FAP benefits effective May 1, 2024 based upon \$ [REDACTED] in unearned income, the \$198.00 standard

deduction, \$305.54 in housing costs, and the \$680.00 heat and utility standard deduction (H/U).

4. Effective April 2024, Petitioner was enrolled in the MA Group 2-Aged, Blind, Disabled (G2S) category with a deductible of \$1,003.00 per month.
5. On June 20, 2024, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner advising him that he was eligible for Plan First (PF) MA benefits.
6. On July 8, 2024, the Department received Petitioner's request for hearing disputing the amount of his FAP benefits in addition to his MA eligibility.
7. On August 12, 2024, the Department issued a new HCCDN to Petitioner advising him that he was eligible for MA benefits with a deductible of \$1,004.00 per month.
8. At the hearing, the parties agreed to address Petitioner's MA eligibility from the Department's most recent August 12, 2024 decision even though it fell outside the normal period of review.

### **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.

### **Timeliness of the Hearing Request**

In this case, Petitioner disputed his FAP benefit rate and MA eligibility. Pursuant to policy, the only issues which may be addressed at a hearing are those issues arising within the 90 days prior to Petitioner's request for hearing with an exception in FAP

cases where the client can dispute the current level of benefits at any time. BAM 600 (June 2024), p. 7.

On March 26, 2024, the Department issued a Notice of Case Action regarding Petitioner's FAP benefit rate and advised him on page 3 of the document that he had 90 days to dispute the decision or until June 24, 2024. Because Petitioner's hearing request was not received by the Department until July 8, 2024, Petitioner's request for hearing was not timely and only the current benefit as of July 2024, ongoing will be reviewed as part of this decision. Petitioner's FAP benefit rate from May 2024 through June 2024 is not considered as part of this decision due to the untimely hearing request.

In addition to Petitioner's FAP request for hearing, Petitioner also submitted a request for hearing regarding his MA benefits. The Department did not provide a copy of any HCCDN issued to Petitioner but noted that Petitioner was eligible for G2S effective April 1, 2024 and that two HCCDNs were issued on June 20, 2024 and August 12, 2024. Because no evidence was submitted that Petitioner's request was untimely and because the parties agreed to have the August 12, 2024 HCCDN addressed in this hearing, Petitioner's MA eligibility is reviewed effective April 1, 2024, ongoing.

### **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 client. 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. 6-8. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9

Petitioner receives a gross RSDI benefit of \$ [REDACTED] per month. Per policy, the Department must consider the gross income in determining FAP eligibility. BEM 500, p. 2; BEM 505, p. 3-4, 7; BEM 503 (April 2024), p. 29. RSDI is received on a monthly basis so there is no need to further standardize the income.

After consideration of income, the Department considers all appropriate deductions and expenses. Petitioner is a Senior, Disabled, or disabled Veteran (SDV); therefore, he is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter deduction.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- Standard Medical Deduction for medical expenses exceeding \$35.00.

BEM 550 (February 2024), pp. 1; BEM 554 (July 2024), p. 1; BEM 556 (May 2024), pp. 3-6.

No evidence was presented that Petitioner has any child support or dependent care expenses. The Department did not budget any medical expenses for Petitioner noting that none had been received prior to Petitioner's request for hearing. Petitioner disputed the Department's testimony but was unable to identify when he submitted any medical expenses except for a couple of days before the hearing. As of January 2021, policy provides that an SDV group that has a *verified* one-time or ongoing medical expense or expenses of more than \$35.00 for an SDV person will receive the Standard Medical Deduction (SMD) of \$165.00. BEM 554, p. 9. If the group has actual medical expenses which are more than the SMD, the client has the option to verify the actual expense instead of receiving the SMD. If the verified expense minus \$35.00 is greater than the SMD, the client will receive the verified expense minus \$35.00. *Id.* Finally, Petitioner has a group size of one, so he is eligible for the standard deduction of \$161.00. RFT 255 (October 2023), p. 1; BEM 556, p. 4. After consideration of each of these deductions, Petitioner's Adjusted Gross Income (AGI) would be calculated by subtracting each item from the total gross income. Therefore, Petitioner's AGI is \$ [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). Housing expenses include rent, mortgage, second mortgage, home equity loan, condo and maintenance fees, lot rent, property taxes, state and local assessments, and insurance on the structure. BEM 554, p. 15. Petitioner has homeowner's insurance and taxes which total \$3,782.89 annually or \$315.24 per month. According to the Notice of Case Action, the Department only budgeted \$305.54. In addition to the housing expense, the Department considers a client's utility expenses. Petitioner is eligible for the H/U of \$680.00. RFT 255 (October 2023), p. 1. The H/U covers all heat and utility costs including cooling except actual utility expenses (repairs or maintenance). BEM 554, pp. 15-16. 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. BEM 554, p. 22-25. The expenses outlined here are the only expenses considered for purposes of calculating the FAP budget and determining eligibility. Petitioner's total shelter cost is \$995.24 which is reduced by 50% of Petitioner's AGI resulting in an Excess Shelter Deduction of \$395.24. *Id.* The Department only budgeted \$386.00.

Next Petitioner's excess shelter deduction is subtracted from his AGI to determine his net income of \$ [REDACTED]. *Id.* Finally, Petitioner's net income is compared against the Food Assistance Issuance Tables found in RFT 260 for a monthly FAP benefit rate of \$49.00 per month. BEM 556, p. 6; RFT 260 (October 2023), p. 11. The Department has not properly calculated Petitioner's FAP benefit rate.

**MA Eligibility effective April 2024**

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, he 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 potentially 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 \$15,060.00 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. Countable RSDI is the gross amount for the month being tested. *Id.* Petitioner receives \$[REDACTED] per month. Next, \$20.00 is subtracted for the general exclusion and Petitioner's Net Income is \$[REDACTED]. BEM 541 (January 2024), p. 3. No evidence was presented of any expenses for 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 [REDACTED] County and has a group size of one; therefore, he is in shelter area IV, and his 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 \$375.00.

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. No evidence was presented of whether Petitioner is responsible for his Medicare premiums despite being a Medicare recipient or if he is enrolled in the Medicare Savings Program (MSP). No evidence was presented that Petitioner receives 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. Because the Department failed to indicate whether Petitioner is responsible for his Medicare premiums, the Department has not met its burden of proof in establishing that it had properly determined Petitioner's MA eligibility. Assuming that Petitioner is not responsible for his Medicare premiums because he is a Medicare Savings Program (MSP) recipient, the PIL would be subtracted from Petitioner's net income to reach a deductible of \$1,003.00. If Petitioner is responsible for a Medicare premium, his MA deductible would be less.

The Department also determined that Petitioner was eligible for PF. PF-MA is also a MAGI-related limited coverage Medicaid group available to any United States citizen or individual with an immigration status entitling them to full Medicaid coverage (not emergency services only (ESO)) residing in Michigan whose fiscal group's net income does not exceed 195% of the federal poverty level (FPL) and meets the other eligibility criteria. BEM 124 (July 2023), p. 1. There are no age or gender restrictions to PF-MA eligibility. BEM 124, p. 1. PF is an MA program limited to family planning services only. <https://www.michigan.gov/mdhhs/assistance-programs/healthcare/adults/planfirst>.

Determination of an individual's PF-MA eligibility requires consideration of the fiscal group's size and income. BEM 124, pp. 1-2. An individual's group size for MAGI purposes requires consideration of the client's tax filing status. Petitioner has a group size of one because he is not married, and no evidence was presented of dependents. BEM 211, pp. 1-2. 195% of the annual FPL in 2024 (the most current applicable FPL) for a household with one member is \$29,367.00. See <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for PF-MA, Petitioner's annual income cannot exceed \$29,367.00 or \$2,447.25 per month.

To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500, pp. 3-4. Income is verified via electronic federal data sources in compliance with MAGI methodology. MREM, § 1. In

determining an individual's eligibility for MAGI-related MA, the Department bases financial eligibility on current monthly household income. Centers for Medicare & Medicaid Services, *State Plan Amendment 17-0100 Approval Notice*, (March 19, 2018), p. 7. MAGI is calculated by reviewing the client's adjusted gross income (AGI) and adding it to any tax-exempt foreign income, tax-exempt Social Security benefits, and tax-exempt interest. HealthCare.gov, *Modified Adjusted Gross Income (MAGI)* < <https://www.healthcare.gov/glossary/modified-adjusted-gross-income-magi/>> (accessed July 20, 2023). AGI is found on IRS Tax Form 1040 at line 11. HealthCare.gov, *Modified Adjusted Gross Income (MAGI)* <https://www.healthcare.gov/glossary/adjusted-gross-income-agi/>> (accessed July 20, 2023). Alternatively, 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, childcare, or retirement savings. HealthCare.gov, *Modified Adjusted Gross Income (MAGI)* < <https://www.healthcare.gov/income-and-household-information/how-to-report/>> (accessed July 20, 2023). In situations where income is difficult to predict because of unemployment, self-employment, commissions, or a work schedule that changes regularly, income should be estimated based upon past experiences, recent trends, possible changes in the workplace, and similar information. *Id.*

Petitioner has a regular monthly RSDI benefit of \$ [REDACTED] per month. No evidence was presented of expenses for health coverage, childcare, or retirement savings. Therefore, his gross income is his MAGI which is less than the PF income limit. Petitioner is eligible for PF. If Petitioner does not want to receive PF benefits, he can request in writing to withdraw from the PF MA category.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's FAP benefit rate and determined Petitioner's MA eligibility with a deductible of \$1,003.00 per month.

### **DECISION AND ORDER**

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

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 April 2024;
2. Recalculate Petitioner's FAP benefit rate effective July 2024;

3. If otherwise eligible, issue FAP and/or MA supplements if applicable to Petitioner or on his behalf for benefits not previously received; and,
4. Notify Petitioner in writing of its decision.

AM/cc



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**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-17-hearings  
BSC4-HearingDecisions  
EQADHearings  
M. Schaefer  
N. Denson-Sogbaka  
B. Cabanaw  
M. Holden  
MOAHR

**Via-First Class Mail :**

**Petitioner**

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