



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR

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

Date Mailed: December 12, 2024
MOAHR Docket No.: 24-012710

[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION

On November 8, 2024, Petitioner [REDACTED] requested a hearing to dispute her public assistance benefits. As a result, a hearing was scheduled to be held on December 10, 2024. Public assistance hearings are held 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; 45 CFR 205.10; and Mich Admin Code, R 792.11002.

The parties appeared for the scheduled hearing. Petitioner appeared and represented herself. Respondent Michigan Department of Health and Human Services (Department) had Hearing Facilitator Caleb Nygren appear as its representative. Neither party had any additional witnesses.

Both parties provided sworn testimony, and two exhibits were admitted into evidence. A 49-page packet of documents provided by the Department was admitted collectively as Exhibit A, and a 2-page document provided by Petitioner was admitted as Exhibit 1.

ISSUES

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits?

Did the Department properly close Petitioner's Medicare Savings Program (MSP) coverage?

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 disabled.
2. Petitioner is not married.

3. Petitioner has a household size of two, which includes Petitioner and her minor child.
4. Petitioner is responsible for paying for utilities (including heating/cooling) and internet.
5. In August 2022, Petitioner began receiving disability insurance benefits from Unum. Petitioner's gross monthly disability insurance benefit amount was \$ [REDACTED].
6. In August 2024, Petitioner was approved for Social Security RSDI benefits, and Petitioner was awarded back benefits, effective June 1, 2022. As of August 2024, Petitioner's gross monthly RSDI benefit was \$ [REDACTED].
7. On August 29, 2024, Unum wrote a letter to Petitioner to notify her that she received an overpayment of disability insurance benefits because she was approved for Social Security RSDI benefits for months that she received disability insurance benefits. Unum notified Petitioner that she was overpaid a total of \$ [REDACTED] through August 27, 2024. Unum also notified Petitioner that her net monthly disability insurance benefit would be reduced to \$ [REDACTED], effective September 23, 2024.
8. On September 18, 2024, the Department reprocessed Petitioner's Medicaid eligibility because Petitioner reported a change in her income to the Department. The Department budgeted \$ [REDACTED] per month for Petitioner's RSDI benefit, the Department budgeted \$ [REDACTED] per month for Petitioner's disability insurance benefit, and the Department budgeted \$ [REDACTED] per month for child support. The Department determined that Petitioner's income exceeded the limit to be eligible for MSP coverage. The Department sent a health care coverage determination notice to Petitioner to notify her that she was no longer eligible for MSP coverage, effective October 1, 2024.
9. On September 24, 2024, the Department received a screenshot of Petitioner's disability insurance benefit payment from Petitioner. The screenshot showed that Petitioner's most recent payment was \$ [REDACTED]. The screenshot showed that Petitioner's "benefit type" was \$ [REDACTED] and there were "miscellaneous amendments" of \$ [REDACTED].
10. On [REDACTED] Petitioner submitted a form to the Department to renew her eligibility for FAP benefits. In the form, Petitioner added her RSDI, and Petitioner changed her disability insurance benefit amount. Petitioner also changed her rent amount. Petitioner provided a letter from her landlord dated August 22, 2024, showing that her rent increased to \$ [REDACTED] per month (plus \$ [REDACTED] per month in additional fees for pets and water) beginning in October.
11. On November 1, 2024, the Department processed Petitioner's FAP renewal. The Department budgeted \$ [REDACTED] per month for Petitioner's RSDI benefit, the Department budgeted \$ [REDACTED] per month for Petitioner's disability insurance benefit, and the Department budgeted \$ [REDACTED] per month for child support. The

Department determined that Petitioner's net income exceeded the limit to be eligible for FAP benefits. The Department sent a notice of case action to Petitioner to notify her that she was no longer eligible for FAP benefits, effective December 1, 2024. The Department also sent a health care coverage determination notice to Petitioner to notify her that she was not eligible for MSP coverage, effective December 1, 2024.

12. Petitioner requested a hearing to dispute the Department's decision to close her FAP and MSP.
13. Petitioner provided a copy of a letter from Unum dated [REDACTED], that notified her that her net monthly disability insurance benefit would be reduced to \$[REDACTED], effective December 23, 2024.

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

The Food Assistance Program (FAP) 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 administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

The Department determines a client's monthly FAP benefit amount by determining the client's group size and net household income, and then looking that information up in its applicable Food Issuance Table. BEM 212 (October 1, 2024), BEM 213 (October 1, 2024), BEM 550 (October 1, 2024), BEM 554 (October 1, 2024), BEM 556 (October 1, 2024), RFT 255 (October 1, 2024), and RFT 260 (October 1, 2024).

In this case, the Department budgeted \$[REDACTED] per month in unearned income for Petitioner's disability insurance benefit. Petitioner asserted that the Department did not properly budget her disability insurance benefit because her disability insurance benefit was reduced to \$[REDACTED] per month. The Department asserted that it budgeted \$[REDACTED] because it concluded that \$[REDACTED] was withheld each month to recoup an overpayment, and the Department determined that the gross amount of \$[REDACTED] was countable unearned income. Thus, the initial issue is whether the Department properly budgeted Petitioner's disability insurance benefit.

Gross income is the starting point for determining FAP eligibility. In general, gross income does not include an amount withheld from an income source to repay an overpayment. 7 CFR 273.9(b)(5) and BEM 500 (April 1, 2022), p. 6. Although there are some situations when gross income should include an amount withheld from an income source to repay

an overpayment, those situations do not apply in this case. Thus, the gross income amount for Petitioner's disability insurance benefit was the amount Petitioner received, \$██████████ regardless of whether an amount was withheld from her disability insurance benefit to repay an overpayment. The Department did not properly budget Petitioner's disability insurance benefit because the Department budgeted \$██████████ per month when it should have only budgeted \$██████████ per month.

Based on Petitioner's gross RSDI benefit of \$██████████ per month, Petitioner gross disability insurance benefit of \$██████████ per month, Petitioner's gross child support income of \$██████████, Petitioner's rent expense of \$██████████¹ per month, Petitioner's obligation to pay her heating/cooling utilities, and Petitioner's obligation to pay an internet expense, Petitioner's net income was \$██████████ per month. Based on Petitioner's net income of \$██████████ per month and Petitioner's group size of two, Petitioner was eligible for a maximum FAP benefit amount of \$██████████ per month. Thus, the Department should have found Petitioner eligible for a FAP benefit amount of \$██████████ per month, effective December 1, 2024.

Petitioner received notice that her disability insurance benefit is going to be reduced to \$██████████ effective December 23, 2024. This will result in a decreased net income and an increased maximum FAP benefit amount. Petitioner's net income will decrease to \$██████████ per month. Based on Petitioner's net income of \$██████████ per month and Petitioner's group size of two, Petitioner will be eligible for a maximum FAP benefit amount of \$██████████ per month, effective January 1, 2025.

The Department's decision to close Petitioner's FAP benefits is reversed because the Department did not properly budget Petitioner's disability insurance benefit. The Department shall redetermine Petitioner's FAP benefit amount in accordance with this decision, and the Department shall issue a supplement to Petitioner as needed.

MEDICARE SAVINGS PROGRAM

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 administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Just like with Petitioner's FAP benefits, the Department budgeted \$██████████ per month in unearned income for Petitioner's disability insurance benefit. Petitioner asserted that the Department did not properly budget Petitioner's disability insurance benefit because her disability insurance benefit was reduced to \$██████████ per month. The Department asserted that it budgeted \$██████████ because it concluded that \$██████████ was withheld each month

¹ Petitioner's allowable housing expenses are limited to Petitioner's rent expense of \$809.00 per month. The additional \$45.00 in fees are not allowable. BEM 554 (October 1, 2024), p. 15. Additionally, renter's insurance is not allowable either. *Id.*

to recoup an overpayment, and the Department determined that the gross amount of \$[REDACTED] was countable unearned income. Thus, the initial issue is whether the Department properly budgeted Petitioner's disability insurance benefit.

Gross income is the starting point for determining Medicaid eligibility. In general, gross income does not include an amount withheld from an income source to repay an overpayment. BEM 500 at 6. Although there are some situations when gross income should include an amount withheld from an income source to repay an overpayment, those situations do not apply in this case. Thus, the gross income amount for Petitioner's disability insurance benefit was the amount Petitioner received, \$[REDACTED], regardless of whether an amount was withheld from her disability insurance benefit to repay an overpayment. The Department did not properly budget Petitioner's disability insurance benefit because the Department budgeted \$[REDACTED] per month when it should have only budgeted \$[REDACTED] per month.

The income rules for Medicaid are slightly different than the rules for FAP benefits. Countable income is the income remaining after applying Medicaid policy in BEM 500, BEM 501, BEM 503, and BEM 504. BEM 530 (April 1, 2020), p. 2. In this case, Petitioner's countable income was the sum of her \$[REDACTED] RSDI benefit, her \$[REDACTED] disability insurance benefit, and her \$[REDACTED] child support. Thus, Petitioner's total countable income was \$[REDACTED]. For Medicaid, net income is countable income minus any deductions in BEM 541 that the applicant is eligible for. Petitioner was eligible for a \$[REDACTED] disregard from her unearned income. BEM 541 (January 1, 2025), p. 3. Petitioner was not eligible for any other Medicaid deductions in BEM 541. Therefore, Petitioner's net income is equal to her total countable income of \$[REDACTED] minus the \$[REDACTED] disregard, which equals \$[REDACTED].

There are three basic types of MSP coverage: QMB, SLMB, and ALMB. BEM 165 (July 1, 2024), p. 1. QMB pays for Medicare premiums, Medicare coinsurances, and Medicare deductibles. *Id.* at 2. SLMB only pays Medicare Part B premiums. *Id.* ALMB only pays Medicare Part B premiums if there is sufficient funding available. *Id.* Thus, QMB is the best coverage, SLMB is the next best coverage, and ALMB is the lowest level of coverage.

The type of MSP coverage a client is eligible for is determined based on income. The income limit for QMB is 100% of the Federal Poverty Level (FPL). *Id.* at 1. The income limit for SLMB is 120% of the FPL. *Id.* The income limit for ALMB is 135% of the FPL. *Id.* The applicable FPL amount is determined based on the applicant's group size. For MSP, the group size is the applicant and the applicant's spouse. BEM 211 (October 1, 2023), p. 8. Since Petitioner was not married, Petitioner's group size was one. The FPL for a household size of one in 2024 is \$15,060.00. 89 FR 2961 (January 17, 2024).

Petitioner's net income of \$[REDACTED] was 152% of the FPL. Since the maximum income limit for MSP coverage is 135%, Petitioner's income exceeded the limit to be eligible for MSP coverage. Thus, although the Department did not properly budget Petitioner's disability insurance benefit, the Department properly determined that Petitioner was not

eligible for MSP coverage. Therefore, the Department's decision to close Petitioner's MSP coverage is affirmed.

Petitioner received notice that her disability insurance benefit is going to be reduced to \$██████, effective December 23, 2024. This will result in a decreased net income. Petitioner's net income will decrease to \$██████ per month. Petitioner's net income of \$██████ will be 126% of the FPL. Since the maximum income limit for MSP coverage is 135%, Petitioner's income will be within the income limit to be eligible for MSP coverage. Therefore, Petitioner should reapply for MSP coverage based on her reduced income amount.

SUMMARY

The Department did not properly budget Petitioner's disability insurance benefit when the Department budgeted \$██████ per month. The Department should have only budgeted the benefit amount that Petitioner received, which was \$██████. Beginning December 23, 2024, Petitioner's disability benefit is going to decrease to \$██████, so the Department will need to budget that amount.

The Department improperly determined that Petitioner was not eligible for FAP benefits because the Department did not properly budget Petitioner's disability insurance benefit. The Department must redetermine Petitioner's FAP eligibility consistent with this decision. Petitioner is eligible for a maximum FAP benefit amount of \$██████ for December 2024, and Petitioner is eligible for a maximum FAP benefit amount of \$██████ per month, thereafter.

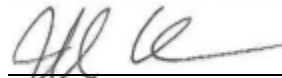
The Department properly determined that Petitioner was not eligible for MSP coverage. Although the Department did not properly budget Petitioner's disability insurance benefit, Petitioner still would have been over the income limit to be eligible for MSP coverage if the Department had properly budgeted her disability insurance benefit. However, Petitioner's disability insurance benefit was subsequently reduced, so Petitioner's income should no longer exceed the limit to be eligible for MSP coverage. Accordingly, Petitioner should reapply for MSP coverage based on her reduced income amount.

DECISION AND ORDER

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: (1) the Department did not act in accordance with its policies and the applicable law when it closed Petitioner's FAP benefits, and (2) the Department acted in accordance with its policies and the applicable law when it closed Petitioner's MSP coverage.

IT IS ORDERED, the Department's decision is **REVERSED IN PART and AFFIRMED IN PART**. The Department's decision to close Petitioner's FAP benefits is reversed, and the Department's decision to close Petitioner's MSP is affirmed. The Department shall redetermine Petitioner's FAP eligibility consistent with this decision, and the Department shall issue a supplement to Petitioner as needed. The Department shall begin to implement this decision within 10 days of the date of mailing of this decision and order.

JK/pe



Jeffrey Kemm
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

Janice Collins
Genesee County DHHS Union St District
125 E. Union St 7th Floor
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Interested Parties

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Via First Class Mail:

Petitioner

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