

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg No. 2011540
Issue No. 2026/3002
Case No. [REDACTED]
Load No. 1 [REDACTED]
Hearing Date: January 11, 2011
Calhoun County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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, an in-person hearing was held on January 11, 2011. Claimant personally appeared and testified.

ISSUE

Did the department properly place claimant's Medicaid (MA) case in deductible status with a [REDACTED] monthly deductible amount and properly determine her monthly Food Assistance Program (FAP) issuance in September 2010?

FINDINGS OF FACT

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

1. Claimant resides with her adult, 18-year-old son in [REDACTED], [REDACTED].
2. At all times relevant, claimant has been working at least part-time [REDACTED].
3. On September 9, 2010, claimant applied for FAP benefits.
4. Because claimant is disabled and also employed, she has been eligible for the department's monthly Additional Low-Income Medicare Benefit (ALMB), which remains ongoing (Department Exhibit #2, pg 1).

5. When determining claimant's household's FAP eligibility and monthly benefit level the department used the income/expense rules required by policy in light of claimant's necessary budgetable factors, as verified (Client Exhibit A; Department Exhibit #1, pgs 5-8).
6. The department determined claimant's household would be eligible for [REDACTED] per month effective October 1, 2010; however, this amount was prorated per diem in September 2010 as required from the application date (9/9/10) in the first month (Department Exhibit #1, pgs 5-8).
7. This resulted in a slightly decreased issuance in September 2010 ([REDACTED]).
8. The department also calculated a monthly MA deductible obligation for claimant based on her income, as required In the MA Group 2 Income Eligibility Policy set forth in BEM Item 545, pgs 1-25.
9. For MA eligible clients with income, the department must consider a Protected Income Level, which is a set amount.
10. PRT 240, pg 1 mandates a [REDACTED] monthly Protected Income Level in claimant's case.
11. Consequently, when the department subtracted this set amount ([REDACTED]) from claimant's countable net income (\$ [REDACTED]), a [REDACTED] monthly deductible resulted ([REDACTED]) (Department Exhibit #1, pgs 3 and 4).
12. On September 22, 2010, the department received claimant's timely hearing request disputing their FAP/MA budgeting actions.
13. Claimant's hearing was held in-person in the [REDACTED] ([REDACTED]) on January 11, 2011.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The applicable departmental policy states:

FAP INCOME BUDGETING

DEPARTMENT POLICY

This item applies only to FAP

A non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group must have income below the net income limits. PEM, Item 550, p. 1.

Always calculate income on a calendar month basis to determine eligibility and benefit amounts. Use income from a month specified in this item for the benefit month being considered.

Budget the entire amount of earned and unearned countable income. Gross countable earned income is reduced by a 20% earned income deduction. Every case is allowed the standard deduction shown in RFT 255. PEM, Item 550, p. 1.

FAP ALLOWABLE EXPENSES AND EXPENSE BUDGETING

DEPARTMENT POLICY

This item applies **only** to FAP.

Budget the following expenses to determine net income for FAP eligibility and benefit levels. PEM, Item 554, p. 1.

- . Groups **with** one or more SDV member:
 - .. dependent care expense up to the maximum in RFT 255; and
 - .. excess shelter, and
 - ..
 - .. court-ordered child support and arrearages paid to non-household members, and

- .. medical expenses for the SDV member(s) that exceed \$35 PEM, Item 554, p. 1.

Complete either manually-calculated or LOA2 budget to document expenses every time an expense change is reported. PEM, Item 554, p. 1.

ALLOWABLE EXPENSES

Allow an expense if:

- . the service is provided by someone outside of the FAP group, and
- . someone in the FAP group has the responsibility to pay for the service in money, and
- . verification is provided, if required. PEM, Item 554, p. 1.

BUDGETING EXPENSES

Budget Month

Use expenses from the same calendar month as the month for which you are determining benefits. PEM Item 554, p. 2.

Verification

You **must** verify the responsibility to pay and the amount of certain expenses. See the individual expense policy for verification requirements. Document verification in the case record.

Do **not** budget expenses that require verification until the verification is provided. Determine eligibility and the benefit level without an expense requiring verification if it cannot be verified.

Example: Do **not** include a medical expense that might be covered by a reimbursement if the amount of the reimbursement cannot be verified.

Treat subsequently provided verification to an eligible FAP group as a change. Issue a supplement for lost benefits **only** if:

- . the expense could **not** be verified within 30 days of the application, and

- . the local office was at fault. PEM, Item 554, p. 2.

SHELTER EXPENSES

Allow a shelter expense when the FAP group has a shelter expense or contributes to the shelter expense. Do **not** prorate the shelter expense even if the expense is shared. Shelter expenses are allowed when billed. The expenses do **not** have to be paid to be allowed. PEM, Item 554, p. 9.

Verification

Verify shelter expenses at application and when a change is reported. If the client fails to verify a reported change in shelter, remove the old expense until the new expense is verified.

Verify the expense **and** the amount for housing expenses, property taxes, assessments, insurance and home repairs. PEM, Item 554, p. 10.

MANDATORY HEAT AND UTILITY STANDARD

Heat Separate from Housing Costs

A FAP group which has a heat expense or contributes to the heat separate from rent, mortgage or condominium /maintenance payments, must use the Heat and Utility Standard. This standard covers all heat and utility costs except **actual utility expenses, i.e. installation fees**, etc. (See Actual Utilities in this item.) Do **not** prorate the Heat and Utility Standard even if the heat expense is shared.

FAP groups that qualify for the Heat and Utility Standard **do not** receive any other individual utility standards. PEM, Item 554, p. 11.

Verification Sources

Acceptable verification sources include, but are not limited to:

- . current bills or a written statement from the provider for heat expenses
- . collateral contact with the landlord or the heat provider
- . cancelled checks, receipts or money order copies, if current. The receipt must contain minimum information to identify the expense, the amount of the expense, the expense address,

the provider of the service and the name of the person paying the expense.

- . DHS-3688, Shelter Verification
- .
- . current lease PEM, Item 554, p. 11.

Furthermore, in order to qualify for Group 2 MA coverage, a medically needy person like claimant must have income which is equal to or less than the Protected Income Level. This dollar figure is a set amount for all non-medical needs, such as food, shelter and incidental expenses. If an individual's income exceeds the Protected Income Level, the excess amount must be used to pay medical expenses before Group 2 MA coverage can begin. This process is known as a "deductible" case. In claimant's case, the Protected Income Level is [REDACTED]. When the department subtracted this dollar amount (i.e., [REDACTED]) from claimant's countable net income (i.e., \$[REDACTED], a [REDACTED] deductible amount resulted.

Specifically, the department's policies relating to deductible cases are as follows:

MA GROUP 2 INCOME ELIGIBILITY

Deductible

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.

Active Deductible

Open an MA case **without ongoing Group 2 MA coverage** on CIMS as long as:

- . The fiscal group has excess income, **and**
- . At least one fiscal group member meets all other Group 2 MA eligibility factors.

Such cases are called active deductible cases. Periods of MA coverage are added on CIMS each time the group meets it deductible.

Deductible Period

Each calendar month is a separate spend-down period.

Deductible Amount

The fiscal group's monthly excess income is called a deductible amount. PEM 545, pp. 8-9.

Meeting a Deductible

Meeting a deductible means reporting and verifying allowable medical expenses (defined in “**EXHIBIT I**”) that equal or exceed the deductible amount for the calendar month tested. PEM, Item 545, p. 9.

The group must report expenses by the last day of the third month following the month for which it wants MA coverage. PAM 130 explains verification and timeliness standards. PEM, Item 545. p. 9.

PROCESSING CHANGES

The group must report changes in circumstances within 10 days. Review the group’s eligibility when a change that may affect eligibility is reported. PEM, Item 545, p. 10.

EXHIBIT I - MEDICAL EXPENSES

A **medical expense** must be incurred for a medical service listed below. Except for some transportation, the actual charge(s) minus liable third party resource payments counts as an allowable expense. However, not all sources of payment are considered liable third party resources. See “**THIRD PARTY RESOURCES, EXHIBIT 1A.**”

Note: A charge cannot be incurred until the service is provided. PEM, Item 545, p. 12.

Count allowable expenses incurred during the month you are determining eligibility for, whether paid or unpaid. You may also count certain **unpaid** expenses from prior months that have not been used to establish MA eligibility. See “**OLD BILLS, EXHIBIT 1B**”. PEM, Item 545, p. 13.

Medical Services

Medical services include the following:

- . Cost of a Diabetes Patient Education program
- . Service animal (e.g., guide dog) or service animal maintenance
- . Personal care services in home, AFC, or HA (See “**EXHIBIT 1D**”)

- . Transportation *for any medical reason

PEM, Item 545, p. 13.

- . Medical service(s) provided by any of the following:
 - .. Anesthetist. PEM, Item 545, p. 13.
 - .. Clubhouse psychosocial rehabilitation programs
 - .. Chiropractor. PEM, Item 545, p. 13.
 - .. Christian Science practitioner nurse or sanatorium. PEM, Item 545, p. 13.
 - .. Certified nurse-midwife. PEM, Item 545, p. 13.
 - .. Dentist. PEM, Item 545, p. 13.
 - .. Family planning clinic. PEM, Item 545, p. 13.
 - .. Hearing aid dealer. PEM, Item 545, p. 13.
 - .. Hearing and speech center. PEM, Item 545, p. 13.
 - .. Home health agency. PEM, Item 545, p. 13.
 - .. Hospice. (See "EXHIBIT III"). PEM, Item 545, p. 13.
 - .. Hospital. (See "EXHIBIT IC"). PEM, Item 545, p. 13.
 - .. Laboratory. PEM, Item 545, p. 13.
 - .. Long-term care facility. (See "EXHIBIT IC"). PEM, Item 545, p. 13.

- .. Maternal support services provider. PEM, Item 545, p. 13.
- .. Medical clinic. PEM, Item 545, p. 13.
- .. Medical supplier**. PEM, Item 545, p. 13.
- .. Mental health clinic. PEM, Item 545, p. 13.
- .. Nurse. PEM, Item 545, p. 13.
- .. Occupational therapist. PEM, Item 545, p. 13.
- .. Ophthalmologist. PEM, Item 545, p. 13.
- .. Optometrist. PEM, Item 545, p. 13.
- .. Oral surgeon. PEM, Item 545, p. 13.
- .. Orthodontist. PEM, Item 545, p. 13.
- .. Pharmacist***. PEM, Item 545, p. 13.
- .. Physical therapist. PEM, Item 545, p. 13.
- .. Physician (M.D. or D.O.). PEM, Item 545, p. 13.
- .. Podiatrist. PEM, Item 545, p. 13.
- .. Psychiatric hospital. PEM, Item 545, p. 13.
- .. Psychiatrist. PEM, Item 545, p. 13.
- .. Psychologist. PEM, Item 545, p. 13.
- .. Radiologist. PEM, Item 545, p. 13.

- .. Speech therapist. PEM, Item 545, p. 13.
- .. Substance abuse treatment services provider. PEM, Item 545, p. 13.
- .. Visiting nurse. PEM, Item 545, p. 14.
- . * Includes ambulance at actual cost and other transportation for medical services at the rates in PAM 825. Includes clients driving themselves for episodic and pharmacy trips at the rate they are paid in PAM 825 for chronic ongoing trips. PEM, Item 545, p. 14.
- . ** Includes purchase, repair and rental of supplies, such as:
 - . Prosthetic devices
 - . Orthopedic shoes
 - . Wheelchairs
 - . Walkers
 - . Crutches
 - . Equipment to administer oxygen
 - . Personal response system (e.g., Lifeline Emergency Services)PEM, Item 545, p. 14.
- . *** Includes:
 - . Legend drugs (i.e., only obtained by prescription)
 - . Aspirin, ibuprofen and acetaminophen drug products
 - .. prescribed by a doctor, and
 - .. dispensed by a pharmacy
 - . Non-legend drugs and supplies, such as:
 - .. Insulin
 - .. Needles
 - .. Syringes

- .. Drugs for the treatment of renal (kidney) diseases
- .. Family planning drugs and supplies
- .. Ostomy supplies
- .. Oxygen
- .. Surgical supplies
- .. Nicotine patches and gum
- .. Incontinence supplies

PEM, Item 545, p. 14.

It does not include medicine chest and first aid supplies, such as:

- . Band-Aids
- . Alcohol
- . Cotton swabs
- . Nonprescription cold remedies
- . Ointments
- . Thermometers

PEM, Item 545, p. 14.

The inclusion of claimant's earned income into her MA budget is required by policy. BEM Item 500. Unfortunately for claimant, the imposition of a deductible restriction is inevitable in this case.

Additionally, this Administrative Law Judge has reviewed the department's FAP/MA budgeting processes and she finds all calculations were properly made. Consequently, the department's actions must be upheld, because they are in complete compliance with the department's policies, and with the governing laws and regulations on which those policies are based.

Claimant's grievance centers on dissatisfaction with the department's current policy. Claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department correctly placed claimant's MA case in deductible status with a [REDACTED] monthly deductible amount and properly determined her FAP issuance in September 2010.

Accordingly, the department's actions are AFFIRMED.

ISI
Marlene B. Magyar
Administrative Law Judge
for Duane Berger, Acting Director
Department of Human Services

Date Signed: January 19, 2011

Date Mailed: January 19, 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

MBM/db

cc: [REDACTED]