

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-20510
Issue No.: 2026
Case No.: [REDACTED]
Hearing Date: May 8, 2013
County: Oakland (63-03)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on May 8, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department properly calculate Claimant's Medical Assistance (MA) deductible effective January 1, 2013, ongoing?

FINDINGS OF FACT

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

1. Claimant was an ongoing recipient of MA benefits.
2. On December 14, 2012, the Department sent Claimant a Notice of Case Action advising him that, effective January 1, 2013, he would receive MA coverage with a monthly \$838 deductible. Exhibit 1.
3. On December 19, 2012, Claimant filed a request for hearing disputing his MA deductible.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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 (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015.

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

The Adult Medical Program (AMP) is established by 42 USC 1315, and is administered by the Department pursuant to MCL 400.10, *et seq.*

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3151 through R 400.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001 through R 400.5015.

It was not disputed that Claimant and his wife were disabled and/or aged individuals. As a disabled person, Claimant received Group 2 Spend-Down (G2S). G2S is an SSI-related category. BEM 166 outlines the proper procedures for determining G2S eligibility. 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 (October 2010), p. 1; BEM 166 (October 2010), pp. 1-2; BEM 544 (August 2008), p. 1; RFT 240 (July 2007), p. 1. The monthly PIL for an MA group of two (Claimant and his spouse) living in Oakland County is \$541 per month. RFT 200 (July 2007), p. 1; RFT 240, p. 1. Moreover, an individual whose monthly income is in excess of \$541 may become eligible for assistance under the deductible program, with the deductible being equal to the amount that the group's monthly income exceeds the PIL. BEM 545 (July 2011), p. 1.

In this case, it was not disputed that Claimant's wife's gross Retirement, Survivors, and Disability Insurance (RSDI) unearned income was \$250 per month. However, the Department testified that Claimant's gross RSDI unearned income was \$776 per month. Claimant disputed this amount. Claimant testified that he received less in RSDI because approximately 4-5 years ago, the Social Security Administration (SSA) overpaid him. Thus, Claimant testified the SSA began deducting payments from his bank account to pay back the overpayment. Claimant did not present any documentation at the hearing regarding the overpayment information.

RSDI is a federal benefit administered by the SSA which is available to retired and disabled individuals, their dependents, and survivors of deceased workers. BEM 503 (November 2012), p. 21. The Department counts the gross benefit amount as unearned income. BEM 503, p. 21. However, amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income. BEM 500 (November 2012), p. 4. These amounts are excluded as income. BEM 500, p. 4. But, any portion of an overpayment (that is normally countable) if the original payment was excluded income when received must be included in gross income. BEM 500, p. 4.

At the hearing, the Department presented two SOLQ reports that showed Claimant's gross RSDI income. Exhibits 1 and 2. Both reports showed that Claimant received a net income which was less than the gross income. Exhibits 1 and 2. There was no explanation on the SOLQ reports to indicate why there was a difference with gross versus net income. Thus, Claimant credibly testified that he had an overpayment being deducted from his RSDI payments. Claimant's overpayment did not fall within the exception to be included in the gross income. BEM 500, p. 4. Thus, the Department should not have included Claimant's overpayment in the calculation of his gross income. BEM 500, p. 4.

Additionally, the Department properly subtracted the \$20 disregard from Claimant's total unearned income; however, the total net unearned income will be different due to the exclusion of the RSDI overpayment. BEM 530 (August 2008), p. 1; BEM 541 (January 2011), p. 1.

Moreover, it was not disputed that Claimant's wife's earned income was \$846 from her adult home help provider income. Exhibit 1. BEM 541 then states that the Department will add \$65 to Claimant's wife's \$846 earned income, which totals \$911. BEM 541, p. 3. BEM 541 then states to disregard one-half of this amount, totaling \$455.50. BEM

541, p. 3; RFT 295 (October 2008), p. 1. The Department will then subtract \$455.50 from Claimant's earned income of \$846, totaling \$390.50. BEM 541, pp. 1-6. The Department would then take the total earned income and add the wife's earned income of \$390.50 and obtain a total net income. However, this amount is different once again due to the exclusion of the RSDI overpayment.

Then, if the recalculation of Claimant's net income for MA purposes exceeds the monthly protected income level of \$541, this difference will be Claimant's monthly deductible. The Department testified that the budget used to calculate Claimant's monthly deductible disregarded \$20 and the Department was unable to explain the \$20 difference. Nevertheless, the Department improperly calculated Claimant's MA deductible. The Department has to redetermine Claimant's MA eligibility to exclude his overpayment amount. BEM 500, p. 4


DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated above and on the record, finds that the Department improperly calculated Claimant's MA deductible in accordance with Department policy because it failed to exclude the overpayment amount in Claimant's RSDI income.

Accordingly, the Department's MA decision is REVERSED.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Recalculate Claimant's MA budget for January 1, 2013, ongoing, and exclude Claimant's RSDI overpayment in the calculation, in accordance with Department policy;
2. Issue supplements to Claimant for any MA benefits he was eligible to receive but did not from January 1, 2013, ongoing; and
3. Notify Claimant in writing of its decision in accordance with Department policy.


Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 15, 2013

Date Mailed: May 16, 2013

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

EJF/pf

cc:

