

**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.: 15-015678  
Issue No.: 1001;2001;2007;3001  
Agency Case No.: [REDACTED]  
Hearing Date: January 12, 2016  
County: Saginaw

**ADMINISTRATIVE LAW JUDGE:** Colleen Lack

**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 January 12, 2016, from Lansing, Michigan. [REDACTED], the Petitioner appeared on her own behalf. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

**ISSUES**

Did the Department properly determine Petitioner's eligibility for the Food Assistance Program (FAP)?

Did the Department properly determine Petitioner's eligibility for the Family Independence Program (FIP)?

Did the Department properly determine Petitioner's eligibility for the Medicaid (MA)?

Did the Department properly determine Petitioner's eligibility for the Medicare Savings Program (MSP)?

**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 and FIP benefits.
2. Petitioner was a recipient of MSP benefits.
3. Petitioner has a monthly deductible, or spend down, for her MA benefits since at least August 2015. (Department Exhibit A, p. 10-11)

4. Petitioner had a change in her household composition and obtained legal guardianship of her ten year old nephew.
5. On August 13, 2015, a Notice of Case Action was issued to Petitioner stating the monthly FAP allotment would decrease to \$ [REDACTED] effective September 1, 2015. (Hearing Facilitator Testimony)
6. On September 16, 2015, a Health Care Coverage Determination Notice was issued to Petitioner, stating she was eligible for full coverage MA for the period of February 1-28, 2015, but was not eligible for the MSP for September 1, 2015, and ongoing because of income that exceeds the limits for this program. (Department Exhibit A, pp. 3-6)
7. On October 9, 2015, Petitioner filed a signed request for hearing<sup>1</sup> contesting the Department's actions regarding FAP, FIP, MA and the MSP. (Department 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).

#### **FAP and FIP**

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

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.

When the Department presents a case for an administrative hearing, policy allows the Department to use the hearing summary as a guide when presenting the evidence, witnesses and exhibits that support the Department's position. See BAM 600, pp. 35-36 (April 1, 2015) But BAM 600 also requires the Department to **always** include the

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<sup>1</sup> The hearing request was initially received on September 10, 2015, but was unsigned at that time.

following in planning the case presentation: (1) an explanation of the action(s) taken; (2) a summary of the policy or laws used to determine that the action taken was correct; (3) any clarifications by central office staff of the policy or laws used; (4) the facts which led to the conclusion that the policy is relevant to the disputed case action; (5) the DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. See BAM 600 p. 36. This implies that the Department has the initial burden of going forward with evidence during an administrative hearing.

Placing the burden of proof on the Department is merely a question of policy and fairness, but it is also supported by Michigan law. In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167; 405 NW2d 88 (1987), the Michigan Supreme Court, citing *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 (1979), said:

The term “burden of proof” encompasses two separate meanings. 9 Wigmore, *Evidence* (Chadbourn rev), § 2483 et seq., pp 276 ff.; McCormick, *Evidence* (3d ed), § 336, p 946. One of these meanings is the burden of persuasion or the risk of nonpersuasion.

The Supreme Court then added:

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 cast first upon the party who has pleaded the existence of the fact, but as we shall see, the burden may shift to the adversary when the pleader has his initial duty. The burden of producing evidence is a critical mechanism in a jury trial, as it empowers the judge to decide the case without jury consideration when a party fails to sustain the burden.

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. See *McKinstry*, 428 Mich at 93-94, quoting McCormick, *Evidence* (3d ed), § 336, p 947.

In other words, the burden of producing evidence (i.e., going forward with evidence) involves a party’s duty to introduce enough evidence to allow the trier of fact to render a reasonable and informed decision. Thus, the Department must provide sufficient evidence to enable the Administrative Law Judge to ascertain whether the Department followed policy in a particular circumstance.

In this case, the Department has not provided sufficient evidence to review the FAP and FIP determinations. The Hearing Facilitator acknowledged that these programs were overlooked when the Hearing Summary was prepared. The Hearing Facilitator further testified there was at least an August 13, 2015; a Notice of Case Action was issued to Petitioner stating the monthly FAP allotment would decrease to \$16.00 effective

September 1, 2015. However, the Hearing Facilitator also noted that the Department may also need to review the FAP case to determine if an adjustment to the FAP monthly allotment should be made even earlier than the September 1, 2015 effective date based on timing of when it was reported and verified that Petitioner had a change in her household composition and obtained legal guardianship of her nephew. Petitioner also testified she was recently approved for FIP, but indicated she was not sure this determination was correct given the issues that have occurred with all of the other benefit programs. The Hearing Facilitator testified the FIP application was filed at on August 10, 2015. The eligibility summary shows FIP was approved starting September 1, 2015. (Department Exhibit A, p. 10)

As discussed during the hearing proceedings, there was not sufficient evidence for this ALJ to review whether or not the Department's determinations regarding Petitioner's eligibility for FAP and FIP benefits were in accordance with Department policy. Accordingly, the Department's determinations for FAP and FIP must be reversed and Petitioner's eligibility should be re-determined retroactive to at least September 2015 for FAP and August 2015 for FIP in accordance with Department policy.

### **MA and MSP**

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.

### **Medicaid**

BEM 211, (January 1, 2015), pp. 1-7, addresses MA group composition.

MA income budgeting is addressed in several policy items, including BEM 530, (January 1, 2014), pp. 1-5; BEM 536 (January 1, 2014), pp. 1-7); and BEM 545, (January 1, 2015) pp. 1-32)

Income eligibility exists for all or part of the month tested when the medical group's allowable medical expenses equal or exceed the fiscal group's excess income. BEM 545, (January 1, 2015), pp. 2-3.

In this case, a September 16, 2015, Health Care Coverage Determination Notice stated Petitioner was eligible for full coverage MA for February 2015, but did not address MA eligibility for any other time periods. There were no notes explaining why this was the only month addressed on the Notice. (Department Exhibit A, pp. 3-6)

It does not appear that the submitted MA eligibility Summary shows what the MA eligibility determinations were for all months from the effective date forward. However, this eligibility summary does show that Petitioner has a monthly deductible, or spend down, for her MA benefits since August 2015, though the Medicaid category at times was Group 2 Spend Down (MA-G2S) and at other times was Group 2 Caretaker (MA-G2C). (Department Exhibit A, p. 10-11)

However, the Hearing Facilitator's testimony acknowledged that Petitioner's MA eligibility should be re-determined because the case record indicates the MA eligibility categories considered may not have been correct for all months, i.e. considering that Petitioner's nephew was in the home. It is unclear why the category changed from MA-G2C to MA-G2S as of October 2015, when Petitioner's nephew was in the home. (Department Exhibit A, p. 10) This implies that Petitioner's nephew was no longer being considered as part of the household composition. The Hearing Facilitator confirmed that the household composition would affect calculation for the monthly spend down. As noted above, there is also insufficient evidence for this ALJ to review the MA determinations all the way back to the February 1, 2015, effective date shown on the September 16, 2015, Health Care Coverage Determination Notice. Accordingly, the Department's MA eligibility determinations must be reversed and Petitioner's MA eligibility should be re-determined retroactive to the February 1, 2015, effective date.

### MSP

Medicare Savings Programs are SSI-related MA categories. They are neither Group 1 nor Group 2. There are three categories that make up the Medicare Savings Programs. The three categories are: 1. Qualified Medicare Beneficiaries (This is also called full-coverage QMB and just QMB. Program group type is QMB.); 2. Specified Low-Income Medicare Beneficiaries (This is also called limited-coverage QMB and SLMB. Program group type is SLMB.); and 3. Q1 Additional Low-Income Medicare Beneficiaries (This is also referred to as ALMB and as just Q1. Program group type is ALMB.). There are both similarities and differences between eligibility policies for the three categories. Benefits among the three categories also differ. Income is the major determiner of category. BEM 165, (January 1, 2015) p. 1.

BEM 165 also addresses countable Retirement, Survivors, and Disability Insurance (RSDI) income and cost of living increases:

### **COUNTABLE RSDI**

Federal law requires that for January, February and March:

- The RSDI cost-of-living increase received starting in January be disregarded for fiscal group members, and
- The income limits for the preceding December be used.

For all other months, countable RSDI means the countable amount for the month being tested.

For all other persons whose income must be considered, the RSDI cost-of-living increase is **not** disregarded.

### **Countable RSDI**

Enter countable RSDI for the month being tested. When the month being tested is January, February or March Bridges will automatically:

- Computes and deducts the RSDI cost-of-living increase for fiscal group members, and
- Uses the limits for the preceding December.

BEM 165, pp. 8-9

Group size is also determined differently for the MSP. The fiscal and asset group policies for SSI-related groups found in BEM 211 are utilized for determining MSP group size. BEM 165, p. 7. Under those rules, the group composition would only consider the SSI-related adult and whether or not there is a spouse. BEM 211, (January 1, 2015), p. 5.

RFT 242 provides the income limits effective April 1, 2015. For a group size of one, the income limits are: QMB \$1,000.83; SLMB \$1,000.84 - \$1,197.00; and ALMB \$1,197.01 - \$1,344.13. The note below the table for each MSP category indicates the table is to be used to determine income eligibility and appears to explain how the income limits were calculated. There is no clear statement in the RFT 242 policy that any amount should be subtracted from the listed income limits in these tables. For example, for Table 3, the ALMB table, the note states "use Table 3 to determine eligibility as Additional Low-Income Medicare Beneficiaries (BEM 165). Income limits are 135 percent of the FPL + \$20 disregard." RFT 242, (May 1, 2015), pp. 1-2.

Additionally, the Federal Poverty Limit (FPL), per the annual update effective January 22, 2015, for a household size of one is \$11,770. See Federal Register, Vol. 80, No. 14, January 22, 2015, pp. 3236-3237. 135% of \$11,770 is \$ 15,889.50. Divided by 12, this gives a monthly income of \$1324.13. When \$20 is added for the disregard, the result matches the listed ALMB monthly income limit of \$1,344.13 found in Table 3.

In this case, the evidence indicates that prior to this case action, the cost of living exclusion was erroneously allowed from April 1, 2015, through August 31, 2015. This was well beyond the specified three months allowed under the above cited BEM 165 policy. (Department Exhibit A, p. 8) The Hearing Facilitator explained that the removal of this cost of living exclusion from the MSP budget effective September 1, 2015,

resulted in the change in the eligibility determination for Petitioner's case. (See Department Exhibit A, pp. 8-9)

The September 2015 budget shows that Petitioner has monthly income from RSDI benefits of \$ [REDACTED]. The \$20.00 unearned income general exclusion was included in the budget. Accordingly, Petitioner's countable income is \$ [REDACTED] (Department Exhibit A, p. 9). However, it is not clear where the income limit of \$ [REDACTED] utilized in this MSP budget came from. As cited above, RFT 242 provides the income limits effective April 1, 2015. For a group size of one, for ALMB, RFT 242 shows that the income limit is \$1,344.13. As noted above, this corresponds with notation stating the limit is 135% of the FPL plus a \$20.00 disregard. Perhaps the lower income limit applied in the budget was based on the budget already including the \$20 unearned income general exclusion when the countable income was determined. However, as written there is no clear direction to subtract \$20.00 from the listed income limit before determining eligibility. Petitioner's countable income of \$ [REDACTED] was below the \$1,344.13 limit listed in RFT 242 for ALMB category of the MSP. Accordingly, the MSP determination must also be reversed.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's eligibility for FIP, FAP, MA, and MSP.

### **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. Re-determine Petitioner's eligibility for FAP and FIP retroactive to at least September 2015 for FAP and August 2015 for FIP in accordance with Department policy. Potentially earlier months may also need to be re-determined based on reviewing the case record to determine when it was reported and verified that Petitioner had a change in her household composition and obtained legal guardianship of her nephew.
2. Re-determine Petitioner's eligibility for MA retroactive to February 1, 2015, in accordance with Department policy.
3. Re-determine Petitioner's eligibility for MSP retroactive to September 1, 2015, in accordance with Department policy.
4. Issue written notice of the determinations in accordance with Department policy.

5. Supplement for lost benefits (if any) that Petitioner was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.



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**Colleen Lack**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

Date Mailed: **1/22/2016**

CL/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 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:

