

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-003317
Issue No.: 2001, 2007, 3008
Case No.: [REDACTED]
Hearing Date: April 09, 2015
County: Genesee-District 6 (CLIO RD)

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, telephone hearing was held on April 09, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department included [REDACTED] as hearing facilitator.

ISSUE

Did the Department of Human Services (Department) properly determine the Claimant's eligibility for Medical Assistance (MA), the Medicare Savings Program (MSP), and the Food Assistance Program (FAP)?

FINDINGS OF FACT

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

1. The Claimant is an ongoing Medical Assistance (MA) and Food Assistance Program (FAP) recipient.
2. The Claimant was a Medicare Savings Plan (MSP) recipient until June 1, 2014.
3. The Claimant had been receiving Medical Assistance (MA) under the Healthy Michigan Plan (HMP) category.
4. The Claimant receives monthly Retirement, Survivors, and Disability Insurance (RSDI) in the gross monthly amount of \$ [REDACTED].
5. The Claimant received Medicare benefits.
6. On March 2, 2015, the Department notified the Claimant that she was approved for Medical Assistance (MA) under the G2-S category with a \$ [REDACTED] deductible effective March 1, 2015.

7. On February 23, 2015, the Department received the Claimant's request for a hearing.

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.

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness. The Michigan Administrative Hearing System (MAHS) may grant a hearing for any of the following:

MAHS may grant a hearing about any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service. Department of Human Services Bridges Administrative Manual (BAM) 600 (March 1, 2014), p 4.

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Rule 400.904(1). Moreover, the Department of Human Services Bridges Administrative Manual (BAM) 600 (March 1, 2014), p. 5, provides in relevant part as follows:

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days. [Emphasis added.]

In this case, the Claimant was a Medicare Savings Program (MSP) recipient until June 1, 2014. The reasons for the Claimant's benefits being closed are no longer relevant to this hearing because the Claimant did not request a hearing within 90 days of being sent notice of the closure.

The Claimant re-applied for MSP benefits and the Department's representative testified that she was approved for Special Low Income Medicare Beneficiary (SLBM) effective February 1, 2015.

Some MSP benefits are not available until the month after the processing month, but SLMB coverage is available for retro MA months and later months. Department of Human Services Bridges Eligibility Manual (BEM) 165 (January 1, 2015), p 3.

The Department's representative testified that it is common for initial MSP benefits to be delayed but that recipients will receive all benefits that they are eligible for including retroactive benefits for the SLBM category.

The Claimant was receiving ongoing MA benefits under the HMP category. The Department's representative testified that the Claimant does not meet the non-financial requirements to receive HMP benefits.

The Healthy Michigan Plan (HMP) is defined as a Modified Adjusted Gross Income (MAGI) category of assistance. The non-financial requirements of this program are outlined in the Modified Adjusted Gross Income (MAGI) Related Eligibility Manual¹. Medicare recipients and those eligible for a non-MAGI category of MA are excluded from enrollment in a MAGI related health plan.

After mistakenly closing the Claimant's MA benefits on February 3, 2015, for failure to complete the Redetermination process, the Department reinstated her MA case but placed her in the category of benefits that she should have been receiving. As Medicare recipient with no minor children in her home that is eligible for a non-MAGI category of MA, the Claimant is not eligible for HMP benefits. The most beneficial category of MA benefits the Claimant is eligible for is under the MA-G2S category.

Participation in the MA-G2s category involves an income test. Income eligibility exists for the calendar month tested when:

- There is no excess income, or
- Allowable medical expenses equal or exceed the excess income.
- Department of Human Services Bridges Eligibility Manual (BEM) 545 (January 1, 2015), pp 1-2.

¹ The Modified Adjusted Gross Income (MAGI) Related Eligibility Manual is available on the internet at http://www.michigan.gov/documents/mdch/MAGI_Manual_457706_7.pdf.

The Claimant resides in Genesee County and falls under shelter area VI. Department of Human Services Reference Table Manual (RFT) 200 (December 1, 2013), pp 1-2.

A review of claimant's case reveals that the Department budgeted correct amount of income received by the Claimant. Claimant's "protected income level" is \$ [REDACTED] and this amount cannot be changed either by the Department or by this Administrative Law Judge. Department of Human Services Reference Table Manual (RFT) 240 (December 1, 2013), p 1. Department's determination that as of March 1, 2015, the Claimant has a \$ [REDACTED] deductible per month she must meet in order to qualify for MA for any medical expenses above is therefore correct.

The Claimant argued that she should have been considered for MA benefits as a group of two because her caretaker should have been included in the MA benefit group.

A benefit group receiving disability related MA benefits made up of adults only consists of the adult MA recipient, or the adult and her spouse. Department of Human Services Bridges Eligibility Manual (BEM) 240 (January 1, 2015), p 5.

This Administrative Law Judge finds that the Department properly determined the Claimant's MA group size and composition as directed by BEM 240.

The Claimant is an ongoing Food Assistance Program (FAP) recipient. On January 25, 2015, the Claimant reported to the Department on a Redetermination (DHS-1010) that there were two people living in her home that purchase and prepare food together. As a disabled member of the FAP group the Claimant is entitled to have countable medical expenses over \$ [REDACTED] considered when determining her eligibility for FAP benefits. The Claimant is also eligible to have monthly housing expenses including mortgage payments, home insurance, and utility expenses considered. Department of Human Services Bridges Eligibility Manual (BEM) 554 (October 1, 2014), pp 1-2.

The production of evidence to support the department's position is clearly required under BAM 600 as well as general case law (see e.g., *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 [1976]). In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich167; 405 NW2d 88 (1987), the Michigan Supreme Court addressed the issue of burden of proof, stating in part:

The term "burden of proof" encompasses two separate meanings. [citation omitted.] One of these meanings is the burden of persuasion or the risk of nonpersuasion. The other is the risk of going forward or the risk of nonproduction. The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually on the party who has pleaded the existence of the fact, but..., the burden may shift to the adversary when the pleader has discharged [its] initial duty. The burden of producing evidence is a critical mechanism[.]

The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced.

McKinstry, 428 Mich at 93-94, quoting McCormick, Evidence (3d ed), Sec. 336, p. 946.

The Department failed to present a notice of case action with respect to FAP benefits or budgets demonstrating how benefits were determined. This Administrative Law Judge finds that the Department has failed to establish that it properly determined the Claimant's FAP eligibility as of February 1, 2015.

In conclusion, this 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 acted in accordance with Department policy when it determined the Claimant's group size and composition for Medical Assistance (MA) benefits, and properly determined that she is entitled to MA benefits under the G2S category with \$581 deductible effective March 1, 2015. The Claimant may have received MA benefits under an improper category due to Department error in the past, but this does not entitle her to continuing benefits under an improper category.

This Administrative Law Judge finds that the Claimant failed to establish a negative action with respect to the Medicare Savings Program (MSP) that falls under the jurisdiction of the Michigan Administrative Hearing System (MAHS). This Administrative Law Judge also finds that the Department failed to establish that it gave the Claimant timely and adequate notice of her approval for MSP benefits.

This Administrative Law Judge finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined the Claimant's eligibility for the Food Assistance Program (FAP) as of February 1, 2015.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED** with respect to Medical Assistance (MA) and Medicare Savings Program (MSP) benefits.

The Department's decision is **REVERSED** with respect to the Food Assistance Program (FAP).

The Claimant's request for a hearing is **DISMISSED** with respect to Medicare Savings Program (MSP) benefits before February 1, 2015, because her request for a hearing is untimely with respect to those benefits.

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. Provide the Claimant with a ten-day period to provide clarification of medical expenses incurred since January 1, 2015.
2. Provide the Claimant with a ten-day period to provide clarification of ongoing housing expenses incurred since January 1, 2015.

3. Initiate a determination of the Claimant's eligibility for the Food Assistance Program (FAP) effective February 1, 2015.
4. Provide the Claimant with a Notice of Case Action (DHS-1605) describing the Department's revised Food Assistance Program (FAP) eligibility determination.
5. Provide the Claimant with a Notice of Case Action (DHS-1605) describing the Claimant's eligibility for Special Low Income Medicare Beneficiary (SLBM) benefits as of February 1, 2015.
6. Issue the Claimant any retroactive benefits she may be eligible to receive, if any.



Kevin Scully
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **4/13/2015**

Date Mailed: **4/13/2015**

KS/las

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:

A large black rectangular redaction box covers the names and contact information of the recipients listed under the 'cc:' field.