

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-011614
Issue No.: 3008, 2001
Case No.: 101953977
Hearing Date: January 22, 2015
County: Washtenaw (20)

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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, an in person hearing was held on January 22, 2015, from Ypsilanti, Michigan. Participants on behalf of Claimant included Claimant and Claimant's Attorney [REDACTED] from [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], [REDACTED]. Also participating by telephone on behalf of the Department was [REDACTED] Assistant Attorney General.

ISSUE

Did the Department properly determine Claimant's Food Assistance Program (FAP) and Medicaid (MA) benefits?

FINDINGS OF FACT

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

1. On June 16, 2014, redetermination forms were sent to Claimant.
2. Claimant submitted redetermination forms and an interview was conducted on August 20, 2014.
3. After the redetermination paperwork was processed Claimant's Food Assistance Program benefits were reduced to \$ [REDACTED] per month from \$ [REDACTED] per month.

4. Claimant's Medicaid changed from MA-Ad-care to Ma-G2C with a \$ [REDACTED] deductible. These actions were reflected in a notice of case action dated August 20, 2014.
5. Claimant requested hearing on August 28, 2014, disputing reduction in FAP assistance and change in Medicaid programs.
6. Claimant received child support payments of \$ [REDACTED] in June 2014 and \$ [REDACTED] in September 2014. These payments were made towards child arrearages owed to Claimant from several years ago.
7. Claimant reported Medical Expenses of "Prescriptions-monthly-\$ [REDACTED]-[REDACTED] on her redetermination form. The Department did not verify these expenses.

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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Allowable Medical Expenses

Allowable medical expenses:

- Prescription drugs and the postage for mail-ordered prescriptions. BEM 554

CHILD SUPPORT

All Types of Assistance

Child Support is money paid by an absent parent(s) for the living expenses of a child(ren). Medical, dental, child care and educational expenses may also be included.

Court-ordered child support may be either **certified** or **direct**. Certified support is retained by the state due to the child's FIP activity. Direct support is paid to the client.

Child support is income to the child for whom the support is paid.

FIP, RCA, SDA, CDC, FAP

Enter child support payments received by a custodial party for an adult child or a child no longer living in the home, as the other unearned income of the payee as long as the money is not forwarded to the adult/child. If forwarded to the adult/child, enter as the other unearned income of the adult/child.

Exception: MA Only - Arrearage payments received by a parent for an adult child, or a child not living in the home, are considered unearned income for the parent.

Child Support Certified All Types of Assistance

Certified support means court-ordered payments the Michigan State Disbursement Unit (MiSDU) sends to DHS due to a child's receipt of assistance. Office of Child Support refers to these collections as retained support.

FAP Only

Bridges excludes collections retained by DHS (certified support) and court-ordered support payments the group receives after the child support certification effective date.

FIP Only

The effective date for court-ordered child support certification at FIP opening depends on the initial FIP eligibility date and the date initial FIP eligibility is certified in Bridges.

When the initial eligibility date is the first of a month, certification of child support is effective the first of the month following the day you certify initial FIP eligibility in Bridges.

When the initial eligibility date is the 16th of a month, court-ordered child support is certified the later of:

- The first of the month following the initial eligibility date.
- The first of the month following the day you certify initial FIP eligibility in Bridges.

Note: Certification effective date changes if a FIP eligibility determination group is closed and then reinstated.

Bridges counts certified child support only in the FIP child support income test: see BEM 255, **Support Certification Effective Date**, BEM 505, **PROSPECTIVE BUDGETING/INCOME CHANGE PROCESSING** and BEM 518, **FIP/RCA/SDA INCOME BUDGETING**.

**Child
Support
Non- FIP
Arrears**

FIP Only

For FIP eligibility determination groups whose initial eligibility is approved on or after October 1, 2009, collections attributed to a time period when the family was not receiving FIP, are not retained by the state. Office of Child Support (OCS) refers to these payments as pre-assistance arrears.

FIP and RCA Only

These payments are excluded income.

MA Only

This type of child support income is countable for SSI-related MA.

FAP Only

This type of child support income is countable.

Child Support Direct (Court- Ordered) All Types of Assistance

Court-ordered direct support means child support payments an individual receives directly from the absent parent or the MiSDU. Bridges counts the total amount as unearned income, except any portion that is court-ordered or legally obligated directly to a creditor or service provider. BEM 505

DEPARTMENT POLICY

SSI-Related MA

Use this item for any person whose income is considered in determining income eligibility or a post-eligibility patient-pay amount. See "Exception" below.

Determine income eligibility and post-eligibility patient-pay amounts (PPA) on a calendar month basis. Use one budget to determine income eligibility (or post-eligibility PPA) for multiple months if the circumstances for each of the months are identical.

Applicants and Deductible Cases

Determine income eligibility in calendar month order beginning with the oldest month. This is especially important when using medical expenses to determine Group 2 income eligibility.

In addition, do a future month budget to determine ongoing income eligibility, deductible status or post-eligibility PPA when a change in circumstances occurred in the processing month or a change is anticipated for the future month. For example:

- Client started a job and will get his first pay next month.
- A group member moved out of the client's home during the processing month.
- Client was admitted to, or discharged from, an LTC facility during the processing month.

MA Recipients and Deductible Cases

For a recipient, do a future month budget at redetermination and when a change occurs that may affect eligibility or a post-eligibility PPA.

For a deductible client, do a future month budget at redetermination and when a change occurs that may affect deductible status.

COUNTABLE INCOME

Use only countable income. Countable income is income remaining after applying MA policy in BEM 500. Also see "**COUNTABLE INCOME**" in BEM 546 for post-eligibility patient-pay amount computations.

AVAILABLE INCOME

Use only available income. Available means income which is received or can reasonably be anticipated. Available income includes amounts garnished from income, joint income, and income received on behalf of a person by his/her representative. See BEM 500 for details.

AVERAGED INCOME

For SSI-related MA budgets, average only self-employment income. Convert self-employment income which is received less often than monthly to a monthly amount based on past and/or estimated future proceeds and allowable expenses.

Group 2 MA budgets, average income received in one month which is intended to cover several months. Divide the income by the number of months it covers to determine the monthly available income. The average amount is considered available in each of the months.

NON-AVERAGED INCOME

Budget non-averaged income for the month in which it was/will be received/available.

Exception: When doing a future month budget, do not budget income from an extra check (example: fifth check for a person who is paid weekly).

BUDGET MONTH INCOME

Past Month

Non-averaged income: Use amounts actually received/available in the past month.

Averaged income: Use the monthly average amount if this month is one of the months used to compute the average.

Processing Month

Non-averaged income: Use amounts already received/available in the processing month. In addition, estimate amounts likely to be received/available during the remainder of the month. See “**PROSPECTING INCOME**” below.

Averaged income: Use the monthly average amount if this month is one of the months used to compute the average.

Future Month

Non-averaged income: Use amounts that will be, or are likely to be, received/available in the future month. See “**PROSPECTING INCOME**” below.

Exceptions:

Do not budget an extra check (example, fifth check for person paid weekly).

If prospecting income based on bi-weekly or twice a month payments, multiply by 2. If prospecting income based on weekly pay, multiply by 4.

Base estimate of daily income (example: insurance pays \$40 for every day in hospital) on a 30-day month.

When the amount of income from a source changes from month to month, estimate the amount that will be received/available in the future month.

Averaged income: Use the monthly average amount if this month is one of the months used to compute the average.

PROSPECTING INCOME

Prospecting income means arriving at a best estimate of the person's income. Prospect income when you are estimating income to be received in a processing or future month. Your best estimate may not be the exact amount of income received.

Some of the reasons income fluctuates is because:

- The number of hours worked in a month may fluctuate.
- The amount of tips may vary from payday to payday.

Use the following guidelines for prospecting income:

For fluctuating earned income, use the expected hourly wage and hours to be worked, as well as the payday schedule, to estimate earnings.

Paystubs showing year-to-date earnings and frequency of pay are usually as good as multiple paystubs to verify income.

A certain number of paystubs is not required to verify income. If even one paystub reflects the hours and wages indicated on the application, that is sufficient information.

If a person reports a pay rate change and/or an increase or decrease in the number of hours they usually work, use the new amount even if the change is not reflected on any paystubs.

If you have an opportunity to talk with the client, that may help establish the best estimate of future income.

Note: Do not require in-person interviews as a condition of eligibility.

AUTOMATED UPDATES

Central office automatic updates, such as Social Security cost-of-living increases, take effect the month the change occurs.

Social Security cost-of-living increases are calculated from BEN-DEX information. The increase is added to existing post-eligibility patient-pay amounts (PPAs). Since this increase is determined independently of the client's total income, the result (e.g., post-eligibility PPA) may be affected by truncating (i.e., dropping cents), but is considered correct. BEM 530

Medicaid

Lump-sums and accumulated benefits are income in the month received. BEM 500

Exception: MA Only - Arrearage payments received by a parent for an adult child, or a child not living in the home, are considered unearned income for the parent. BEM 503

DEPARTMENT POLICY MA Only-ADCARE

This is an SSI-related Group 1 MA category.

Consider eligibility under this category only if eligibility does not exist under BEM 154 through 158. Use this category before using Extended-Care (BEM 164) or any Group 2 MA category.

This category is available to persons who are aged or disabled (AD). Net income cannot exceed 100% of the poverty level.

All eligibility factors in this item must be met in the calendar month being tested. If the month being tested is an L/H month and eligibility exists, go to BEM 546 to determine the post-eligibility patient-pay amount. BEM 163

BUDGET MONTH INCOME

Past Month Non-averaged income: Use amounts actually received/available in the past month. BEM 530

Additionally, Claimant reported medical expenses in the form of prescription costs on her redetermination forms that were not verified by the Department, the Department conceded this at hearing. This was contrary to Department policy because Claimant is disabled. BEM 554 The Department shall request verifications regarding her prescription costs and process verified medical expenses going back to the date of the redetermination. Claimant raised issues with regard to other medical expenses and the fact that potential deduction of medical expenses in determining her Food Assistance benefits was never brought to her attention. The undersigned Administrative Law Judge is unaware of an affirmative duty of the Department to inform Claimants of all factors that could affect their FAP benefits. Claimant had an opportunity to submit medical expenses at her redetermination interview or list them on her redetermination form. The only medical expense that will be considered is prescription expenses specifically written on the redetermination forms at the time of redetermination. Going forward, Claimant may submit all relevant medical expense information and the Department should follow policy in processing those medical expenses and reflect that in Claimant's FAP budgeting.

The other issue raised at hearing was how to budget the child support payments Claimant received in June and September 2014. Claimant's attorney presented proof that these payments were made pursuant to an arrearage and not ongoing obligations. Claimant's attorney also asserted that these payments were sporadic and non-regular. Department policy dictates how child support payments are budgeted. BEM 505 p.3 The undersigned Administrative Law Judge agrees that Department policy was not followed in ascertaining how child support income should be calculated with regard to Claimant's FAP budgeting. The Department was not explicit in how they determined that the 3-month average was appropriate and did not have a discussion with the Claimant. There was testimony that Claimant received child support payments in June, September and

November and that some of these payments resulted from show cause hearings with the Friend of the Court. This Administrative Law Judge finds that 3 payments over a 5-month period is regular enough to trigger the 3-month average budgeting outlined in BEM 505 despite the nature of the payments. Therefore, the Department's budgeting of child support income, using a 3-month average, was proper and correct. If going forward these payments are more sporadic then Claimant should bring that to the attention of the Department.

With regard to child support income being budgeted as it pertains to MA benefits, the Claimant's attorney argued that child support should be budgeted on a month to month basis and that Claimant would have been eligible for MA-Ad-care in the months that she received no child support payments. BEM 530 Claimant's redetermination was completed on August 20, 2014. As of August 20, 2014, Claimant had not received any child support income in the previous month. Pursuant to BEM 530, no child support income should have been budgeted because none had been received in the past month. Claimant had unearned income of \$[REDACTED] less than the \$[REDACTED] income limit for Ad-Care. RFT 242 Therefore, Claimant was eligible for Ad-care at the time of redetermination and her conversion to MA-G2C was improper and incorrect. [REDACTED] testified at hearing that the average used for FAP budgeting was used for the MA budgeting pursuant to the BRIDGES computer software. This was contrary to Department policy, BEM 505 does not apply to MA budgeting. Averaged income is only used for self-employment income and not child support in SSI related-MA budgeting. BEM 530.

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 did not act in accordance with Department policy when it failed to consider Claimant's prescription costs in budgeting her FAP benefits and when it closed her MA-Ad-care benefits due to excess income.


DECISION AND ORDER

Accordingly, the Department's 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. Reinstate MA-Ad-care going back to the date of closure.
2. Reprocess FAP benefits after Claimant's is given an opportunity to verify Prescription Costs for the period of time in question.

3. Pay Claimant a supplement for any increase in FAP benefits.


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Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/30/2015**

Date Mailed: **1/30/2015**

AM/jaf

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion.

MAHS **MAY** grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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 48909-8139

cc:

