

**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.: 15-019231
Issue No.: 3008
Agency Case No.: [REDACTED]
Hearing Date: December 07, 2015
County: Oakland-District 3
(Southfield)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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, an in-person hearing was held on December 7, 2015, from Southfield, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly calculate Petitioner's medical expense deduction in determining her Food Assistance Program (FAP) allotment for [REDACTED] ongoing?

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.
2. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits would increase to \$80 monthly for [REDACTED] to [REDACTED] (Exhibit A, pp. 6-9).
3. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits were increasing to \$99 monthly for [REDACTED] to [REDACTED] (Exhibit A, pp. 10-13).

4. On [REDACTED], Petitioner submitted a mid-certification contact notice to the Department showing that her medical insurance costs were \$370 monthly and that she did not know if her medical expenses had changed (Exhibit A, pp. 19-22).
5. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits had decreased to \$19 monthly for [REDACTED] to [REDACTED] (Exhibit A, pp. 23-27).
6. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits had decreased to \$16 monthly for [REDACTED] to [REDACTED] (Exhibit A, pp 28-31).
7. On [REDACTED], Petitioner filed a request for hearing disputing the Department's calculation of her medical expenses in determining her FAP benefits (Exhibit A, pp. 2-5).

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.

Petitioner disputed the calculation of her medical expense deduction in the calculation of her monthly FAP benefits for May 2015 through September 2015 and for October 2015 ongoing. The Department argued that Petitioner's hearing request with respect to her FAP benefits for May 2015 through September 2015 was not timely and should be dismissed. Hearing requests that are not filed with the Department within 90 calendar days of the date the Department sent a written notice of case action concerning the action at issue must be dismissed. BAM 600 (October 2015), pp. 6-7.

In this case, the Department established that Petitioner was notified in notices of case action sent to her on [REDACTED] and [REDACTED] concerning her FAP benefits for May 2015 ongoing; these notices showed the medical expense deduction being applied in the calculation of Petitioner's FAP benefits (Exhibit A, pp 6-13). Although Petitioner was engaged in ongoing email discussions with the Department concerning her medical deduction calculation for her May 2015 ongoing FAP benefits, she did not request a

hearing on this matter until [REDACTED]. Because this hearing request was not filed within 90 days of the Department's April 2015 notices of case action, Petitioner has failed to timely request a hearing concerning her medical expense deduction for the period between May 2015 and September 2015. The hearing proceeded to address Petitioner's FAP benefits for October 2015 ongoing.

Petitioner's hearing request concerned the calculation of the medical expense deduction used in determining her FAP benefits. Disabled individuals and individuals over age 65 are senior/disabled/veteran (SDV) members of their FAP groups and are eligible for a medical deduction in the calculation of their FAP benefits for medical expenses in excess of \$35. BEM 554 (October 2015), p 1; BEM 550 (October 2015), pp. 1-2. In this case, the Department acknowledged that Petitioner was eligible for a medical expense deduction in the calculation of her FAP benefits but contended that, because of her responses in her mid-certification contact report, she was eligible only for a medical expense deduction for her health insurance premiums until she provided verification of additional expenses.

Department policy requires that all FAP clients with a 24-month benefit period complete a mid-certification contact notice. BAM 210 (October 2015), p. 9. If an expense has changed and the client does not return proof of the expense, but all of the sections on the report are answered completely, the Department must remove the expense before running an eligibility determination and benefit calculation. BAM 210, p. 9.

In this case, the mid-certification sent to Petitioner stated that the total amount of medical expenses used in her FAP budget was \$510 and asked her to send in proof of expenses and to list the expenses, indicating whether the cost had started, stopped or changed (Exhibit A, p. 20). Petitioner responded by identifying the expenses she incurred for her health insurance premiums and writing in that she did not know if her current expenses were \$510. The Department explained that, based on Petitioner's response, it removed all ongoing medical expenses from Petitioner's FAP budget other than the health insurance premiums. Petitioner confirmed that those expenses totaled \$370. The Notices of Case Action the Department sent to Petitioner on September 3, 2015 and [REDACTED] (Exhibit A, pp. 23-31) and the October 2015 FAP net income budget (Exhibit A, pp. 32-34) all show that the Department applied a medical expense deduction of \$335, the difference between the \$370 verified medical expenses for health insurance premiums and the \$35 threshold, in calculating Petitioner's FAP benefits for October 2015. As a consequence, Petitioner's FAP benefits decreased to \$19 monthly effective [REDACTED] (Exhibit A, pp. 23-27). A change in Department policy decreasing the heat and utility standard effective [REDACTED] resulted in a second notice of case action being sent to Petitioner notifying her that her monthly FAP benefits were actually \$16 effective [REDACTED] (Exhibit A, pp. 28-31).

Petitioner argues that she submitted receipts with her mid-certification for purchases of supplements that should have been used to process her medical expense deduction for October 2015. The Department acknowledged that it had receipts for Petitioner's

purchases made from September 2014 to March 2015 at the time she submitted her mid-certification and it received her receipts for her supplement purchases on [REDACTED]. The Department argued that, because Petitioner did not submit the medical expenses for June 2015 through August 2015 evidencing ongoing medical expenses until [REDACTED] and a medical needs form completed by her doctor until [REDACTED], it was not required to apply the allowable medical expenses for the supplements as an ongoing expense until the November 2015 FAP issuance.

The mid-certification and all expenses were due [REDACTED]. Therefore, the expenses Petitioner submitted on [REDACTED], after the [REDACTED] Notice of Case Action (Exhibit A, pp. 23-27) notifying her of the updated FAP benefits following processing of the mid-certification was sent, were untimely. BAM 130 (July 2015), p. 8; BAM 220 (October 2015), p. 13. The medical expenses submitted on [REDACTED], along with the medical needs form submitted on [REDACTED], were properly processed as a change to affect November 2015 FAP benefits. See BAM 220, p. 10. Therefore, the Department acted in accordance with Department policy when it processed the medical expenses.

Petitioner also argued that the Department improperly excluded certain expenses, specifically Celtic sea salt, coconut oil, DHEA, and pregnenolone, in calculating her medical expense deduction. Allowable medical expenses for FAP purposes are limited to the following:

- Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner authorized by State law or other qualified health professional.
- Hospitalization or nursing care, including these expenses for a person who was a group member immediately prior to entering a hospital or nursing home.
- Prescription drugs and the postage for mail-ordered prescriptions.
- Costs of medical supplies, sickroom equipment (including rental) or other prescribed medical equipment (excluding the cost for special diets).
- Over-the-counter medication (including insulin) and other health-related supplies (bandages, sterile gauze, incontinence pads, etc.) when recommended by a licensed health professional.
- Premiums for health and hospitalization policies (excluding the cost of income maintenance type health policies and accident policies, also known as assurances). If the policy covers more than one person, allow a prorated amount for the SDV person(s).
- Medicare premiums.

- Dentures, hearing aids and prosthetics including the cost of securing and maintaining a seeing eye or hearing dog or other assistance animal. (Animal food and veterinary expenses are included.)
- Eyeglasses when prescribed by an ophthalmologist (physician-eye specialist) or optometrist.
- Actual costs of transportation and lodging necessary to secure medical treatment or services. (If actual costs **cannot** be determined for transportation, allow the cents-per-mile amount at the standard mileage rate for a privately owned vehicle in lieu of an available state vehicle. To find the cents-per-mile amount go to the Michigan Department of Management and Budget at www.michigan.gov/dtmb, select Services & Facilities from the left navigation menu, then select Travel. On the travel page, choose Travel Rates and High Cost Cities using the rate for the current year.)
- The cost of employing an attendant, homemaker, home health aide, housekeeper, home help provider, or child care provider due to age, infirmity or illness. (This cost must include an amount equal to the maximum FAP benefits for one person if the FAP group provides the majority of the attendant's meals. If this attendant care cost could qualify as both a medical expense and a dependent care expense, it **must** be treated as a medical expense.)
- A medical expense used to meet a Medicaid deductible that is not overdue.

BEM 554, pp. 9-11.

Under this list of allowable medical expenses, the supplements Petitioner purchased are allowable medical expenses if they are over-the-counter medication or other health-related supplies recommended by a licensed health professional. A DHS-54A, medical needs form, completed by a licensed health professional is an acceptable verification source to establish that the supplement is recommended by a licensed health provider. BEM 554, p. 12.

In this case, Petitioner submitted a medical needs form completed by her doctor including among the supplements he recommended for her Celtic sea salt, coconut oil, DHEA, and pregnenolone. The Department responded by asking its policy division to review the list of supplements. Based on the response it received, it included the costs for DHEA and pregnenolone in determining the ongoing medical expense deduction but excluded the sea salt and coconut oil (Exhibit A, pp. 45-46). Department policy defines an allowable medical expense for over-the-counter "medication" or "health-related supplies." The Department acted in accordance with policy when it concluded that sea salt and coconut oil did not fall within the definition of "medication" or "health-related supplies."

Finally, Petitioner expressed some vague concerns about the manner in which the Department calculated her ongoing medical expense deduction. The Department may estimate an SDV person's medical expenses for the benefit period based on (i) verified allowable medical expenses, (ii) available information about the SDV member's medical condition and health insurance, and (iii) changes that can reasonably be anticipated to occur during the benefit period. BEM 554, p. 8.

In calculating the ongoing medical expense deduction in Petitioner's case, the Department explained that it took Petitioner's verified expenses from September 2014 to August 2015 for supplements that were allowable medical expenses and divided the total by the 12 months considered to arrive at a monthly average medical expense (Exhibit A, pp. 54-145). It initially advised Petitioner in an [REDACTED] Notice of Case Action that, as a result of this calculation, it had determined that her ongoing monthly medical expense deduction for allowable prescription/supplement costs was \$150.83 and advised her that she was eligible in \$82 in monthly FAP benefits beginning [REDACTED] (Exhibit A, pp. 150-13). The next day it sent a new Notice of Case Action notifying her that the calculation was erroneous and that, based on \$1768.04 in allowable medical expenses over the 12-month period from [REDACTED] to [REDACTED], her ongoing prescription/supplement cost was \$147.34, resulting in a decrease in her monthly FAP benefits to \$80 effective [REDACTED] (Exhibit A, pp. 146-149).

Petitioner did not point out any errors in the Department's calculation. Because the Department could use prior expenses to estimate ongoing medical expenses, the Department acted in accordance with policy.

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 calculated Petitioner's allowable medical expense deduction for FAP purposes.

DECISION AND ORDER

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



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **12/16/2015**

Date Mailed: **12/16/2015**

ACE / tlf

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]