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

IN THE MATTER OF:

[redacted]

MAHS Reg. No.: 15-017858
Issue No.: 2001; 2004; 2007; 3001; 3008
Agency Case No.: [redacted]
Hearing Date: November 18, 2015
County: WAYNE-DISTRICT 49

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 Petitioner, Geralyn Robinson. The Department of Health and Human Services (Department) was represented by [redacted], Eligibility Specialist; [redacted], Family Independence Manager; and [redacted], Eligibility Specialist.

ISSUES

Did the Department properly deny Petitioner's Food Assistance Program (FAP) benefits from [redacted]?

Did the Department properly calculate Petitioner's FAP allotment effective [redacted], ongoing?

Did the Department properly calculate Petitioner's Medical Assistance (MA) – Group 2 Spend-Down (GS2) deductible for [redacted], ongoing?

Did the Department properly deny Petitioner's eligibility for the Medicare Savings Program (MSP) for [redacted]?

Did the Department properly request verification of Petitioner's reported medical expenses?

Did the Department properly process Petitioner's retroactive MA application for the period of [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. On [redacted], Petitioner applied for MA and FAP benefits. See Exhibit A, pp. 5-12. Petitioner also applied for retro MA for May 2015 to July 2015. See Exhibit A, p. 8.

2. In the application, Petitioner reported that she had unpaid medical expenses within the last three months (May 2015 to July 2015). See Exhibit A, p. 8.

3. In the application, Petitioner also reported receiving monthly disability benefits of $969. See Exhibit A, p. 10.

4. On or around [redacted], Petitioner received a final disability income payment of $1,659 for the payment period of [redacted] (90-days duration). See Exhibit A, p. 16.

5. For August 2015, Petitioner's gross Retirement, Survivors, and Disability Insurance (RSDI) income was $1,074. See Exhibit A, pp. 13-14. Petitioner was responsible for her $104.90 Medicare Part B premium for the month of August 2015. See Exhibit A, pp. 13-14.

6. On [redacted], the Department sent Petitioner a Notice of Case Action notifying her that she was denied for FAP benefits from [redacted], due to her net income exceeding the limits. See Exhibit B, pp. 1-2.

7. On [redacted], the Notice of Case Action also notified Petitioner that she was approved for FAP benefits in the amount of $16 effective [redacted]. See Exhibit B, pp. 1-2.

8. On [redacted], the Department sent Petitioner a Health Care Coverage Determination Notice (determination notice) notifying her that her MA – G2S deductible would be $2,336 effective [redacted]. See Exhibit B, pp. 3-4. The determination notice also notified Petitioner that her deductible decreased to $678 effective [redacted], ongoing. See Exhibit B, pp. 3-4.

9. On [redacted], the determination notice also notified her that she was not eligible for MSP benefits effective [redacted] due to her income exceeding the limits for this program. See Exhibit B, pp. 3-4. However, the determination notice also notified Petitioner that she was eligible for the MSP program effective [redacted], ongoing. See Exhibit B, pp. 3-4.

10. The Department failed to present any evidence that a Notice of Case Action and/or a determination notice was generated informing Petitioner of her eligibility for the retroactive period.

11. For September 2015, Petitioner's gross and net RSDI income was $1,074. See Exhibit A, pp. 13-14.

12. On [redacted], Petitioner filed a hearing request, protesting the Department's action. See Exhibit A, pp. 2-3.

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.

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 Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

FAP benefits from [redacted]

On [redacted], the Department sent Petitioner a Notice of Case Action notifying her that she was denied for FAP benefits from [redacted] due to her net income exceeding the limits. See Exhibit B, pp. 1-2. During the hearing, Petitioner did not dispute her FAP denial for the period of [redacted]. As such, the undersigned finds the Department acted in accordance with Department policy when it denied Petitioner's FAP benefits from [redacted]. See Exhibit B, pp. 1-2.

FAP benefits from September 1, 2015, ongoing

On [redacted], the Department sent Petitioner a Notice of Case Action notifying her that she was approved for FAP benefits in the amount of $16 effective [redacted]. See Exhibit B, pp. 1-2. Petitioner disputed the amount of her 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 September 2015 FAP budget for review. See Exhibit A, pp. 21-22.

First, the Department calculated Petitioner's gross unearned income to be $1,073. See Exhibit B, p. 21. The Department presented Petitioner's State On-Line Query (SOLQ) that shows she receives RSDI in the amount of $1,074. See Exhibit A, pp. 13-14.

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), 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 $1,073 in accordance with Department policy. See BEM 503, p. 28. The undersigned finds it harmless error that the Department calculated Petitioner's income one dollar less than what she receives.

Next, the Department applied the $154 standard deduction applicable to Petitioner's group size of one. RFT 255 (October 2014), p. 1.

Then, the Department did not provide Petitioner with any medical expense deduction. During Petitioner's FAP interview, the Department testified (her actual caseworker present for the hearing) that Petitioner did not report any medical expenses that she pays out-of-pocket on a month-to-month basis. The Department did testify, though, that Petitioner reported she had outstanding medical bills she had to pay from the past.

In response, Petitioner argued that she did notify the Department of medical expenses. In fact, Petitioner testified that on or around August 2015, she sent, via mail, to the Department her Blue Cross Blue Shield of Michigan medical statement. The Department testified that it never received such documentation. A review of Petitioner's application finds that she did report that she had unpaid medical expenses within the last three months (May 2015 to July 2015). See Exhibit A, p. 8. Moreover, a review of Petitioner's submitted medical expense does find some medical bills/payments in the month of application (August 2015). See Exhibit 1, pp. 16, 42, 43, and 45.

Policy states that for groups with one or more SDV member, the Department allows medical expenses that exceed $35. BEM 554 (October 2014), p. 1.

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 foregoing information and evidence, the undersigned finds that the Department failed to request verification of Petitioner's medical expenses in accordance with Department policy. See BEM 554, p. 11. Petitioner clearly indicated in her application that she had unpaid medical expenses within the last three months. See Exhibit A, p. 8. In fact, Petitioner provided as evidence, medical expenses that might possibly qualify as one-time-only medical expenses in the month of application. See Exhibit 1, pp. 16, 42, 43, and 45. Medical expenses do not have to be ongoing. Policy allows the Department to budget one-time-only medical expenses. See BEM 554, pp. 8-9. Nevertheless, the undersigned does not conclude one way or another that Petitioner should be eligible for a medical expense deduction. The undersigned is only saying that the Department should have requested verification of her medical expenses at the time of application in order to determine if she has an allowable medical deduction. See BEM 554, p. 11 and BAM 130 (July 2015), pp. 1-9 (Obtaining verification via a Verification Checklist). Because the Department failed to request verification of Petitioner's medical expenses, the Department improperly calculated Petitioner's FAP budget in accordance with Department policy. The Department will initiate verification of Petitioner's medical expenses to determine if she has an allowable medical expense deduction.

MA deductible for August 2015

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

In this case, the Department presented the August 2015 budget. See Exhibit A, p. 20. The Department calculated Petitioner's gross total unearned income to be $2,731. See Exhibit A, p. 20. The evidence indicated that the total unearned income comprised of the following: (i) $1,659 disability income; and (ii) $1,074 RSDI income. See Exhibit A, pp. 13-16. It should be noted that the undersigned calculated a total of $2,733; however, this is harmless error as the Department calculated a lesser amount of $2,731.

The Department counts the gross benefit amount of RSDI as unearned income. BEM 503, p. 28. Sick and accident insurance pay a flat-rate benefit due to illness or injury without regard to actual charges or expenses incurred. BEM 503, p. 30. This does not include long term care facility insurance payments. BEM 503, p. 30. Examples include short or long term disability payments. BEM 503, p. 30. The Department counts the gross amount of these payments as unearned income. See BEM 503, p. 30.

Additionally, the Department determines income eligibility in calendar month order beginning with the oldest month. BEM 530 (January 2014), p. 1. This is especially important when using medical expenses to determine Group 2 income eligibility. BEM 530, p. 1.

The Department uses only available income. BEM 530, p. 2. Available means income which is received or can reasonably be anticipated. BEM 530, p. 2. For Group 2 MA budgets, the Department uses the average income received in one month which is intended to cover several months. BEM 530, p. 2. Divide the income by the number of months it covers to determine the monthly available income. BEM 530, p. 2. The average amount is considered available in each of the months. BEM 530, p. 2.

Based on the foregoing information and evidence, the Department improperly calculated Petitioner's MA income in accordance with Department policy. Yes, the Department properly calculated Petitioner's gross RSDI income. However, the Department did not properly calculate Petitioner's disability income received in August of 2015. Petitioner's disability income covered the payment period of [redacted] (90-days duration). See Exhibit A, p. 16. Per policy, the Department should have divided this income by three (90-days duration), to determine the monthly available income. See BEM 530, p. 2. The result is that the Department should have calculated Petitioner's disability income to be $553 for the month of August 2015 ($1,659 divided by three). As such, the Department will recalculate Petitioner's MA – G2S deductible in accordance with Department policy.

Additionally, a review of the budget found that the Department did not factor any current and/or old bills. See Exhibit A, p. 24. As stated in the previous analysis, Petitioner reported that she had unpaid medical expenses within the last three months (May 2015 to July 2015) in her application. See Exhibit A, p. 8. However, an issue arose as to whether the Department requested verification of these medical expenses because such expenses could possibly be applied toward her deductible for one or more future months.

Meeting a deductible means reporting and verifying allowable medical expenses that equal or exceed the deductible amount for the calendar month. BEM 545 (January 2015), p. 11. The MA group must report expenses by the last day of the third month following the month it wants medical coverage. BEM 545, p. 9. BAM 130 explains verification and timeliness standards. BEM 545, p. 9. BAM 130 states that the Department tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. The Department uses the DHS-3503, Verification Checklist (VCL), to request verification. BAM 130, p. 3. Furthermore, a group with excess income can delay deductible for one or more future months based on allowable old bills. BEM 545, p. 9.

Petitioner submitted several bills for the hearing that could possibly qualify as an allowable old bill that could delay the deductible for one or more future months. See Exhibit 1, pp. 1-57. After Petitioner reported/notified the Department of the expenses, the Department had an obligation to verify the expenses. As noted above, the Department must follow the guidelines set forth by BAM 130. It should be noted the Department testified that it requested verification of medical expenses on or around October 2015; however, this was after the hearing request and there was no evidence provided of such a request.

Based on the foregoing information and evidence, the Department failed to establish it acted in accordance with Department policy when it failed to request verification of Petitioner's medical bills and/or expenses. The Department will request verification of Petitioner's medical expenses (any applicable retro months), in accordance with Department policy. See BAM 130, p. 3 and BEM 545, p. 9.

MSP benefits for August 2015

During the hearing, Petitioner did not dispute and/or address the denial of her MSP program due to her income exceeding the limits for August 1, 2015 to August 31, 2015. See Exhibit B, pp. 3-4; BEM 165 (January 2015), pp. 1-9; and RFT 242 (May 2015), pp. 1-2. However, Petitioner requested a hearing in which she disputed her MA benefits. See Exhibit A, p. 2. MSP benefits falls under the category of MA programs. As such, the undersigned will address Petitioner's MSP denial for August 2015.

The Medicare Savings Programs are SSI-related MA Categories. BEM 165 (January 2015), 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. RFT 242 lists the income limits to determine whether or not an individual is eligible for one of three MSP categories.

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.

In the present case, the Department testified that the MSP was approved effective August 2015, ongoing. See Exhibit A, p. 1 (Hearing Summary). However, the determination notice indicated that Petitioner was denied for MSP benefits for August 2015 based on her income exceeding the limits. See Exhibit B, p. 3. Thus, the Department presented the undersigned with contradictory information. Nevertheless, the previous analysis concluded that the Department improperly calculated Petitioner's disability income for the month of August 2015. Petitioner's disability income should have been $553 for that month. This reduction in her disability income could possibly make her eligible for one of the MSP program. As such, the Department will redetermine Petitioner's eligibility for the MSP program for August 2015.

MA deductible for September 2015

In this case, the Department presented the September 2015 budget. See Exhibit A, p. 25. The Department properly calculated Petitioner's gross total unearned income to be $1,073 from her RSDI income. See Exhibit A, p. 25. Again, the undersigned finds it harmless error as the Department calculated a lesser amount as she did receive $1,074 in RSDI income. See Exhibit A, pp. 13-14.

The Department then properly subtracted the $20 disregard to establish Petitioner's total net unearned income of $1,053. BEM 541 (January 2015), p. 3 and Exhibit A, p. 25.

Again, though, Petitioner clearly notified the Department of her unpaid medical expenses in her application, which could possibly qualify as an allowable old bill that could delay the deductible for one or more future months. See Exhibit 1, pp 1-57. Based on the foregoing information and evidence, the Department failed to establish it acted in accordance with Department policy when it failed to request verification of Petitioner's medical bills and/or expenses.

MA retro request

The Department determines eligibility and benefit amounts for all requested programs. BAM 105 (July 2015), p. 17. The DHS-3243, Retroactive Medicaid Application, is used along with the DHS-4574 or DCH-1426 for retro MA applications. BAM 110 (July 2015), p. 4. Only one DHS-3243 is needed to apply for one, two or three retro MA months. BAM 110, p. 4.

Retro MA coverage is available back to the first day of the third calendar month prior to the criteria listed in BAM 115. BAM 115 (July 2015), p. 11. A person might be eligible for one, two or all three retro months, even if not currently eligible. BAM 115, p. 12. A separate determination of eligibility must be made for each of the three retro months. BAM 115, p. 13.

In this case, the Department testified that Petitioner was approved for MA retroactive from May 2015 to July 2015. See Exhibit A, p. 1 (Hearing Summary). However, the Department failed to present any evidence that a Notice of Case Action and/or a determination notice was generated informing Petitioner of the eligibility determination for the retroactive period. The determination notice dated [redacted], only addressed Petitioner's MA eligibility form [redacted], ongoing. See Exhibit B, p. 3. Thus, the Department will register and process Petitioner's MA retroactive application for [redacted], in accordance with Department policy.

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 (i) the Department acted in accordance with Department policy when it denied Petitioner's FAP benefits from [redacted]; (ii) the Department did not act in accordance with Department policy when it improperly calculated Petitioner's FAP allotment effective [redacted]; (iii) the Department did not act in accordance with Department policy when it improperly calculated Petitioner's MA – G2S budget effective [redacted], ongoing; (iv) the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's MSP eligibility for August of 2015; and (v) the Department failed to process Petitioner's MA retroactive eligibility for the period of [redacted].

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to FAP denial for [redacted] and **REVERSED IN PART** with respect to FAP benefits effective [redacted]; MA benefits effective [redacted]; MSP denial for August of 2015; and MA retroactive request.

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. Recalculate Petitioner's FAP budget (including requesting verification of any allowable medical expenses) effective [redacted], ongoing;

2. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from [redacted], ongoing;

3. Recalculate Petitioner's MA budget (including the calculation of disability income) effective [redacted], ongoing;

4. The Department shall request verification of Petitioner's medical expenses (any applicable retro months);

5. Issue supplements to Petitioner for any MA benefits she was eligible to receive but did not from [redacted], ongoing;

6. Redetermine Petitioner's MSP eligibility for August 2015 (including the calculation of disability income);

7. Issue supplements to Petitioner for any MSP benefits she was eligible to receive but did not for August 2015;

8. Initiate registration and processing of Petitioner's MA retroactive eligibility for [redacted];

9. Begin issuing supplements to Petitioner for any MA benefits she was eligible to receive but did not from [redacted]; and

10. Notify Petitioner of its decision.

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

Date Signed: **11/20/2015**

Date Mailed: **11/20/2015**

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: [redacted]