



STATE OF MICHIGAN

GRETCHEN WHITMER  
GOVERNOR

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: September 9, 2024  
MOAHR Docket No.: 24-008534  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: L. Alisyn Crawford**

### **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 22, 2024. Petitioner was present at the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Dina Grifo, Assistance Payments Worker.

### **ISSUE**

Did the Department properly determine Petitioner's Medical Assistance (MA) eligibility?

Did the Department properly determine Petitioner's Food Assistance Program (FAP) replacement benefit amount?

### **FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. At all relevant times, Petitioner was an ongoing recipient of FAP and MA benefits.
2. Petitioner is [REDACTED] years old, disabled, and lives alone. (Exhibit A, p. 7).
3. Petitioner receives unearned income from Social Security Administration in the form of Retirement, Survivor's, and Disability Insurance (RSDI) benefits in the amount of [REDACTED]
4. Petitioner is a Medicare recipient.

5. On May 2, 2024, the Department sent a Health Care Coverage Determination Notice (HCCDN) to Petitioner informing her that she was approved for limited coverage MA under the Plan First Family Planning (PFFP) program effective July 1, 2024 ongoing. (Exhibit A, pp. 14-18). Further, the HCCDN noted that effective June 1, 2024, Petitioner was approved for MA coverage under a deductible program with a \$1,345 monthly deductible and a Medicare Savings Program (MSP) under Non-Categorically Eligible Michigan Beneficiaries (NMB). The HCCDN also included a Deductible Report form for Petitioner to complete for her program on a monthly basis.
6. On June 7, 2024, Petitioner submitted a Food Replacement Affidavit reporting that \$3,018.35 in FAP benefits were stolen from her EBT card. (Exhibit A, pp. 22-24).
7. On July 9, 2024, the Department sent a Benefit Notice informing Petitioner that she was approved for FAP fraud benefit replacement in the lump sum amount of \$322. (Exhibit A, pp. 25-28).
8. On July 19, 2014, Petitioner requested a hearing disputing the Department's decisions regarding her MA and FAP cases. (Exhibit A, pp. 4-5).

### **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).

#### **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.

Upon reviewing Petitioner's eligibility criteria at redetermination, the Department concluded that Petitioner was eligible for MA coverage under the Group 2 Aged, Blind, or Disabled (G2S) program with a monthly deductible. Petitioner disputes this coverage.

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, (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage, and (iv) to individuals who meet the eligibility criteria for PFFP coverage. 42 CFR 435.911; 42 CFR 435.100 to 435.172; BEM 105 (January 2024), p. 1; BEM 137 (January 2024), p. 1; BEM 124 (July

2023), p. 1. Under federal law, an individual eligible under more than one MA category must have eligibility determined for the category selected and is entitled to the most beneficial coverage available, which is the one that results in eligibility and the least amount of excess income or the lowest cost share. BEM 105 (January 2021), p. 2; 42 CFR 435.404.

Because Petitioner is disabled, enrolled in Medicare and not the caretaker of a minor child, the Department properly concluded that she was potentially eligible for SSI-related MA only. BEM 105, p. 1. The AD-Care program is a Group 1 full-coverage SSI-related MA program for 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). BEM 163, p. 1. An unmarried client who applies for SSI-related MA is considered a fiscal group size of one. BEM 163, p. 1. Because Petitioner has a fiscal group size of one, to be income eligible for this program, her income would have had to be [REDACTED] or less. RFT 242 (April 2024).

In this case, Petitioner receives RSDI in the amount of [REDACTED]. The gross amount of RSDI is counted as unearned income but, for purposes of SSI-related MA, is reduced by \$20 to determine the net unearned income. BEM 503 (April 2024), pp. 30-31; see also BEM 163. The Department properly determined the fiscal group net unearned income was [REDACTED] (RSDI amount reduced by \$20). This amount is more than 100% of the FPL, and therefore, the Department acted in accordance with Department policy when it determined that Petitioner was not eligible for MA coverage under AD-Care.

The Department determined that Petitioner was eligible for MA coverage under the G2S program. BEM 166 (April 2017), p. 1. Clients who are ineligible for full-coverage MA coverage because of excess income may still be eligible for G2S MA, which provides MA coverage with a monthly deductible. BEM 105, p. 1. The deductible for G2S is equal to (i) the amount the individual's net income, calculated in accordance with the applicable Group 2 MA policy, (ii) minus specific expenses set forth in BEM 544; (iii) 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 nonmedical 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 [REDACTED] County, where Petitioner resides, for a one-person fiscal group, is [REDACTED]. RFT 200 (April 2017), p. 2; RFT 240 (December 2013), p. 1.

At the hearing, the Department testified to how it arrived at its calculation of Petitioner's monthly deductible based on a G2S was reviewed. Petitioner's net income is reduced by allowable needs deductions. Allowable needs deductions consist of health insurance premiums of the MA group and remedial services costs for individuals in adult foster care homes or homes for the aged. BEM 544, pp. 1-2. The Department testified that the budget reflected allowable needs deductions for Petitioner's Medicare Part B premium, which Petitioner paid monthly from her RSDI income in the amount of [REDACTED]. No evidence was introduced that Petitioner was in a home for the aged or an adult foster care home or received any remedial services. Therefore, Petitioner was not eligible for any allowable

needs deductions other than the Part B premium. Based on the evidence and testimony provided by the Department, Petitioner's net income of [REDACTED] reduced by \$174 in allowable needs deductions and by the [REDACTED] PIL results in a deductible amount less than [REDACTED] determined by the Department. Thus, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's G2S deductible amount.

### **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.

In this case, Petitioner reported theft of her FAP benefits, in the amount of \$3,018.35, to the Department and requested replacement benefits. The Department approved her request for replacement benefits in the amount of \$322. Petitioner requested a hearing asserting that the entire amount lost should be replaced by the Department.

The Economic Stability Administration (ESA), a division of the Michigan Department of Health and Human Services, issues supplemental policies and processes concerning or addressing issues related to FAP, among others, as needed. ESA Memo 2023-53 (ESA 2023-53) issued October 23, 2023, with an effective date of October 30, 2023, addresses the issue of Bridge Card fraud as it relates to FAP benefits and other programs. In conjunction with the memo, the ESA also issued the FAP Bridge Card Fraud Replacement Local Office Process Guide (Process Guide) which describes fraud to include card cloning, skimming, and other activities including phishing schemes. Process Guide, p. 1.

The ESA 2023-53 memo states in relevant part that FAP fraud benefit replacement can only be approved for up to two months' worth of benefits issued prior to the fraud or the amount that was fraudulently removed, whichever is lower. Petitioner's reimbursed FAP fraud amount of \$322 represented FAP benefits Petitioner received in May 2024 (\$159) and June 2024 (\$163).

At the hearing, Petitioner testified that she believed she did everything she was supposed to do to have continued access to her FAP benefits such as use of the card in small amounts monthly. Petitioner further noted that she intended and purposefully held over her FAP benefits for over a year, which made the balance over \$3,000, to purchase a cow for meat. However, based on the ESA 2023-53 memo, the Department is limited to reimburse for the lower of up to two months or the benefit lost amount. Therefore, the Department acted in accordance with Department policy when it approved Petitioner's FAP fraud replacement application and reimbursed only two months' worth of Petitioner's stolen FAP benefits.

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 satisfy its burden of showing it acted in accordance with Department policy when it determined Petitioner's G2S monthly deductible, and acted in accordance with Department policy when it reimbursed Petitioner for two months' worth of FAP stolen benefits.

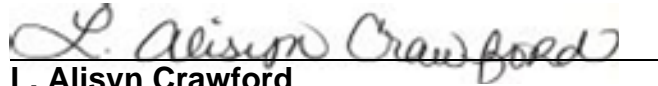
### **DECISION AND ORDER**

Accordingly, the Department's decision related to Petitioner's FAP case is **AFFIRMED**. The Department's decision regarding the calculation of Petitioner's G2S MA monthly deductible amount 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 G2S deductible for June 1, 2024 ongoing; and
2. Notify Petitioner of its decision in writing.

LC/ml

  
**L. Alisyn Crawford**  
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**

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**Interested Parties**

BSC4

M Holden

B Cabanaw

N Denson-Sogbaka

M Schaefer

EQAD

MOAHR

**Via First Class Mail:**

**Petitioner**

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