

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

**IN THE MATTER OF:**

██████████  
██  
██

Reg. No.: 2014-20820  
Issue No(s): 2007; 3008  
Case No.: ██████████  
Hearing Date: January 29, 2014  
County: Wayne (17)

**ADMINISTRATIVE LAW JUDGE:** Eric Feldman

**HEARING DECISION**

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on January 29, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and Claimant's advocate/interpreter, ██████████. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████ Medical Contact Worker.

**ISSUES**

Did the Department properly calculate Claimant's Medical Assistance (MA) deductible in the amount of \$934 effective January 1, 2014, ongoing?

Did the Department properly calculate Claimant's Food Assistance Program (FAP) allotment in the amount of \$83 effective January 1, 2014, 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 is an ongoing recipient of FAP and MA benefits.
2. On December 6, 2013, the Department sent Claimant a Notice of Case Action notifying her that her MA deductible would be \$934 effective January 1, 2014, ongoing. See Exhibit 2.

3. On December 7, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits would decrease to the amount of \$83 effective January 1, 2014, ongoing. See Exhibit 2.
4. On December 23, 2013, Claimant filed a hearing request, protesting her FAP allotment (this hearing request referenced the Notice of Case Action dated December 7, 2013). See Exhibit 1.
5. On December 30, 2013, Claimant filed a hearing request, protesting her MA deductible (this hearing request referenced the Notice of Case Action dated December 6, 2013). See Exhibit 1.

### **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), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

### **FAP benefits**

Claimant is an ongoing recipient of FAP and MA benefits. On December 7, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits would decrease to the amount of \$83 effective January 1, 2014, ongoing. See Exhibit 2.

It was not disputed that the group size is two and that the FAP group does contain two senior/disabled/disabled veteran (SDV) members. The Department presented the January 2014 FAP budget for review from the Notice of Case Action dated December 7, 2013. See Exhibit 2. The Department calculated the FAP group's gross unearned income to be \$1,456. See Exhibit 2.

The Department counts the gross benefit amount for Retirement, Survivors, and Disability Insurance (RSDI) amount as unearned income. See BEM 503 (July 2013), p. 28. The Department also counts the gross amount of current SSA-issued Supplemental

Security Income (SSI) as unearned income. BEM 503, p. 32. State SSI Payments (SSP) are issued quarterly. BEM 503, p. 33. Payments are issued in the final month of each quarter. BEM 503, p. 33. Whenever an SSA-issued independent living or household of another payment is budgeted, the Department counts the corresponding monthly SSP benefit amount as unearned income. BEM 503, p. 33; and see RFT 248 (December 2013), p. 1.

At the hearing, the FAP group's unearned income comprised of Claimant and her husband's SSA income. The Department presented Claimant's SOLQ document, which indicated she receives a gross amount of \$591 in monthly RSDI income. See Exhibit 2. Also, Claimant's husband's SOLQ document indicated that he receives a gross RSDI income amount of \$865. See Exhibit 2. When both amounts are added together, this results in a gross unearned income amount of \$1,456. Based on this information, the Department properly calculated the unearned income.

The Department then applied the \$151 standard deduction applicable to Claimant's group size of two. RFT 255 (December 2013), p. 1.

The Department also applied \$70 in medical deductions. For groups with one or more SDV members, the Department uses medical expenses for the SDV member(s) that exceed \$35. BEM 554 (July 2013), p. 1. At application and redetermination, the Department considers only the medical expenses of SDV persons in the eligible group or SDV persons disqualified for certain reasons. BEM 554, p. 8. The Department estimates an SDV person's medical expenses for the benefit period. BEM 554, p. 8.

A list of allowable expenses are located in BEM 554. BEM 554, pp. 9-11. The Department estimates an SDV person's medical expenses for the benefit period. BEM 554, p. 11. The expense does not have to be paid to be allowed. BEM 554, p. 11. The Department allows medical expenses when verification of the portion paid, or to be paid by insurance, Medicare, Medicaid, etc. is provided. BEM 554, p. 11. The Department allows only the non reimbursable portion of a medical expense. BEM 554, p. 11. The medical bill cannot be overdue. BEM 554, p. 11. The medical bill is not overdue if one of the following conditions exists:

- Currently incurred (for example, in the same month, ongoing, etc.).
- Currently billed (client is receiving the bill for the first time for a medical expense provided earlier and the bill is not overdue).
- Client made a payment arrangement before the medical bill became overdue.

BEM 554, p. 11.

Finally, the Department verifies allowable medical expenses including the amount of reimbursement, at initial application and redetermination. BEM 554, p. 11. The Department verifies reported changes in the source or amount of medical expenses if the change would result in an increase in benefits. BEM 554, p. 11.

In this case, the SOLQ document indicated that Claimant received Part B premium in the amount of \$104.90, however, Claimant was not paying this amount as it was state billing. See Exhibit 2. The SOLQ document also indicated that Claimant's husband received Part B premium in the amount of \$104.90, however, he was not paying this amount as it was state billing. See Exhibit 2. It should be noted that the husband's Part B premium buy-in start date was January 1, 2014. See Exhibit 2. It was discovered during the hearing, though, that Claimant's husband received a different amount in RSDI income. Claimant presented as evidence a bank statement history that showed that Claimant's husband received a direct deposit amount of \$760 from SSA and Claimant received \$591 from SSA. See Exhibit A. Claimant's amount matches correctly with the SOLQ. However, Claimant's husband amount is different. Based on the above information, it appears that Claimant's husband paid for his Part B premium for January 2014 (\$865 gross RSDI income minus \$104.90 Part B Premium equals \$760).

Nevertheless, the Department takes into account Claimant's husband's Part B Premium as a medical deduction. See Exhibit 2. Claimant's husband is an SDV member and receives a medical deduction for any expenses in excess of \$35. Thus, the \$104.90 Part B premium minus \$35, results in the medical deduction amount of \$70. See Exhibit 2 and BEM 554, p. 1.

It should be noted that Claimant cannot have her Part B premium as a medical deduction as it is state billing. Also, Claimant and her witness testified that she did have additional medical expenses, such as a \$412 medical bill that incurred on October 7, 2013. However, it was discovered that Claimant just received that bill and did not present it until today's hearing. Also, Claimant and her witness testified that they have prescription co-pays.

Based on the foregoing information and evidence, the Department properly calculated the medical deduction in the amount of \$70. As stated above, Claimant's husband is entitled to the \$70 medical deduction as it was proven by the Claimant that he paid for his Part B premium for January 2014. See Exhibit A. However, Claimant did not notify the Department of the other medical expenses until today's hearing. The Department did not have any verifications of these medical expense beforehand. BEM 554, p. 11.

Once the Department subtracts the \$151 standard deduction and \$70 medical deduction, this results in an adjusted gross income of \$1,235. See Exhibit 1.

Then, Claimant testified that the FAP group does contain SDV members. For groups with one or more SDV members, the Department uses the excess shelter amount. BEM 554, p. 1.

The Department presented an excess shelter budget, which indicated Claimant's monthly housing expense is \$421, which Claimant did not dispute. See Exhibit 2. Then, the Department gives a flat utility standard to all clients responsible for utility bills. BEM 554, pp. 14-15. The utility standard of \$553 (see RFT 255, p. 1.) encompasses all

utilities (water, gas, electric, telephone) and is unchanged even if a client's monthly utility expenses exceed the \$553 amount.

Furthermore, the total shelter obligation is calculated by adding Claimant's housing expenses to the utility credit; this amount is found to be \$974. Then, the Department subtracts the total shelter amount from fifty percent of the \$1,235 adjusted gross income to obtain an excess shelter deduction.

Finally, the Department then subtracts the \$1,235 adjusted gross income from the excess shelter deduction, this results in a net income of \$878. See Exhibit 1. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Claimant's group size and net income, the Department properly determined that Claimant's FAP benefit issuance is found to be \$83. RFT 260 (December 2013), p. 12.

### **MA deductible**

Claimant is an ongoing recipient of FAP and MA benefits. On December 6, 2013, the Department sent Claimant a Notice of Case Action notifying her that her MA deductible would be \$934 effective January 1, 2014, ongoing. See Exhibit 2.

It was not disputed that Claimant was disabled and/or an aged individual. As a disabled person, Claimant received Group 2 Spend-Down (G2S).

G2S is an SSI-related Group 2 MA category. BEM 166 (July 2013), p. 1. BEM 166 outlines the proper procedures for determining G2S eligibility. BEM 166, pp. 1-3.

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 (July 2013), p. 1; BEM 166, p. 2; BEM 544 (July 2013), p. 1; RFT 240 (December 2013), p. 1.

The monthly PIL for an MA group of one living in Wayne County is \$375 per month. RFT 200 (December 2013), pp. 1-2; RFT 240, p. 1. The monthly PIL for an MA group of two (Claimant and her spouse) living in Wayne County is \$500 per month. RFT 200, pp. 1-2; RFT 240, p. 1.

Moreover, an individual whose monthly income is in excess of \$375 (for a MA group of one) or \$500 (for a MA group of two), 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 2013), p. 1.

In this case, the Department presented the MA – G2S budget for January 2014. See Exhibit 2. The Department calculated a gross unearned income amount of \$1,456. See Exhibit 2. As stated in the above analysis, the \$1,456 is the proper calculation for Claimant and her husband's SSA income. Also, the Department properly subtracted the

\$20 disregard to establish Claimant's total net income for MA purposes at \$1,436. BEM 541 (July 2013), p. 3. The Department also subtracted Claimant's husband's \$104.90 insurance premium. BEM 544, pp. 1-3. The Department's budget indicated that the total countable income is \$1,309.10. See Exhibit 2. However, \$1,456 minus \$104.90 minus \$20, results in a total countable income of \$1,331.10. It appears the difference might be based on the cost-of-living (COLA)

Countable RSDI for fiscal group members is the gross amount for the previous December when the month being tested is January, February, or March. BEM 503, p. 29. Federal law requires the COLA increase received in January be disregarded for these three months. BEM 503, p. 29. For all other months countable RSDI is the gross amount for the month being tested. BEM 503, p. 29. Thus, it appears that Claimant's \$1,309.10 takes into account the COLA disregard when reviewing the SOLQ documents.

Nevertheless, Claimant's net income of \$1,309.10 for MA purposes exceeds the monthly protected income level of \$375 by \$934. Thus, the Department determined that Claimant would receive MA coverage once she incurs medical expenses in excess of \$934 during the month.

However, it was discovered during the hearing that the Department did not apply a protected income level amount for two (Claimant and spouse), which is \$500. See RFT 200, pp. 1-2 and RFT 240, p. 1. If the Department applied the \$500 protected income level, then her deductible would decrease. The Department testified that it did not apply a protected income level amount for two because Claimant's spouse received full medical coverage. The Department testified that Claimant's husband received MA – AD-Care. However, it did not appear clear why the Department would budget Claimant's husband's unearned income, however, not include him in the protected income level.

The protected income level (PIL) is a set allowance for non-medical need items such as shelter, food and incidental expenses. BEM 544, p. 1. RFT 240 lists the Group 2 MA PILs based on shelter area and fiscal group size. BEM 544, p. 1. RFT 200 lists the counties in each shelter area. BEM 544, p. 1.

For past months, the Department uses the shelter area for the county the fiscal group lived in on the last day of the month tested. BEM 544, p. 1. For all other months, use the shelter area for the county the fiscal group lives in on the processing date. BEM 544, p. 1.

BEM 166 states use the fiscal and asset group policies for SSI-related groups in BEM 211. BEM 166, p. 2.

For SSI-Related MA, the following cannot be fiscal or asset group members: FIP recipients; SSI recipients; Title IV-E recipients; Department wards; a person about

whom information necessary to determine eligibility is refused. BEM 211 (July 2013), p. 4.

An adult's fiscal and asset group is: the adult and his spouse for all other customers. BEM 211, pp. 6-7. BEM 211 further states to see BEM 541 to determine budgetable income for each person in the fiscal group. BEM 211, p. 7.

Based on the above information, it appears that Claimant's husband is included in the fiscal group and therefore, the protected income level should be two. First, the Department budgeted income for each person in the fiscal group, which in this case was Claimant and her husband. See BEM 211, p. 7. Based on this action, it appears that the Department recognized both as part of the fiscal group. Second, the Department did not present enough testimony or evidence to determine if the husband is an excluded person from the fiscal group. See BEM 211, pp. 4-5. If he was an excluded person from the fiscal group, then it would be proper for a protected income level of one.

Nevertheless, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it improperly calculated Claimant's MA deductible effective January 1, 2014, ongoing. The Department presented contradictory information as to budgeting Claimant's husband's income, but excluding him from the fiscal group when determining the protected income level. The Department will recalculate the MA deductible and initiate verification of MA group composition.

### **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 the Department (i) acted in accordance with Department policy when it properly calculated Claimant's FAP benefits in the amount of \$83 effective January 1, 2014, ongoing; and (ii) did not act in accordance with Department policy when it improperly calculated Claimant's MA deductible in the amount of \$934 effective January 1, 2014, ongoing.

Accordingly, the Department's decision is AFFIRMED IN PART with respect to FAP benefits and REVERSED IN PART with respect to the MA deductible.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Begin recalculating the MA budget for January 1, 2014, ongoing, in accordance with Department policy;
2. Initiate verification of Claimant's MA group composition effective January 1, 2014, ongoing;

3. Issue supplements to Claimant for any MA benefits she was eligible to receive but did not from January 1, 2014, ongoing; and
4. Notify Claimant in writing of its MA decision in accordance with Department policy.



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

Date Signed: February 5, 2014

Date Mailed: February 5, 2014

**NOTICE OF APPEAL:** 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-07322



EJF/cl

cc:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]