



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: September 24, 2024
MOAHR Docket No.: 24-009552
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 19, 2024. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Philip Jones, Eligibility Specialist.

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 MA Group 2-Aged, Blind, Disabled (G2S) recipient with a deductible of \$1,107 until March 2024 which then increased to \$1,156.00 effective April 2024.
2. On July 22, 2024, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner advising him that effective August 2024, he was eligible for Plan First (PF) MA benefits only.
3. On August 2, 2024, the Department received Petitioner's completed Mid-Certification Contact Notice listing no changes in income or expenses.

4. On August 15, 2024, the Department received Petitioner's completed Redetermination listing himself as the only household member, a Retirement Survivors Disability Insurance (RSDI) benefit of \$[REDACTED] per month, utility expenses, a Medicare premium of \$174.70, and that he does not have any dependents or plan to file taxes.
5. On the same day, the Department received Petitioner's request for hearing disputing his FAP and MA benefits.
6. On August 29, 2024, the Department issued a Notice of Case Action to Petitioner advising him he was eligible for \$23.00 in FAP benefits.
7. On September 12, 2024, the Department recertified Petitioner's G2S benefits with a deductible of \$1,156.00 but no HCCDN was issued.
8. Petitioner has property taxes of approximately \$3,300 per year and provided verification to the Department about two weeks before the hearing.
9. The parties agreed to a review of the FAP and MA decisions made 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).

Food Assistance Program (FAP)

The 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 disputes the Department's calculation of his 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. A standard monthly amount must be

determined for each income source used in the budget. BEM 505, pp. 8-9. Petitioner receives monthly RSDI income of \$ [REDACTED].

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

- Medical expense deduction for the SDV 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 one. RFT 255 (October 2023), p. 1; BEM 556, p. 4. Petitioner does not have any child support dependent care, or medical expenses. Each of these expenses is deducted from the household gross income to equal the 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 does not have rental expense or a mortgage but does have property taxes of approximately \$3,300 per year. 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 $((3300/12)+680=\$955.00)$ and reduced by 50% of Petitioner's AGI (\$ [REDACTED]) resulting in an excess shelter cost of \$262. *Id.*

Petitioner's excess shelter cost is then deducted from his AGI for a net income of \$ [REDACTED]. *Id.* A review of the Food Assistance Issuance Table shows that Petitioner is eligible for \$23.00 in FAP benefits for a group size of one. BEM 556, p. 6; RFT 260 (October 2023), p. 27. The Department properly calculated Petitioner's FAP benefit rate.

Medical Assistance (MA) Program

The 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.

In this case, Petitioner also disputes his MA deductible. 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 Plan First Medicaid (PF-MA) 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. HMP is a MAGI-related MA category that provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income under the MAGI methodology at or below 133% of the federal poverty level (FPL); (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, p. 1; 42 CFR 435.603.

Because Petitioner is a Medicare recipient 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 (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 (April 2024), 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

greater than the net income limit. Petitioner is not eligible for the full coverage AD-Care program.

Since Petitioner has excess income for eligibility under the AD-Care program, the full coverage SSI-related MA program, an evaluation of Petitioner's eligibility for MA coverage under the Group 2-Aged, Blind, Disabled (G2S) 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 ██████ County and has a group size of one; therefore, he is in shelter area VI, and his PIL is \$408.00. 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 \$408.00, 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 \$408.00.

As discussed above, Petitioner's net income was \$█████. In calculating the deductible, allowances are made for health insurance premiums and remedial services. BEM 544, pp. 1-2. The parties dispute whether Petitioner is responsible for his Medicare Part B premium. Because the Department has the burden of proof and has not shown that Petitioner received the benefit of the Medicare Savings Program (MSP), Petitioner's Medicare premium is counted here. No evidence was presented of other insurance premiums. Petitioner does not have any remedial services. Therefore, the PIL is subtracted to reach a deductible of \$981.00 (rounded to the nearest dollar). The Department has not met its burden of proof in establishing that it properly calculated Petitioner's G2S deductible for May 2024, ongoing.

The Department has not shown that Petitioner was a recipient of MSP which is evaluated here. The MSP is divided into four subcategories. BEM 165 (June 2024), p. 1. Qualified Medicare Beneficiary (QMB) is the full coverage MSP. BEM 165, p. 1. Specified Low-Income Medicare Beneficiary (SLMB) is a limited coverage MSP. *Id.* The third MSP category is the Additional Low-Income Medicare Beneficiary (ALMB). *Id.* The fourth category is Non-Categorically Eligible Michigan Beneficiaries (NMB) which provides coverage when income and assets are above the allowed limits for ALMB but the client has full coverage MA benefits with Medicare Part A and/or B entitlement. BEM 165, p. 1. QMB pays for Medicare premiums, coinsurances, and deductibles. BEM 165, p. 2. SLMB pays Medicare Part B premiums. *Id.* ALMB pays for Medicare Part B premiums if funding is available. *Id.* NMB pays the Medicare Part A and B premiums for full coverage MA beneficiaries not otherwise eligible for MSP.

Income determines placement in the programs. BEM 165, p. 1. For QMB, net income cannot exceed 100% of the federal poverty level, the same as AD-Care. *Id.* SLMB is available for individuals whose income is over 100% of the federal poverty level, but not more than 120% of the federal poverty level. *Id.* Finally, ALMB is available to those

whose income exceeds 120% of the federal poverty level but does not exceed 135%. *Id.* The 2024 federal poverty level and income limit for QMB for a one-person household is \$15,060 or \$1,255 per month. <https://www.federalregister.gov/documents/2023/01/19/2023-00885/annual-update-of-the-hhs-poverty-guidelines>; RFT 242 (April 2024), p. 1; BEM 211 (October 2023), p. 8. The income limit for SLMB is \$18,072.00 or \$1,506.00. *Id.* Finally, the income limit for ALMB is \$20,331 or \$1,694.25. *Id.* The net income limit is established through policy by subtracting \$20.00 from the amount shown in RFT 242.

To determine the countable income for purposes of MSP benefits, the Department relies on the same policies as utilized for AD-Care, which has an income limit of 100% of the FPL and Group 2-Aged, Blind, Disabled (G2S), shown in BEM 500, 501, 502, 503, 504, 530, 540, and 541. BEM 165, p. 8. Therefore, Petitioner's Net Income as calculated for AD-Care of \$ [REDACTED] means that Petitioner is eligible for MSP ALMB and because he is eligible for ALMB, he is not responsible for the Medicare Part B premium. The deduction is therefore removed from the G2S calculation resulting in a deductible of \$1,156 as calculated by the Department.

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 acted in accordance with Department policy when it calculated Petitioner's FAP benefit rate but failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's MA and MSP eligibility.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED in part with respect to FAP and REVERSED in part with respect to MA and MSP benefits.

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 and MSP eligibility effective as of the most recent certification on September 12, 2024;
2. If otherwise eligible, issue MA coverage for Petitioner for benefits not previously received; and,

3. 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-Oakland-DistrictII-Hearings
BSC4-HearingDecisions
EQADHearings
M. Schaefer
N. Denson-Sogbaka
B. Cabanaw
M. Holden
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Via-First Class Mail :

Petitioner

[REDACTED] MI [REDACTED]