

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

IN THE MATTER OF:



MAHS Reg. No.: 15-017483
Issue No.: 3008
Agency Case No.: [REDACTED]
Hearing Date: November 18, 2015
County: WAYNE-DISTRICT 57

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION

Following Petitioner'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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on November 18, 2015, from Detroit, Michigan. The Petitioner was represented by his co-guardian/Authorized Hearing Representative (AHR), [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED] Eligibility Specialist; and [REDACTED], Family Independence Manager.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) allotment effective [REDACTED]?

FINDINGS OF FACT

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

1. Petitioner is an ongoing recipient of FAP benefits. See Exhibit A, p. 8-10.
2. Petitioner's FAP benefits increased from \$83 for September 2015 to \$132 for October 2015. See Exhibit A, p. 8 and Exhibit B, pp. 1-4.
3. On an unspecified date, Petitioner's AHR submitted a Mid-Certification Contact Notice (mid-certification) (DHS-2240-A), which was generated on [REDACTED]. See Exhibit A, pp. 11-13.

4. In the mid-certification, the AHR informed and provided verification that Petitioner was responsible for \$264.95 in eye care. See Exhibit A, pp. 12-13 and 15. The medical expense incurred date was [REDACTED]. See Exhibit A, p. 15.
5. On [REDACTED], Petitioner's AHR filed a hearing request, protesting the Department's action. See Exhibit A, p. 2.

CONCLUSIONS OF LAW

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

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

Preliminary matter

As a preliminary matter, it was discovered that the Department recalculated Petitioner's October 2015 FAP allotment approximately two times, which resulted in an increase in his benefits.

On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits increased to \$90 effective [REDACTED]. See Exhibit A, pp. 20-22. As a result, Petitioner's AHR filed a hearing request on [REDACTED], disputing the Department action. See Exhibit A, p. 2. Then, on an unspecified date, the Department recalculated Petitioner's benefits, which resulted in his monthly allotment increasing to \$100 effective [REDACTED]. See Exhibit A, pp. 5-6. However, it was discovered the Department again recalculated Petitioner's benefits, which increased his allotment to \$132 effective [REDACTED]. See Exhibit B, pp. 1-4 (Notice of Case Action dated [REDACTED]).

Based on the foregoing information and evidence, the undersigned will address Petitioner's FAP allotment in the amount of \$132 effective [REDACTED]. See BAM 600 (April 2015 and October 2015), pp. 1-6. Yes, the Department conducted subsequent actions that affected Petitioner's FAP allotment after the hearing request. Nevertheless, Petitioner's hearing request is based on his dispute with the October 2015 FAP benefits. See Exhibit A, p. 2. As such, the undersigned reviewed Petitioner's

most recent October 2015 FAP budget to determine if the Department properly calculated his benefits. See BAM 600, pp. 1-6.

FAP allotment

It was not disputed that the certified group size is one and that Petitioner is a senior/disabled/disabled veteran (SDV) member. The Department presented the October 2015 FAP budget for review. See Exhibit B, pp. 5-6.

First, the Department calculated Petitioner's gross unearned income to be \$830. See Exhibit B, p. 5. The Department presented Petitioner's State On-Line Query (SOLQ) that shows he receives Retirement, Survivors and Disability Insurance (RSDI) in the amount of \$829.90 (rounded-up). See Exhibit B, pp. 8-9. Petitioner's AHR indicated that the RSDI decreased; however, he did not provide any documentation showing such.

RSDI is a federal benefit administered by the Social Security Administration that is available to retired and disabled individuals, their dependents, and survivors of deceased workers. BEM 503 (July 2015 and October 2015), p. 28. The Department counts the gross benefit amount as unearned income. BEM 503, p. 28.

Based on the foregoing information, the Department properly calculated Petitioner's gross unearned income to be \$830 in accordance with Department policy. See BEM 503, p. 28.

Next, the Department applied the \$154 standard deduction applicable to Petitioner's group size of one. RFT 255 (October 2015), p. 1. The Department also provided Petitioner with a medical expense deduction amounting to \$70.00. Petitioner is responsible for his Medicare Part B premium in the amount of \$104.90. See Exhibit B, p. 8. However, policy states that for groups with one or more SDV member(s), the Department allows medical expenses that exceed \$35. BEM 554 (October 2014 and October 2015), p. 1. Thus, the Department properly determined that Petitioner's medical expense deduction is \$70 (\$105 Medicare premium (rounded-up) minus \$35 threshold). See BEM 554, p. 1.

But, the AHR argued that Petitioner had additional medical expenses, specifically, he was responsible for \$264.95 in eye care. In fact, Petitioner's AHR reported and verified the medical expense in Petitioner's mid-certification, which appeared to be submitted on or around August of 2015. See Exhibit A, pp. 11-13. The medical expense incurred date was [REDACTED]. See Exhibit A, p. 15. Petitioner's AHR also argued that Petitioner is responsible for other medical expenses, for example, co-pays, doctor's visits, etc...

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. The Department bases the estimate on all of the following:

- Verified allowable medical expenses.
- Available information about the SDV member's medical condition and health insurance.
- Changes that can reasonably be anticipated to occur during the benefit period.

BEM 554, p. 8.

A FAP group is not required to, but may voluntarily report changes during the benefit period. BEM 554, p. 8. Process changes during the benefit period only if they are one of the following:

- Voluntarily reported and verified during the benefit period such as expenses reported and verified for MA deductible.
- Reported by another source and there is sufficient information and verification to determine the allowable amount without contacting the FAP group.

BEM 554, p. 8.

Groups that do not have a 24-month benefit period may choose to budget a one time-only medical expense for one month or average it over the balance of the benefit period. Bridges will allow the expense in the first benefit month the change can affect. BEM 554, pp. 8-9.

Exception: Groups that have 24-month benefit periods must be given the following options for one-time-only medical expenses billed or due within the first 12 months of the benefit period:

1. Budget it for one month.
2. Average it over the remainder of the first 12 months of the benefit period.
3. Average it over the remainder of the 24-month benefit period.

BEM 554, p. 9.

Allowable medical expenses include eyeglasses when prescribed by an ophthalmologist (physician-eye specialist) or optometrist, Medicare premiums, etc... 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.

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. The Department does not verify other factors, unless questionable. BEM 554, p. 11. Other factors include things like the allowability of the service or the eligibility of the person incurring the cost. BEM 554, p. 11.

Based on the above information, the Department properly calculated Petitioner's medical expense deduction to be \$70 in accordance with Department policy. See BEM 554, pp. 1-12. First, the undersigned finds Petitioner's eyeglasses expense in the amount of \$264.95 to be overdue and thus, is not an allowable medical expense. Petitioner's medical expense was incurred on [REDACTED], however, was not reported until August of 2015 in the mid-certification. See Exhibit A, pp. 11-13 and 15. The undersigned finds that the medical bill is overdue because it is not currently incurred, it is not currently billed, and the evidence indicates that Petitioner did not make a payment arrangement before the medical bill became overdue. See BEM 554, p. 11. As such, the Department properly did not allow Petitioner's medical expense in the amount of \$264.95 in accordance with Department policy. See BEM 554, pp. 1-12. Second, Petitioner's AHR also argued that Petitioner had additional medical expenses, such as co-pays. However, Petitioner's AHR testified that this was the first time he notified the Department of such other medical expenses. Therefore, the Department also properly did not consider Petitioner's additional medical expenses, as the Department did not learn of them until today's hearing. See BEM 554, p. 11.

Once the Department subtracts the \$154 standard deduction and \$70 medical deduction, the result is an adjusted gross income of \$606. See Exhibit B, p. 5.

Next, the Department presented Petitioner's Excess Shelter Deduction budget (shelter budget) for October 2015. See Exhibit B, p. 7. The shelter budget indicated Petitioner's housing expenses were \$670, which the AHR did not dispute. See Exhibit B, p. 7.

Also, Petitioner's shelter budget showed that he was not receiving the \$539 heat and utility (h/u) standard. See Exhibit B, p. 7. The shelter budget showed that Petitioner only receives the telephone standard of \$33. RFT 255, p. 1 and see Exhibit B, p. 7.

For groups with one or more SDV members, the Department uses excess shelter. See BEM 554, p. 1. In calculating a client's excess shelter deduction, the Department considers the client's monthly shelter expenses and the applicable utility standard for any utilities the client is responsible to pay. BEM 556 (July 2013), pp. 4-5. The utility standard that applies to a client's case is dependent on the client's circumstances. The mandatory h/u standard, which is currently \$539 and the most advantageous utility standard available to a client, is available only for FAP groups (i) that are responsible for heating expenses separate from rent, mortgage or condominium/maintenance payments; (ii) that are responsible for cooling (including room air conditioners) and verify that they have the responsibility for non-heat electric; (iii) whose heat is included in rent or fees if the client is billed for excess heat by the landlord, (iv) who have received the home heating credit (HHC) in an amount greater than \$20 in the current month or the immediately preceding 12 months, (v) who have received a Low-Income Home Energy Assistance Act (LIHEAP) payment or a LIHEAP payment was made on his behalf in an amount greater than \$20 in the current month or in the immediately preceding 12 months prior to the application/recertification month; (vi) whose electricity is included in rent or fees if the landlord bills the client separately for cooling; or (vii) who have any responsibility for heating/cooling expense (based on shared meters or expenses). BEM 554, pp. 16-20; RFT 255, p. 1.

To show responsibility for heating and/or cooling expenses, acceptable verification sources include, but are not limited to, current bills or a written statement from the provider for heating/cooling expenses or excess heat expenses; collateral contact with the landlord or the heating/cooling provider; cancelled checks, receipts or money order copies, if current as long as the receipts identify the expense, the amount of the expense, the expense address, the provider of the service and the name of the person paying the expense; DHS-3688 shelter verification; collateral contact with the provider or landlord, as applicable; or a current lease. BEM 554, pp. 16-20. For groups that have verified that they own or are purchasing the home that they occupy, the heat obligation needs to be verified only if questionable. BEM 554, p. 16.

FAP groups not eligible for the mandatory h/u standard who have other utility expenses or contribute to the cost of other utility expenses are eligible for the individual utility standards that the FAP group has responsibility to pay. BEM 554, p. 19. These include the non-heat electric standard (\$119 as of October 1, 2015) if the client has no heating/cooling expense but has a responsibility to pay for non-heat electricity; the water and/or sewer standard (currently \$81) if the client has no heating/cooling expense but has a responsibility to pay for water and/or sewer separate from rent/mortgage; the telephone standard (currently \$33) if the client has no heating/cooling expense but has a responsibility to pay for traditional land-line service, cell phone service, or voice-over-Internet protocol; the cooking fuel standard (currently \$33) if the client has no

heating/cooling expense but has a responsibility to pay for cooking fuel separate from rent/mortgage; and the trash removal standard (currently \$19) if the client has no heating/cooling expense but has a responsibility to pay for trash removal separate from rent/mortgage. BEM 554, pp. 20-24; RFT 255, p. 1.

Sometimes the excess shelter deduction calculation will show more than one utility deduction. However, if the client is eligible for the \$539 mandatory h/u, then that is all for which the client is eligible. If he is not eligible for the mandatory h/u, he gets the sum of the other utility standards that apply to his case. BEM 554, pp. 15 and 20.

In this case, the evidence established that Petitioner was not eligible for the \$539 mandatory h/u standard in accordance with Department policy. See BEM 554, pp. 15-20. Petitioner's rent included all utilities such as heat, electric, trash, etc... The Department properly determined that Petitioner was only eligible for the telephone standard deduction. It should be noted that Petitioner's AHR argued that the Petitioner is also responsible for personal items/care, such as personal hygiene products and clothing. See Exhibit A, pp. 2 and 13. However, a review of BEM 554 finds that these types of personal items/care cannot be factored in as an allowable deduction. See BEM 554, pp. 1-30.

Furthermore, the total shelter obligation is calculated by adding Petitioner's housing expenses to the utility credit; this amount is found to be \$703. See Exhibit B, p. 7. Then, the Department subtracts the total shelter amount from fifty percent of the \$606 adjusted gross income. Fifty percent of the adjusted gross income is \$303. See Exhibit B, p. 7. When the Department subtracts the total shelter amount from fifty percent of the gross income, the excess shelter amount is found to be \$400. See Exhibit B, p. 7.

The Department then subtracts the \$606 adjusted gross income from the \$400 excess shelter deduction, which results in a net income of \$206. See Exhibit B, pp. 5-6. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Petitioner's group size and net income, the Department properly determined that Petitioner's FAP benefit issuance is found to be \$132 effective [REDACTED]. RFT 260 (October 2015), p. 3.

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 acted in accordance with Department policy when it properly calculated Petitioner's FAP allotment effective [REDACTED].

Accordingly, the Department's FAP decision is **AFFIRMED**.



Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **11/19/2015**

Date Mailed: **11/19/2015**

EF / hw

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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:

