

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.: 2011-8903
Issue Nos.: 2019, 3003, 3052
Case No.: [REDACTED]
Hearing Date: January 3, 2011
DHS County: Wayne (82-35)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37 and Claimant [REDACTED] request for a hearing. After due notice, a telephone hearing was held on January 3, 2011. Claimant appeared and testified. [REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUES

1. Whether DHS properly calculated the amount of Claimant's Food Assistance Program (FAP) grant?
2. Whether DHS properly calculated Claimant's Medical Assistance (MA or Medicaid) Patient Pay Amount (spend-down)?
3. Whether DHS is entitled to recoup an overissuance to Claimant through the administrative recoupment process?

FINDINGS OF FACT

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

1. Claimant receives Social Security Income (SSI) of \$967 per month.
2. In 2010, Claimant received FAP and MA benefits.
3. Claimant does not have any pension income.

4. DHS erroneously included pension income as a part of Claimant's gross income when DHS calculated Claimant's FAP benefits.
5. DHS erroneously calculated Claimant's monthly property tax in determining her FAP benefits.
6. DHS corrected both of these errors, resulting in a decrease in Claimant's FAP benefits.
7. DHS failed to consider Claimant's monthly Blue Cross Blue Shield (BCBS) insurance premiums in calculating her net income for FAP benefits.
8. At the hearing, DHS agreed to recalculate Claimant's FAP benefits using the BCBS information Claimant provided at the hearing.
9. On October 25, 2010, DHS issued a Notice of Case Action and a Notice of Overissuance reducing Claimant's FAP benefit from \$16 to \$6 and requesting repayment of \$448.
10. Claimant declined to sign a Repayment Agreement.
11. Claimant seeks a reduction of her MA spend-down amount because she cannot afford to pay it.
12. Claimant filed requests for hearing on October 1, 2010, October 28, 2010, and November 1, 2010.

CONCLUSIONS OF LAW

FAP was established by the Food Stamp Act of 1977 and is implemented by Federal regulations in Title 7 of the Code of Federal Regulations. DHS administers the FAP program pursuant to MCL 400.10 *et seq.*, and Michigan Administrative Code Rules 400.3001-400.3015. DHS' policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. DHS' policies are found in BAM, BEM and RFT. *Id.*

The manuals are the policies and procedures that DHS officially created for its own use. While the manuals are not laws created by Congress or the Michigan State Legislature, they constitute the legal authority which DHS must follow. It is to the manuals that I look now in order to see what policy applies in this case. After setting forth what the applicable policies are, I will examine whether they were in fact followed in this case.

I will first address the FAP calculation. FAP calculations are made in accordance with BEM 550, "FAP Income Budgeting." I have reviewed this BEM Item in its entirety. BEM 550 requires that income shall be calculated on a monthly basis and that every person shall receive a standard deduction.

I also find that another manual Item, BEM 554, "FAP Allowable Expenses and Expense Budgeting," applies in this case as well. BEM 554 lists the allowable medical expenses that can be deducted for the purpose of determining FAP income. They are medical/dental care, hospitalization/nursing care, prescription drugs/postage, medical supplies, over-the-counter medication, insurance premiums, Medicare premiums, dentures/hearing aids/prosthetics, prescription eyeglasses, transportation/lodging, and attendant care. BEM 554 also states that property taxes are an allowable expense. BEM 554, pp. 7-8, 10.

I now look to see if DHS properly applied these manual Items in the calculation of Claimant's FAP benefits. I find that DHS gave Claimant the standard deduction and made a correction as to her monthly property taxes. I also find and conclude that DHS corrected its error in including pension income. I find that DHS correctly reduced the amount of property taxes Claimant paid, and DHS correctly eliminated pension income from Claimant's income. To this extent, I AFFIRM DHS' action in this case.

However, DHS did not include Claimant's BCBS insurance premiums. I find and conclude that BEM 554 requires that Claimant's BCBS premiums shall be deducted from Claimant's income in calculating FAP benefits. I find that DHS erred in failing to include the premiums and shall be PARTIALLY REVERSED as to the FAP calculation in this case. DHS is ORDERED to recalculate Claimant's FAP benefits, making appropriate deductions for insurance premiums Claimant paid.

Next, with regard to Claimant's Medicaid spend-down amount, the applicable manual Item to consider is BEM 541, "MA Income Deductions – SSI-Related Adults." This Item lists the expenses that can be used to reduce or set off the overall gross income and cause the net income to be a smaller amount. BEM 541 lists the following as the only allowable deductions: court-ordered child support, blind and impairment-related work expenses, allocation to non-SSI-related children, \$20 disregard (this applies only to unearned income), \$65 + ½ disregard (this applies only to earned income) and guardianship/conservator expenses.

Having reviewed the six categories of deductions allowed, I find that Claimant is entitled to only the \$20 unearned income disregard. I also reviewed the MA spend-down budget provided at the hearing, and I find that DHS did provide a \$20 disregard to Claimant. I do not find that Claimant has presented evidence to qualify her for any other type of deduction allowed by BEM 541. Therefore, I find that DHS properly calculated Claimant's MA spend-down and I AFFIRM the DHS calculation that Claimant's spend-down amount is \$572.

The last issue in this case is whether DHS is entitled to recoup \$448 FAP benefits paid to Claimant. DHS recoupment policy is found in BAM 700, "Benefit Overissuances." This Item states that even if the overissuance was caused by DHS' error, DHS is entitled to recoup it. BAM 700, p. 3.

I have reviewed the alleged FAP overpayment amount of \$448. This figure is based on a corrected FAP calculation which included the correction of Claimant's pension income and property taxes. However, I ruled above that Claimant's FAP budget must be recalculated a third time to include the appropriate deductions for BCBS premiums. Until this recalculation is made, the correct amount of Claimant's benefits and the amount of the overpayment, if any, are to be determined. I therefore DENY DHS' request for an order permitting DHS to pursue administrative recoupment procedures in this case. I hold that until the exact amount of the overpayment is known, DHS may not initiate recoupment procedures.

In conclusion, I will summarize all of my rulings in this closing paragraph. I AFFIRM DHS' correction of two DHS errors in FAP benefit calculation concerning pension income and property taxes. I REVERSE DHS with regard to its calculation of FAP benefits to the extent that it erred in omitting BCBS premiums as deductible items in the FAP calculation. I AFFIRM DHS' calculation of Claimant's MA spend-down and find that no further action need be taken with regard to the MA spend-down. I DENY DHS' request for an order allowing DHS to initiate recoupment procedures. DHS may take no further action with regard to recoupment in this case.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, the Administrative Law Judge PARTIALLY AFFIRMS and PARTIALLY REVERSES DHS in this case as follows:

1. AFFIRMS the recalculation of Claimant's FAP grant to eliminate errors with regard to Claimant's pension and property taxes;

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2. REVERSES DHS with regard to the omission of BCBS premiums as a deductible item in the FAP calculation;
3. AFFIRMS DHS' calculation of Claimant's MA spend-down; and
4. DENIES DHS' request for a finding of an overissuance in this case.

IT IS ORDERED that DHS shall recalculate Claimant's FAP benefits in accordance with all DHS policies and procedures. IT IS ORDERED that DHS need take no further action with regard to Claimant's MA spend-down. IT IS ORDERED that DHS' request for an order permitting that administrative recoupment procedures be initiated is DENIED.



Jan Leventer
Administrative Law Judge
for Duane Berger, Director
Department of Human Services

Date Signed: January 10, 2011

Date Mailed: January 13, 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 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.

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