



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: October 11, 2024
MOAHR Docket No.: 24-008988
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 October 3, 2024. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Courtney Ferguson, Assistance Payments Worker, and Nicole Taylor, Assistance Payments Supervisor.

The Department's 49-page hearing packet was admitted into evidence as Exhibit A. The Department's interview guide, dated July 3, 2024, was admitted into evidence as Exhibit B.

Petitioner's 100-page packet was admitted into evidence as Exhibit 1.

ISSUE

Did the Department properly deny Petitioner Food Assistance Program (FAP) benefits due to excess net income?

Did the Department properly deny Petitioner Medicaid (MA) coverage?

Did the Department properly determine Petitioner's eligibility for Medicare Savings Program (MSP)?

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 ■ years old, single, disabled, has no minor children, and receives \$2,668 per month in gross Retirement, Survivors, and Disability Insurance (RSDI) income. (Exhibit A, p. 12, 22; Exhibit 1, p. 46).
2. On June 17, 2024, the Department sent Petitioner a Health Care Coverage Determination Notice (HCCDN) that closed Petitioner's MA and Medicare Savings Program (MSP), effective July 1, 2024. (Exhibit A, p. 17).
3. On ■ ■ 2024, the Department received a completed application for FAP, MA, and cash assistance from Petitioner for herself, and reported that her household included her ■ year old son ■ (DS), and ■ year old son ■ (MR) who was temporarily absent from her home. (Exhibit A, pp. 22 – 30).
4. On July 3, 2024, the Department interviewed Petitioner for FAP, and she reported that she purchases and prepares food separately from DS and MR. (Exhibit B, pp. 1 – 7).
5. On July 3, 2024, the Department sent Petitioner a Notice of Case Action (NOCA) that denied Petitioner FAP due to excess net income. (Exhibit A, pp. 37 – 38).
6. On July 11, 2024, the Department sent Petitioner a HCCDN that denied Petitioner for MA and MSP for June 2024 and approved Petitioner for MSP – NMB for July 2024 ongoing. (Exhibit A, pp. 42 – 43).
7. On July 23, 2024, the Department sent Petitioner a HCCDN that denied Petitioner MA effective September 1, 2024 ongoing and MSP effective August 1, 2024 ongoing due to excess income. (Exhibit A, pp. 46 – 47).
8. On August 2, 2024, the Department received a request for hearing from Petitioner which disputed the Department's denial of FAP and MA and its calculation of Petitioner's income, among other things. (Exhibit A, pp. 4 – 11).

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).

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.

Petitioner requested a hearing to dispute the Department's denial of FAP benefits for June 20, 2024 ongoing due to excess net income.

FAP groups with a senior, disabled, or disabled veteran (SDV) member may be eligible for FAP benefits if their net income is less than 100% of the federal poverty level for their group size. BEM 213 (May 2024), p. 1. Parents and their children under 22 years of age who live together must be in the same FAP group. BEM 212 (March 2024), p. 1. In this case, Petitioner is a SDV individual, reported that she purchases and prepares her food separately from her 40 year old son DS, and testified that ■ year old MR returned to her home in June 2024. Because MR is under ■ years old and lives with Petitioner, he is a mandatory group member, and Petitioner has a two-person FAP group. A two-person FAP group must have net income of less than \$20,440 to be eligible for FAP. 89 Fed Reg 2961.

To determine Petitioner's FAP net income, all the FAP group's countable income must be considered. BEM 500 (April 2022), pp. 1 – 5; BEM 505 (October 2023), p. 1; BEM 550 (February 2024), p. 1. The gross benefit amounts of RSDI income and VA disability income are counted as unearned income. BEM 503 (January 2023), pp. 29 – 30, 40 – 41.

During the application process, Petitioner reported her sole income to be RSDI income of \$2,668 per month. (Exhibit B, p. 5; see also Exhibit 1, p. 46). The Department introduced a budget during the hearing and testified that it budgeted \$4,237 per month in unearned income for Petitioner. (Exhibit A, p. 31). The Department explained that the income it budgeted for Petitioner included child support but that upon further review, it determined its calculation was incorrect because Petitioner had not received any child support within the last three months pursuant to a Consolidated Income Inquiry (CI) report it retrieved on July 3, 2024. BEM 505, pp. 4 – 5. Additionally, during the hearing, Petitioner testified that MD receives VA disability income, but she did not identify the monthly gross amount of that income. Because MD was an adult member of Petitioner's FAP group, his income must be considered in determining the FAP group's income eligibility. BEM 212, p. 1. Because the Department budgeted child support income Petitioner did not receive and did not budget MD's VA disability income, the Department has failed to satisfy its burden of showing that it properly calculated the FAP group's countable income to determine the group's net income eligibility.

Petitioner also introduced evidence of medical expenses, including payment of Medicaid premiums. (Exhibit 1). As an SDV member, if Petitioner reports medical expenses to the Department, she is entitled to a medical expense deduction of \$165 if she verifies one-time or ongoing medical expenses in excess of \$35, or more if she has actual medical expenses in a higher amount and verifies those actual expenses. BEM 554 (April 2023), p. 9.

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 the Department's denial of her application for MA. The Department denied Petitioner MA for June 2024 because she was eligible in another case. (Exhibit A, 42 – 43). The Department also denied Petitioner MA for September 2024 ongoing due to excess income (Exhibit A, pp. 46 – 47) and could not explain Petitioner's MA eligibility for July and August 2024.

Whether the Department properly determined an individual'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 disabled and a Medicare recipient, and not the caretaker of a minor child, Petitioner is eligible for MA under only SSI-related categories. (Exhibit A, p. 12, 22; Exhibit 1, p. 46).

Based on Petitioner's circumstances, she was potentially eligible for AD-Care MA. The AD-Care program is a Group 1, full-coverage, SSI-related MA program for aged (over 65) or 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 are not married are a fiscal group size of one. BEM 211 (October 2023), p. 8. For a fiscal group size of one, the AD-Care income limit is \$1,255. 89 Fed Reg 2961; RFT 242 (April 2024).

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 \$1,255 or less. Petitioner's gross amount of RSDI, \$2,668 per month, 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; BEM 541 (January 2024), p. 3; see also BEM 163. Petitioner's RSDI reduced by \$20, equals \$2,648 in net unearned income. Because her countable net unearned income alone was \$2,648, which is more than the \$1,255 limit for AD-Care MA, 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. Because Petitioner is disabled, she may be eligible for G2S, which is the next most beneficial MA coverage available to her based on her circumstances. Here, the Department did not explain whether it considered Petitioner's eligibility for MA under Group 2 SSI-related (G2S) MA for June 2024 ongoing. Therefore, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it failed to determine if Petitioner was eligible for MA under G2S for June 2024 ongoing.

MSP

Petitioner also challenged the Department's MSP decisions. The Department denied Petitioner MSP for June 2024 because she was eligible in another case, approved her for MSP – NMB for July 2024 (Exhibit A, 42 – 43), and denied her for MSP for August 2024 and September 2024 ongoing for not meeting program criteria. (Exhibit A, pp. 46 – 47).

MSP is an SSI-related MA program that pays for certain Medicare expenses. BEM 165 (June 2024), p. 1. Individuals who are entitled to Medicare Part A and B but have income in excess of the limits for the MSP categories of Qualified Medicare Beneficiaries (QMB), Specified Low-Income Medicare Beneficiaries (SLMB), or QI Additional Low-Income Medicare Beneficiaries (ALMB), may be eligible for Non-Categorically Eligible Michigan Beneficiaries (NMB) if they have full coverage Medicaid. BEM 165, p. 1.

For purposes of MSP, single individuals are a fiscal group of one. BEM 211, p. 8. ALMB has the highest income limit of the MSP categories, and that limit is \$1,714.25 for a one-person group. RFT 242. Because Petitioner had RSDI income of \$2,668 per month (Exhibit 1, p. 46), she had excess income for ALMB. Therefore, the only MSP she may have been eligible for was NMB, which pays the Medicare Part B premiums (and the part A premiums for the few who have them) for full coverage Medicaid beneficiaries not otherwise eligible for MSP. BEM 165, p. 2.

Although the Department approved Petitioner for MSP - NMB in July, it denied her for MSP – NMB for August 2024 ongoing. However, because the Department did not properly determine Petitioner's eligibility for MA, the Department could not properly determine Petitioner's eligibility for MSP – NMB for August 2024 ongoing. Further, the Department provided no other explanation for finding that Petitioner did not meet program criteria.

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 had excess net income for purposes of FAP and failed to satisfy its burden of showing that it acted in

accordance with Department policy when it failed to determine Petitioner's eligibility for MA under G2S and for MSP.

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 eligibility for FAP benefits for June 19, 2024 ongoing;
2. If Petitioner is eligible for any FAP benefits, issue supplemental payments to Petitioner for any FAP benefits she was eligible to receive but did not, from June 19, 2024 ongoing;
3. Redetermine Petitioner's eligibility for MA for June 2024 ongoing;
4. If eligible, provide Petitioner with the most beneficial MA coverage she is eligible to receive for June 2024 ongoing;
5. Redetermine Petitioner's eligibility for MSP for August 2024 ongoing;
6. If eligible, provide Petitioner with the most beneficial MSP coverage she is eligible to receive for August 2024 ongoing; and
7. 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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