



GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR



Date Mailed: September 9, 2024
MOAHR Docket No.: 24-008869
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 September 3, 2024. The Petitioner was represented by her Authorized Hearings Representative (AHR), [REDACTED]. The Department of Health and Human Services (Department) was represented by Thaedora Moore, Family Independence Specialist, and Cherro West, Family Independence Manager.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) eligibility?

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 was an ongoing FAP and MA for Supplemental Security Income (SSI) beneficiaries recipient.
2. Although the Department testified that it did not have any record of a Redetermination being sent to Petitioner, in March 2024, the Department issued a Redetermination to Petitioner which she received and her AHR completed, then sent back to the Department in the prepaid envelope before the due date of April 22, 2024.

3. The Department argues it did not receive the completed Redetermination and closed Petitioner's MA benefits effective June 1, 2024.
4. On July 3, 2024, the Department received an MA application for Petitioner.
5. On July 17, 2024, the Department issued a Verification Checklist (VCL) to Petitioner requesting verification of assets by July 22, 2024.
6. On July 23, 2024, the MA application was denied and FAP was pending for closure.
7. On July 29, 2024, verification of assets for Petitioner were received by the Department.
8. On the same day, another MA application was received by the Department for Petitioner.
9. On August 2, 2024, the Department received Petitioner's request for hearing disputing the closure of MA and FAP benefits.
10. On August 12, 2024, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner advising her that effective September 1, 2024, she was eligible for Medicare Savings Program (MSP)-Qualified Medicare Beneficiary (QMB) benefits.
11. On the same day, the Department issued a Notice of Case Action to Petitioner advising her that she was eligible for \$576.00 in FAP benefits for a group size of three based upon \$ [REDACTED] in unearned income, a \$198.00 standard deduction, \$384.00 in rental housing costs, and finally, the \$680.00 heat and utility standard deduction (H/U).
12. No HCCDN was presented at the hearing showing Petitioner was notified of it, but the Department has shown that Petitioner was enrolled in MA-LIF for July and August 2024, then in the AD-care category effective September 2024.
13. The parties agreed to address the decisions made by the Department after Petitioner's request for hearing.

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 Hearing Request

In this case, Petitioner disputes the Department's closure of FAP and MA benefits as well as calculation of FAP benefits dating back to January 2024. In all cases, the client or AHR has 90 calendar days from the date of a written notice of case action to submit a request for hearing to the local office. BAM 600 (June 2024), p. 6. The only exception is for FAP cases in which case the client or AHR may submit a hearing request to dispute the current level of benefits at any time within the benefit period. *Id.*

The Department did not issue any Notice of Case Action or make changes to Petitioner's FAP case until August 12, 2024 after the August 2, 2024 hearing request was received. Therefore, the earliest period which can be evaluated is August 2024 and the parties agreed that the August 12th Notice of Case Action which took effect September 1, 2024 could be addressed by this decision. Petitioner's FAP eligibility from January 2024 through July 2024 is not addressed by this decision.

With respect to Petitioner's MA benefits, the Department closed Petitioner's MA benefits effective May 31, 2024. In MA cases, benefits stop at the end of a benefit period unless a renewal is completed. BAM 210 (July 2024), p. 4. In MA for SSI recipients' cases, redeterminations are only required when the individual is no longer eligible for SSI benefits in which case an *ex parte review* should be completed which includes a review of all MA categories. BEM 150 (January 2024), pp. 5-6. The *ex parte review* should begin at least 90 calendar days before the anticipated change is expected to result in case closure. BAM 210, p. 2. The *ex parte review* is a determination made by the Department without the involvement of the recipient of all materials available to the Department that may be found in the current MA file. BPG Glossary (June 2024), p. 25. The Department testified that no redetermination was received which means that MA benefits closed automatically without a HCCDN being issued and Petitioner's MA eligibility can be reviewed by this decision. Because the Department closed Petitioner's MA benefits without a notice and without an *ex parte review*, the closure is reviewed in addition to the Department's determination of eligibility on August 12, 2024 as agreed to by the parties at the hearing.

Food Assistance Program

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. The only household income is Petitioner's RSDI benefit of \$ [REDACTED], and her two children who each receive \$ [REDACTED] per month. Policy requires that the Department consider the gross benefit as unearned income. BEM 503 (January 2023), p. 29. Total gross income for the group 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 for a group size of three. 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. No medical expenses were submitted for consideration in the FAP budget. 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 \$384 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 (\$1,064.00) and reduced by 50% of Petitioner's AGI (\$██████) resulting in an excess shelter cost of \$499.00. *Id.*

Next, Petitioner's excess shelter cost is deducted from her AGI to equal her Net Income, of \$██████. *Id.* A review of the Food Assistance Issuance Table shows that Petitioner is eligible for \$576.00 in FAP benefits for a group size of three. BEM 556, p. 6; RFT 260 (October 2023), p. 21. The Department properly calculated Petitioner's FAP benefit rate effective September 2024.

Although the Department has shown that Petitioner's benefit rate was properly calculated for September 2024 ongoing, the Department has not provided any evidence as to the amount of benefits Petitioner was receiving in August 2024. Therefore, the Department has not met its burden of proof with respect to Petitioner's August 2024 benefit rate.

Medical Assistance Program

Petitioner also disputes the closure of her MA Supplemental Security Income (SSI) recipients benefits effective June 1, 2024. The Department closed her MA benefits for failure to return the completed Redetermination. Petitioner's SSI benefits stopped because she transitioned to receiving RSDI benefits. MA for SSI recipients begins the first day of the month of SSI entitlement. BEM 150, p. 1. When SSI benefits stop, the Department central office evaluates the reason and either closes the MA SSI benefit or places the client in the MA SSI Terminated category (MA SSIT). BEM 150, p. 6. A redetermination date is set for the second month after transfer to allow for an *ex parte* review. *Id.* The local office is then required to evaluate whether the client is eligible for any other type of MA. *Id.* A redetermination/*ex parte* review is required before MA closure when there is an actual or anticipated change unless the change results in ineligibility for all types of MA benefits. *Id.* The review should begin at least 90 days before the anticipated change which will result in case closure. *Id.*

Although the Department testified that no redetermination was issued to Petitioner, Petitioner credibly testified that she had received one in March 2024 and mailed the completed form back to the Department in the self-addressed prepaid envelope provided by the Department before the due date. The Department also testified that it had not received a completed redetermination from Petitioner and provided a copy of Petitioner's electronic case file as verification. However, the screen shot of the electronic case file provided only shows dates between June 5, 2024 and August 2, 2024 and it is unclear which case number the electronic case file is associated with, her previous MA for SSI recipients or her new application from July 2024. Because Petitioner's MA benefits were closed effective June 1, 2024 and because they were listed under another case number, the Department has not shown that Petitioner failed to return the form timely. Likewise, the Department has not shown that it properly completed the *ex parte review* before termination of Petitioner's MA benefits. Therefore, the Department has not shown by a preponderance of the evidence that it has acted in accordance with Department policy in closing Petitioner's MA benefits effective June 2024.

In July and August 2024, the Department began LIF coverage for Petitioner. In September 2024, Petitioner's MA coverage was changed to AD-Care.

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 2020), 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 2020), p. 1; Modified Adjusted Gross Income (MAGI) Related Eligibility Manual, § 1.2.

Petitioner is disabled and receiving Medicare; therefore, she is not eligible for HMP. However, she may be eligible for Low-Income Family (LIF) MA coverage or coverage based on her disability. LIF is a MAGI-related MA category for parents or caretaker relatives and children under the age of 19. BEM 110 (April 2018), p. 1. Adults with a dependent child and income under 54% of the federal poverty level (FPL) are considered eligible for LIF. *Id.* An individual is eligible for LIF if the household's MAGI-income does not exceed 54% 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. In this case, Petitioner has two children; therefore, her group size consists of herself and two children and has a group size of three. BEM 211 (October 2023), p. 2. 54% of the annual FPL in 2024 (the most current applicable FPL) for a household with three members is \$13,959. See <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>. Therefore, to be income eligible for LIF, Petitioner's group income cannot exceed \$13,959 or \$1,163.25 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 (July 2020), 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). For non-tax filers who are not claimed as dependents, the gross RSDI benefit is considered. BEM 503 (April 2024), 31. Petitioner's children's RSDI benefit is not countable as there is no indication that they are required to file taxes. *Id.* Therefore, total gross income for Petitioner is equal to her gross RSDI benefit of \$[REDACTED]. There was no other evidence of deductions for health coverage, childcare, or retirement accounts identified. Therefore, her total MAGI is \$[REDACTED]. Petitioner is not eligible for LIF.

Because Petitioner is a Medicare recipient, disabled, and not eligible for LIF, Petitioner may be 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 (FPL) 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>. The net income limit is also established by subtracting \$20.00 from the income limits seen in RFT 242, \$1,255.00 for a group size of one effective April 1, 2024. RFT 242 (April 2024), p. 1; BEM 163 (July 2017), p. 2.

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, pp. 29-30. Petitioner has total gross RSDI income of \$[REDACTED]. 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 child support, work-related expenses, nor guardianship or conservator expenses. BEM 541, pp. 1-7. Therefore, Petitioner's Net Income is less than the net income limit. Petitioner is eligible for the full coverage AD-Care 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 failed to

satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's August 2024 FAP benefit rate, when it closed Petitioner's MA benefits effective June 1, 2024, and determined her MA eligibility for July and August 2024.

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 benefits effective June 1, 2024 through August 31, 2024;
2. Redetermine Petitioner's FAP benefits effective August 2024;
3. If otherwise eligible under either or both programs issue supplements as applicable to Petitioner or on her behalf for benefits not previously received; and,
4. Notify Petitioner in writing of its decision.

AM/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-23-Hearings
BSC4-HearingDecisions
EQADHearings
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Via-First Class Mail :

Authorized Hearing Rep.

[REDACTED]
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Petitioner

[REDACTED]
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