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GOVERNOR

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

MARLON BROWN
DIRECTOR

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[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: December 18, 2024
MOAHR Docket No.: 24-012684
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 December 11, 2024, from Detroit, Michigan. Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by Priya Johnson, Assistance Payments Supervisor.

ISSUE

Did the Department properly calculate the amount of Petitioner's Food Assistance Program (FAP) benefits and determine his Medical Assistance (MA) and Medicare Savings Program (MSP) 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 recipient of FAP benefits. Petitioner's FAP case was closed effective October 1, 2024, for an unverified reason. Petitioner requested a hearing to dispute the closure of his FAP case effective October 1, 2024. Prior to the hearing, the Department reinstated Petitioner's FAP case. Petitioner withdrew his request for hearing, as the Department approved his FAP benefits.
2. On October 15, 2024, the Department sent Petitioner a Notice of Case Action advising him that effective October 1, 2024, he was approved for \$23 in monthly FAP benefits. (Exhibit A, pp.13-14)

3. On October 31, 2024, the Department sent Petitioner a Notice of Case Action advising him that from November 1, 2024, to November 30, 2024, he was approved for \$292 in FAP benefits. (Exhibit A, pp. 15-17)
4. On November 1, 2024, the Department sent Petitioner a Notice of Case Action advising him that for December 1, 2024, ongoing, he was approved for \$292 in FAP benefits. (Exhibit A, pp. 17-18)
5. The Budget Summary from the October 31, 2024, and November 1, 2024, Notices of Case Action suggests that the increase in FAP benefits to \$292 for November 2024 and December 2024 is related to the submission of medical expenses that were applied to the budget as a medical deduction. (Exhibit A, pp. 15-18)
6. The Department asserted that Petitioner's medical expenses were ended and effective January 1, 2025, he again was approved for \$23 in monthly FAP benefits. (Exhibit A, pp. 19-22)
7. On or around November 1, 2024, the Department sent Petitioner a Health Care Coverage Determination Notice advising him that from July 1, 2024, ongoing, he was ineligible for MSP benefits because he did not meet basic criteria. (Exhibit A, pp. 23-25)
8. Although the November 1, 2024, Health Care Coverage Determination Notice identified a different reason for denial, the Department determined that Petitioner was not eligible for MSP benefits because his income exceeded the income limit. (Exhibit A, p. 1)
9. The Department determined that Petitioner was eligible for MA subject to a monthly deductible of \$1,312; however, the effective date of the deductible was unknown.
10. On or around November 7, 2024, Petitioner requested a hearing disputing the Department's actions with respect to the FAP, MA program, and MSP. (Exhibit A, pp. 3-18)

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.

In this case, Petitioner disputed the Department's actions with respect to the amount of his FAP benefits. It was initially unclear what negative action taken by the Department Petitioner requested a hearing to dispute. After some discussion, Petitioner clarified that at issue is the amount of his FAP benefits for the month of October 2024, and January 2025 in the amount of \$23. Petitioner asserted that after the Department reinstated his FAP case, he was approved for increased FAP benefits in the amount of \$292 for the month of November 2024 and December 2024 and that he should have received the increased amount for October 2024, and ongoing months effective January 2025. Petitioner asserted that he should have received a \$269 supplement for the month of October 2024, in addition to receiving the supplement for November 2024 and December 2024.

At the hearing, the Department could not access its Bridges system and thus, was unable to provide much information in support of its case presentation or the actions taken. The Department asserted that based on medical expenses that were submitted on an unverified date, Petitioner was approved for the increase in FAP benefits for November 2024 and December 2024, but when the expenses were removed, Petitioner's benefits decreased to \$23 effective January 2025. The Department also asserted that Petitioner was not eligible for increased FAP benefits for the month of October 2024.

The Department presented a FAP EDG Net Income Results Budget for the January 2025 benefit period which was thoroughly reviewed to determine if the Department properly calculated Petitioner's FAP benefits. (Exhibit A, pp. 19-21). While there was no budget presented for October 2024, the approved benefit amount in both October 2024 and January 2025 was the same. All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (April 2022), pp. 1 – 5. The Department considers the gross amount of money earned from Retirement Survivors Disability Insurance (RSDI) or Social Security and retirement pension in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (April 2024), pp. 29-32.

The budget shows unearned income of [REDACTED] which the Department testified consists of [REDACTED] in Petitioner's RSDI or Social Security, and [REDACTED] in retirement pension, both of which were confirmed by Petitioner as correct. There was some testimony from Petitioner and a notation on the November 1, 2024, Notice of Case Action that the additional unearned income amount could be attributed to royalties or residual payments that Petitioner receives for his previous work in TV/film. Petitioner testified that he was previously employed as an actor and receives inconsistent income monthly based on residual fees. Petitioner testified that this income fluctuates. The Department provided no explanation for the remaining [REDACTED] in unearned income that was budgeted or how the amount was determined. 7 CFR 273.9(b)(2)(v) provides that royalties are considered

unearned income and countable for FAP eligibility. Because residual fees are similar to royalties, they can also be considered in the calculation of unearned income. However, because Petitioner testified that his residual payments are irregular and fluctuate, the Department is to consider income from a 60 or 90 day period in order to determine the average of Petitioner's unearned income. See BEM 505 (October 2023), pp. 1-7. Upon review, although the Department properly considered Petitioner's Social Security and retirement pension, because the Department was unable to explain the residual income considered, the Department failed to establish that Petitioner had unearned income of [REDACTED]

The deductions to income on the net income budget were also reviewed. Petitioner's FAP group includes a senior/disabled/veteran (SDV) member. BEM 550 (February 2024), pp. 1-2. Petitioner's FAP group is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- Medical expenses for the SDV member(s) that exceed \$35.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (July 2024), p. 1; BEM 556 (May 2024), p. 1-8.

Petitioner's group did not have any earned income, thus, there was no applicable earned income deduction. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support, and therefore, the budget properly did not include any deduction for dependent care, or child support. See BEM 554, pp. 6-8. The Department properly applied a standard deduction of \$204 which was based on Petitioner's confirmed group size of one. RFT 255 (October 2024), p. 1.

The budget shows a medical deduction of \$165, which the Department representative testified was based on Medicare Part B premiums for Petitioner in the amount of \$174.70. (Exhibit A, p.22). The Department testified that for the months of November 2024, and December 2024, it had included additional medical expenses in the amount of \$911, and \$11.29 but these expenses were removed for January 2025. (Exhibit A, pp. 21-22). The Department did not explain when the expenses were submitted and for what months the expenses were incurred. Petitioner asserted that he submitted various medical expenses for consideration.

BEM 554 at pp. 9-13 provides detailed information regarding medical expenses that can be considered and applied to the medical deduction on the FAP budget, as well as the criteria for reporting expenses to the Department. For one time only expenses that are not reoccurring on a monthly basis, groups that do not have a 24-month benefit period may choose to budget a one-time-only medical expense for one month or average it over the balance of the benefit period. Bridges will allow the expense in the first benefit month the change can affect. BEM 554, pp. 10-11. For FAP groups that have 24-month benefit

periods must be given the following options for one-time-only medical expenses billed or due within the first 12 months of the benefit period: 1. Budget it for one month. 2. Average it over the remainder of the first 12 months of the benefit period. 3. Average it over the remainder of the 24-month benefit period. BEM 554, pp. 10-11. The Department provided no testimony or other documentary evidence in support of the medical deduction, as it could not explain when the expenses were submitted to the Department or that the expenses were properly applied to the medical deduction. There was also no evidence that Petitioner was given the option to choose to have the expenses budgeted for one month or averaged over the balance of the benefit period as required by Department policy. Therefore, the Department failed to establish that it properly calculated the medical deduction.

With respect to the calculation of the \$468 excess shelter deduction, the Department properly considered Petitioner's confirmed housing expenses of \$527 for monthly rent, the \$50 internet standard and properly applied the \$664 heat and utility standard, which covers all heat and utility costs including cooling expenses. BEM 554, pp. 13-17. BEM 505 (October 2023), pp. 1-2.

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 because of the errors identified above with respect to the calculation of Petitioner's unearned income and the calculation of the medical deduction, the Department did not act in accordance with Department policy when it determined that Petitioner was eligible for \$23 in FAP benefits for the month of October 2024 and January 2025, ongoing.

MA/MSP

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.

In this case, Petitioner disputed the Department's determination that he was eligible for MA under a deductible based program and that he was ineligible for MSP benefits due to excess income. At the hearing, the Department was unable to access the Bridges system and thus, provided no information as to the effective date of Petitioner's eligibility for MA under the Group 2 Aged, Blind, Disabled (G2S) category with a monthly deductible. However, based on information contained in the Hearing Summary and the November 1, 2024, Health Care Coverage Determination Notice, that denied MSP eligibility effective July 1, 2024, Petitioner's MA/MSP eligibility for July 1, 2024, ongoing will be addressed.

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 (October 2023), p. 1; BEM 137 (June 2020), 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, p. 2; 42 CFR 435.404.

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 enrolled in Medicare, he is not eligible for full coverage MA under the HMP. Thus, the Department properly concluded that Petitioner was eligible for SSI-related MA, which is MA for individuals who are blind, disabled or over age 65. BEM 105, p. 1. Individuals are eligible for Group 1 coverage, with no deductible, if their income falls below the income limit, and eligible for Group 2 coverage, with a deductible that must be satisfied before MA is activated, when their income exceeds the income limit. BEM 105, p. 1. Ad-Care coverage is a SSI-related Group 1 MA category which must be considered before determining Group 2 MA eligibility. BEM 163 (July 2017), p. 1. Eligibility for Ad-Care is based on the client meeting nonfinancial and financial eligibility criteria. BEM 163, pp. 1-2. The eligibility requirements for Group 2 MA and Group 1 MA Ad-Care are the same, other than income. BEM 166 (April 2017), pp. 1-2.

Income eligibility for the Ad-Care program is dependent on MA fiscal group size and net income which cannot exceed the income limit in RFT 242. BEM 163, p. 2. Petitioner has a MA fiscal group of one. BEM 211 (October 2023), pp. 5-8. Effective April 1, 2024, an MA fiscal group with one member is income-eligible for full-coverage MA under the Ad-Care program if the group's net income is at or below \$1,275, which is 100 percent of the Federal Poverty Level, plus the \$20 disregard. RFT 242 (April 2023), p. 1. Thus, the income limit for Ad-Care eligibility is \$1,255.

The Department is to determine countable income according to SSI-related MA policies in BEM 500 and 530 *except* as explained in the countable RSDI section of BEM 163. The Department will also apply the deductions in BEM 540 (for children) or 541 (for adults) to countable income to determine net income. BEM 163, p. 2. The Department asserted that Petitioner had excess income for the Ad-Care program. Although the Department failed to present any documentary evidence in support of the MA/MSP determination, some conclusions can be made based on the limited income information available. While the exact amount of Petitioner's unearned income from royalties/residuals was unknown, Petitioner confirmed that he receives gross monthly income of [REDACTED] in RSDI or Social Security, and [REDACTED] in retirement pension, which totals [REDACTED]. The Department would

also have considered the unearned income general exclusion of \$20. Thus, based solely on his unearned income from RSDI and pension, Petitioner has net unearned income of [REDACTED] which exceeds the \$1,255 net income limit for the Ad-Care program. Therefore, the Department acted in accordance with Department policy when it determined that Petitioner was ineligible for full coverage MA benefits under the Ad-Care program without a deductible and determined that he would be eligible for MA under the Group 2 Aged Blind Disabled (G2S) program with a monthly deductible.

Additionally, deductible is a process which allows a client with excess income to become eligible for Group 2 MA if sufficient allowable medical expenses are incurred. BEM 545 (July 2022), p. 10. Individuals are eligible for Group 2 MA coverage when net income (countable income minus allowable income deductions) does not exceed the applicable Group 2 MA protected income levels (PIL), which is based on shelter area and fiscal group size. BEM 105, pp. 1-2; BEM 166, pp. 1-2; BEM 544 (January 2020), p. 1; RFT 240 (December 2013), p. 1. The PIL is a set allowance for non-medical need items such as shelter, food and incidental expenses. BEM 544, p. 1. The monthly PIL for an MA group of one living in [REDACTED] County is [REDACTED] per month. RFT 200 (April 2017), pp. 1-2; RFT 240, p. 1. Thus, if Petitioner's net monthly income is in excess of the [REDACTED] he may become eligible for assistance under the deductible program, with the deductible being equal to the amount that his monthly income exceeds [REDACTED] BEM 545, p. 1. To meet a deductible, a MA client must report and verify allowable medical expenses (defined in Exhibit I) that equal or exceed the deductible amount for the calendar month being tested. The group must report expenses by the last day of the third month following the month in which client wants MA coverage. BEM 545, p. 11. The Department is to add periods of MA coverage each time the group meets its deductible. BEM 545, p.11.

The Hearing Summary indicates that Petitioner was eligible for MA under the G2S category with a monthly deductible of \$1,312. The Department did not produce an SSI-Related Medicaid Income Budget to show how it calculated the deductible. Although it was confirmed that Petitioner receives [REDACTED] monthly in RSDI and a pension, as referenced above, the additional unearned income from his residuals was unknown. The Department also presented no evidence regarding the deductions to income that were considered and whether the Department took into consideration Petitioner's responsibility for monthly Medicare insurance premiums or medical expenses that were submitted for consideration, in light of Petitioner's testimony that he submitted medical expenses to be applied as a deduction in determining the amount of Petitioner's monthly deductible.

Therefore, although the Department properly determined that Petitioner would be eligible for a under the G2S with a monthly deductible, 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 establish that it at an accordance with Department policy when it calculated the \$1,312 deductible.

The Department also determined that Petitioner was not eligible for MSP benefits under any category due to excess income but failed to present any budget or other documentary evidence in support of its determination. MSP are SSI-related MA categories. In July

2024, there were four MSP categories: Qualified Medicare Beneficiaries (QMB); Specified Low-Income Medicare Beneficiaries (SLMB); Additional Low-Income Beneficiaries (ALMB); and Non-Categorically Eligible Michigan Beneficiaries (NMB). BEM 165 (July 2024), p. 1. QMB is a full coverage MSP that pays Medicare premiums (Medicare Part B premiums and Part A premiums for those few people who have them), Medicare coinsurances, and Medicare deductibles. SLMB pays Medicare Part B premiums and ALMB pays Medicare Part B premiums provided funding is available. NMB 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, pp. 1-2.

Income is the major determiner of category. The monthly income limits for Petitioner's fiscal group size of one are identified in RFT 242 (April 2024). For QMB eligibility, net income cannot exceed \$1,275, which is 100% of the poverty level, plus the \$20 disregard for RSDI income. For SLMB eligibility, net income is between \$1,275.01 and \$1,526, which is over 100% but not over 120% of the poverty level, plus the \$20 disregard for RSDI income. For ALMB eligibility, net income must be between \$1,526.01 and \$1,714.25, which is over 120% but not over 135% of the poverty level, plus the \$20 disregard for RSDI income. RFT 242, p.1; BEM 165, pp. 1-2, 8-10. Because there is no income limit identified in Department policy for NMB eligibility, the Department may activate NMB for the months in which a client has met their monthly deductible.

The Department is to determine countable income according to the SSI-related MA policies in BEM 500, 501, 502, 503, 504, and 530, except as otherwise explained in BEM 165. RFT 242, pp. 1-2; BEM 165, pp. 8-10. The Department will also apply the deductions in BEM 540 (for children) and BEM 541 (for adults) to countable income to determine net income. BEM 165, pp. 8-10.

As discussed above, although it was confirmed that Petitioner receives [REDACTED] monthly in RSDI and a pension, the additional unearned income from his residuals was unknown. Therefore, while it is possible that Petitioner may have excess income for MSP eligibility under the QMB, SLMB, and ALMB categories based on the income limits identified above, the Department did not establish that Petitioner was ineligible for all MSP categories, including the NMB. Thus, the Department will be ordered to redetermine Petitioner's MSP eligibility under all categories.


DECISION AND ORDER

Accordingly, the Department's FAP and MA/MSP decisions are **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. Recalculate Petitioner's FAP budget for October 2024, and January 2025, ongoing;
2. Issue FAP supplements to Petitioner for any benefits he was eligible to receive but did not, if any, from October 1, 2024, ongoing, in accordance with Department policy;
3. Recalculate Petitioner's MA deductible under the G2S for July 1, 2024, ongoing;
4. Redetermine Petitioner's MSP eligibility under the most beneficial category for July 1, 2024, ongoing;
5. If eligible, provide Petitioner with MA and MSP coverage under the most beneficial categories that he was entitled to receive but did not from July 1, 2024, ongoing; and
6. Notify Petitioner in writing of its decisions.

ZB/ml



Zainab A. Baydoun
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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