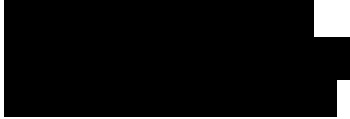


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 2014-28099
Issue No(s): 2007; 3008
Case No.: [REDACTED]
Hearing Date: March 17, 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 March 17, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department or DHS) included [REDACTED], Family Independence Specialist Case Manager. Also, [REDACTED] was present as Claimant's interpreter.

ISSUES

Did the Department properly calculate Claimant's Food Assistance Program (FAP) allotment effective March 1, 2014, ongoing?

Did the Department properly deny Claimant's application for Medicare Savings Program (MSP) 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 benefits.
2. On November 12, 2013, Claimant applied for MSP benefits.
3. On December 6, 2013, the Department sent Claimant a Notice of Case Action notifying him that his MSP application was denied effective January 1, 2014, ongoing. See Exhibit 1.

4. On January 30, 2014, the Department sent Claimant a Notice of Case Action notifying him that his FAP benefits decreased effective March 1, 2014, ongoing, in the amount of \$348. See Exhibit 1.
5. On February 11, 2014, Claimant filed a hearing request, protesting his MSP denial and FAP allotment. 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.

MSP benefits

Medicaid coverage includes Medicare cost-sharing benefits, meaning it will pay for Medicare Part B premiums or Part A and B premiums, coinsurances, and deductibles for certain Medicaid recipients. BAM 810 (July 2013), p. 1.

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 (July 2013), p. 1. Medicaid is also known as Medical Assistance ("MA"). BEM 105, p. 1. The Medicaid program is comprised of several categories; one category is for FIP recipients while another is for SSI recipients. BEM 105, p. 1. The Medicare Savings Programs are SSI-related MA Categories. BEM 165 (October 2013), p. 1. 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 SLMB); and Additional Low-Income Medicare Beneficiaries (also known as ALMB or Q1). BEM 165, p. 1.

Income is the major determiner of which category an individual falls under. BEM 165, p. 1. Effective April 1, 2013, to be eligible for full coverage AD-Care/QMB, income cannot exceed \$958.00 for a fiscal group of one or \$1,293.00 for a fiscal group of two; for

limited coverage QMB/SLMB, \$959.00 to \$1,149.00 (fiscal group of one), and \$1,294.00 to \$1,551.00 (fiscal group of two); and for ALMB \$1,152.00 to \$1,293.00 (fiscal group of one), and \$1,552.00 to \$1,745.00 (fiscal group of 2). RFT 242 (December 2013), pp. 1-2.

Eligibility under the QMB exists when the net income does not exceed 100% of poverty. BEM 165, p. 1. SLMB program exists when the net income is over 100% of poverty, but not over 120% of poverty. BEM 165, p. 1. ALMB program exists when the net income is over 120% of poverty, but not over 135% of poverty. BEM 165, p. 1. A person who is eligible for one of these categories cannot choose to receive a different Medicare Savings Program category. BEM 165, p. 1. All eligibility factors must be met in the calendar month being tested. BEM 165, p. 1. Full coverage QMB pays for Medicare premiums, co-insurances, and deductibles; limited QMB/SLMB pays Medicare Part B premiums; and ALMB pays Medicare Part B premiums provided funding is available. BEM 165, p. 2. The Department of Community Health determines whether funding is available. BEM 165, p. 2.

On November 12, 2013, Claimant applied for MSP benefits. On December 6, 2013, the Department sent Claimant a Notice of Case Action notifying him that his MSP application was denied effective January 1, 2014, ongoing. See Exhibit 1. Specifically, the Notice of Case Action denied Claimant's MSP - ALMB coverage due to him not being eligible. See Exhibit 1.

At the hearing, the Department testified that Claimant was denied for MSP benefits due to excess income. A review of the Notice of Case Action (dated December 6, 2013) only stated he was not eligible and did not mention excess income as a denial reason. Nevertheless, a review of Claimant's SOLQ document indicated he receives \$1,581.90 (gross) in Retirement, Survivors, and Disability Insurance (RSDI) income. See Exhibit 1. However, the Department failed to provide a budget to indicate how it calculated his excess income. A review of his income appears to indicate that he does not qualify; however, a budget is needed to determine if the Department properly denied his application for excess income.

The local office and client or AHR will each present their position to the ALJ, who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600 (March 2014), p. 36. Both the local office and the client or AHR must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence. BAM 600, p. 36. The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600, p. 39.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it improperly denied Claimant's MSP application effective January 1, 2014, ongoing. BAM 600, pp.

36 and 39. First, the Department failed to present a budget to indicate how it calculated his excess income. Second, it was unclear why the Notice of Case Action (dated December 6, 2013) did not mention his MSP application was denied for excess income. It is possible that Respondent does not qualify, however, the Department failed to present a budget to indicate how it calculated the excess income. The evidence failed to present that the Department denied Claimant's MSP application in accordance with Department policy. As such, the Department will reprocess his MSP application effective January 1, 2014, ongoing.

FAP budget

In this case, Claimant is an ongoing recipient of FAP benefits. On January 30, 2014, the Department sent Claimant a Notice of Case Action notifying him that his FAP benefits decreased effective March 1, 2014, ongoing, in the amount of \$348. See Exhibit 1.

It was not disputed that the group size is six and that the FAP group does contain one (Claimant) senior/disabled/disabled veteran (SDV) member. It should be noted that the Claimant testified he has seven household members; however, it was discovered that his wife was excluded for not being a U.S. citizen (less than five years). See BEM 225 (January 2014), pp. 10-11 and 38. Claimant did not dispute this and agreed that the FAP group size is six. Nevertheless, Claimant's spouse does receive RSDI and whether her unearned income is included in the budget will be discussed later.

The Department presented the March 2014 FAP budget for review from the Notice of Case Action dated January 30, 2014. See Exhibit 1. The Department calculated the FAP groups gross unearned income to be \$2,212. See Exhibit 1. Claimant did not dispute this amount. A review of the SOLQ indicated that Claimant receives a gross RSDI income of \$1,581.90. See Exhibit 1. See BEM 503 (January 2014), p. 28. Claimant testified that the additional five group members receive \$131 each month in RSDI income. Also, Claimant testified that his wife receives \$131 in RSDI income, which the SOLQ did verify. See Exhibit 1. It should be noted that only six of the SOLQ's were presented for the hearing. A review of the above amounts concludes a total FAP group RSDI amount of \$2,236 (\$1,581.90 Claimant's RSDI income plus \$655 for five group member's RSDI income). This amount is greater than the \$2,212 calculated by the Department. See Exhibit 1.

Moreover, for FAP benefits, the disqualified person's assets and income might have to be considered based on the program(s) requested (i.e., Claimant's spouse). BEM 225, pp. 1-2. BEM 550 also states that the Department also budgets a pro rata share of earned and unearned income for a person disqualified for not meeting citizenship/alien status requirements. BEM 550 (July 2013), p. 3. Each source of income is prorated individually as follows:

1. The number of eligible FAP group members is added to the number of disqualified persons that live with the group.

2. Next the disqualified/ineligible person's income is divided by the number of persons in step 1.
3. Then the result in step 2 is multiplied by the number of eligible group members.

BEM 550, p. 4. The Department does not apply these rules to the income of eligible group members, or non-group members. BEM 550, p. 4.

Based on this information, the Department appears to have not properly included the prorated share of Claimant's spouse unearned income. Claimant's spouse is a person disqualified for not meeting citizenship/alien status requirements. BEM 550, p. 3. Moreover, it appears that her unearned income should also be included by a pro rata share. See BEM 550, pp. 3-4.

Furthermore, based on the six group member's RSDI income (Claimant plus five eligible group members), a higher unearned income amount was calculated in this decision as compared to the budget presented. See Exhibit 1. Thus, the Department did not act in accordance with Department policy when it improperly calculated the FAP group's unearned income. The Department will recalculate the FAP group's unearned income and also determine if whether the Department budgets a prorated share of the spouse's unearned income. See BEM 550, pp. 3-4.

It should be noted that the Department properly applied the \$218 standard deduction applicable to Claimant's group size of six. RFT 255 (December 2013), p. 1. However, the Department failed to apply a medical deduction for the Claimant. A review of Claimant's SOLQ document indicated that he pays for his Medical Part B Premium in the amount of \$104.90 each month. See Exhibit 1. The Department did not apply a medical deduction for this amount as he is a SDV member. For groups with one or more SDV member, the Department uses medical expenses for the SDV member that exceeds \$35. BEM 554 (July 2013), p. 1. As such, Claimant is entitled to medical expenses in excess of \$35. The Department testified that it previously budgeted the medical deduction. It was unclear why the Department did not apply a medical deduction for Claimant's March 2014 budget. Nevertheless, the Department will recalculate Claimant's medical deduction effective March 1, 2014, ongoing. See BEM 554, pp. 1, 8, and 9.

Finally, the budget indicated that Claimant's monthly housing expense is \$600, which he did not dispute. See Exhibit 1. Also, 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.


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) failed to satisfy its burden of showing that it acted in accordance with Department policy when it improperly denied Claimant's MSP application effective January 1, 2014, ongoing; and (ii) did not act in accordance with Department policy when it improperly calculated Claimant's FAP benefits effective March 1, 2014, ongoing.

Accordingly, the Department's FAP and MSP decision is REVERSED.

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. Initiate registration and processing of Claimant's MSP application dated November 12, 2013;
2. Begin issuing supplements to Claimant for any MSP benefits he was eligible to receive but did not from January 1, 2014, ongoing;
3. Begin recalculating the FAP budget (including the unearned income and medical deductions) for March 1, 2014, ongoing, in accordance with Department policy;
4. Issue supplements to Claimant for any FAP benefits he was eligible to receive but did not from March 1, 2014, ongoing; and
5. Begin notifying Claimant in writing of its FAP and MSP decisions in accordance with Department policy.


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

Date Signed: March 20, 2014

Date Mailed: March 20, 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/tlf

cc:

