

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2009-27048 &
2011-25863
Issue Nos.: 2017, 3002
Case No.: [REDACTED]
Hearing Date: May 31, 2011
DHS Oakland (63-02)
Counties: Wayne (82-43)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan, on Tuesday, May 31, 2011. The Claimant appeared and testified. [REDACTED] (02) and [REDACTED] (43) appeared on behalf of the Department of Human Services ("Department").

ISSUE

1. Whether the Claimant timely protested the October 21, 2010, Hearing Decision?
2. Whether the Department properly processed the Claimant's March 2010 Medical Assistance ("MA") application seeking retroactive Qualified Medicare Beneficiaries ("QMB") benefits?
3. Whether the Department properly calculated the Claimant's Food Assistance Program ("FAP") benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant is an MA and FAP recipient.
2. The Claimant receives Retirement, Survivors and Disability Insurance ("RSDI") income and is automatically entitled to Medicare Part A.

3. The Claimant's gross monthly RSDI income for March 2010 was \$1,212.00.
4. The Claimant does not pay Medicare Part A premiums.
5. On May 26, 2009, the Department received the Claimant's written request for hearing specifically protesting the Department's reported failure to recognize physician approved out-of-pocket expenses and for the failure in processing four State Emergency Relief ("SER") applications.
6. In March 2010, the Claimant submitted a public assistance application seeking MA/QMB benefits and FAP benefits.
7. On October 13, 2010, a telephone hearing was conducted based on the May 26, 2009 request for hearing.
8. The Department approved the Claimant for QMB benefits; however, the Claimant continued to pay her Part B Medicare premiums.
9. There were no other requests for hearing for the period between May 2009 and the October 13, 2010 hearing.
10. On October 21, 2010, a Hearing Decision issued as a result of the October 13th hearing.
11. In November 2010, the Department issued a Notice of Case Action to the Claimant showing approval for the Medicaid Program for both the Claimant (Ad-Care) and her daughter (Other Healthy Kids), and an increase in FAP benefits to \$367.00.
12. On November 19, 2010, the Department issued a \$565.00 FAP supplement for the period from March 2, 2010, through November 30, 2010.
13. In December 2010, the Claimant began receiving the increased FAP benefits of \$367.00/month.
14. On December 7, 2010, the Claimant submitted a Request for Reconsideration, dated November 16th and December 2nd, of the October 21st Hearing Decision.
15. On January 3, 2011, the Department received the Claimant's written request for hearing protesting her Medicaid and seeking FAP benefits retroactive from November 2009 through November 2010.

16. On January 11, 2011, the Department received the Claimant's written requests for hearing protesting food stamps/unearned income and QMB benefits.
17. On January 14, 2011, the Claimant re-submitted the January 11, 2011, request for hearing.
18. On January 21, 2011, the Department received the Claimant's withdrawal of the January 3rd and January 11th, hearing requests.

CONCLUSIONS OF LAW

In this case, several issues were brought up regarding the Claimant's case. Each issue will be addressed separately.

Request for Reconsideration

The Claimant filed a request for hearing in May 2009, specifically protesting her MA and SER applications. A hearing was held on October 13, 2010, resulting in a Decision and Order dated October 21, 2010. During the hearing, it was apparent that the Claimant had several telephone conversations with various individuals within the Michigan Administrative Hearing System ("MAHS"). Requests for reconsideration must be in writing and received in 30 days from the Decision mail date. The evidence shows that the written request for reconsideration was not received until December 7, 2010, which is beyond the 30 day timeliness requirement. In light of the foregoing, the Claimant's request for reconsideration of the October 21, 2010, Decision and Order is DISMISSED as untimely.

Qualified Medicare Beneficiary ("QMB")

The Medical Assistance program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, formerly known as the Family Independence Agency, pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges Reference Manual ("RFT").

The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. BEM 105. Medicaid is also known as Medical Assistance ("MA"). BEM 105. The Medicaid program is comprised of several categories; one category is for FIP recipients while another is for SSI recipients. BEM 105. The Medicare Savings Programs are SSI-related MA

Categories. BEM 165. The three Medicare Savings Programs are: Qualified Medicare Beneficiaries (also known as full-coverage QMB); Specified Low-Income Medicare Beneficiaries (also referred to as limited coverage QMB); and Q1 Additional Low-Income Medicare Beneficiaries (also known as ALMB or Q1). BEM 165.

Income is the major determiner of which category an individual falls under. BEM 165. For QMB, net income cannot exceed 100% of poverty. BEM 165. All eligibility factors must be met in the calendar month being tested. BEM 165. QMB pays for Medicare premiums, co-insurances, and deductibles. BEM 165. SSI recipients, as opposed to RSDI recipients, receiving MA, and who are entitled to Medicare Part A, are considered QMB eligible without a separate QMB determination. BEM 165. A Medicare Savings Program determination is made for clients entitled to Medicare Part A who are under: the Medicare Savings Programs (only); the Group 2 MA (FIP-related and SSI-related); Extended Care; Healthy Kids; or the Transitional Medicaid ("TMA")-Plus benefit programs. QMB coverage begins the calendar month after the month during which an eligibility determination is made. BEM 165. QMB is not available for past months or the processing month. BEM 165. Countable RSDI income is used for the month being tested. BEM 165. In March 2010, the full-coverage QMB income eligibility limit for a group size of 2 was \$1,215.00 and \$903.00 for a group size of 1. An LOA2-generated memo (or a copy of the completed DHS-4660) is sent to the Buy-In Coordinator when full-coverage QMB (or limited-coverage QMB) is approved, changed, or terminated. BEM 165.

In this case, in March 2010, the Claimant received RSDI income in the monthly gross amount of \$1,212.00. The Claimant receives Medicare Part A and does not pay for the premiums. The Claimant's group size is 2. The Department testified that the Claimant was approved for QMB although a QMB determination was not submitted and the Claimant continued to pay for Medicare Part B premiums as well as deductibles. It was unclear as to why the Claimant was required to pay for Part B premiums and deductibles especially in light of the fact that her monthly gross earnings were below income eligibility limit. Ultimately, based on the foregoing, it is found that the Department failed to establish it acted in accordance with Department policy when processing the Claimant's March 2010 application for MA/QMB benefits. Accordingly, the Department's actions are REVERSED.

Food Assistance Benefits

In this case, the Claimant testified that for the period from May 2009 through October 2010, the only request for hearing was dated in May 2009. That hearing request only addressed her SER applications and MA benefits. As detailed above, the purpose of the October 13, 2010, hearing was to address the May 2009 hearing request. The hearing request did not mention any concerns regarding the Claimant's FAP benefits.

In November 2010, a Notice of Case Action issued which notified the Claimant that effective December 2010, her FAP benefits would increase to \$367.00 for a group size of 2. The Claimant agrees with that amount. On November 19th, the Claimant received a \$565.00 FAP supplement which covered the period from March 2, 2010, through November 30, 2010. On January 14, 2011, the Claimant requested a hearing regarding, in part, her FAP benefits. Because of the November 19, 2010, supplement specifically referred to the period from March 2, 2010, through November 30, 2010, this decision will address that period as well. It was explained during the hearing that jurisdiction does not exist for 2009.

In reviewing the benefit summary which resulted in the \$565.00 FAP supplement, the Claimant's income was entered as \$1,544.00. The Claimant's gross RSDI monthly benefit amount is \$1,212.00. Based on the record (see the November 24, 2009 Notice of Case Action Comments), \$332.00 of SSI income was erroneously included in the Claimant's income. In light of the foregoing, it is found that the incorrect income figure was used when calculating the Claimant's FAP supplement covering the period from March 2, 2010, through November 30, 2010. Accordingly, it is found that the FAP supplement was not correct.

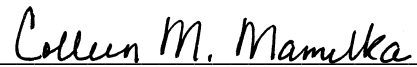
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant's December 7, 2010 Request for Reconsideration is DISMISSED as untimely. It is further held that the Department's QMB determination and Department's FAP supplement are not upheld.

Accordingly, it is ORDERED:

1. The Claimant's December 7, 2010, Request for Reconsideration for the October 21, 2010, Decision and Order is DISMISSED as untimely.
2. The Department's MA/QMB determination is REVERSED.
3. The Department shall re-register and process the Claimant's MA/QMB March 2010 application in accordance with Department policy.
4. The Department shall notify the Claimant in writing of the QMB determination in accordance with Department policy.

5. The Department shall supplement for Medicare Part B premiums paid from April 2010 forward that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
6. The Department's November 19, 2010, FAP supplement is REVERSED.
7. The Department shall recalculate the Claimant's FAP supplement for the period from March 2, 2010, through November 30, 2010, using the Claimant's correct monthly income.
8. The Department shall notify the Claimant in writing of the determination in accordance with Department policy.
9. The Department shall supplement for lost FAP benefits that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.



Colleen M. Mamelka
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: June 14, 2011

Date Mailed: June 20, 2011

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

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The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

CMM/pf

cc:

