

**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.: 15-022149
Issue No.: 2000, 3000, 3001
Agency Case No.: [REDACTED]
Hearing Date: January 20, 2016
County: Wayne (15)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 20, 2015, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], specialist, and [REDACTED], manager.

ISSUES

The first issue is whether MDHHS issued Qualified Medicare Beneficiaries (QMB) coverage to Petitioner.

The second issue is whether Petitioner timely requested a hearing to dispute Food Assistance Program (FAP) eligibility since March 2015.

The third issue is whether MDHHS properly determined Petitioner's FAP eligibility since November 2015.

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 was an ongoing QMB recipient.
2. Petitioner was an ongoing FAP benefit recipient.
3. Petitioner was the only member of his FAP benefit group.

4. On an unspecified date before March 2015, MDHHS mailed Petitioner written notice that he was eligible to receive \$16 in FAP benefits.
5. As of November 2015, Petitioner received \$767.00 in unearned income, paid \$164.00 for housing costs, and was responsible for electricity and telephone.
6. MDHHS determined Petitioner's FAP eligibility for November 2015, in part, based on \$767.00 in unearned income, \$164 housing costs, and obligations for telephone and electricity.
7. On [REDACTED], Petitioner requested a hearing to dispute an alleged absence of QMB eligibility and FAP benefits of \$16.00.

CONCLUSIONS OF LAW

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. MDHHS (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

A desire for QMB was clearly stated in Petitioner's hearing request. During the hearing, Petitioner was asked if he knew what QMB eligibility was; Petitioner did not know. Petitioner testimony indicated someone else wrote out his hearing request.

MSP programs offer three different degrees of assistance with payment toward a client's Medicare premium and deductibles. BEM 165 (April 2014), p. 1. Qualified Medicare Beneficiaries (QMB) coverage pays for a client's Medicare premiums, coinsurances, and deductibles. *Id.*

MDHHS testified that Petitioner has QMB and he has received it for several years. The MDHHS testimony was not verified though presented documentation was supportive.

MDHHS presented a SOLQ (Exhibit 1, pp 1-3). An SOLQ is understood to list Social Security Administration (SSA) based on a data exchange with SSA. The SOLQ indicated MDHHS paid Petitioner's Part B Medicare premium since [REDACTED]. Payment of a Medicare premium since 2000 is indicative of QMB approval.

During the hearing, Petitioner was asked if he had any problems with his ongoing MA eligibility. Petitioner responded that he had no problems.

Based on presented evidence, it is found Petitioner did not establish a dispute concerning MA or QMB eligibility. Petitioner's hearing request will be dismissed concerning MA/QMB eligibility.

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. MDHHS (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing, in part, to dispute FAP eligibility. Petitioner's hearing request specifically objected to a \$16.00/month FAP issuance. Petitioner testimony estimated that MDHHS began issuing \$16.00 in FAP benefits in March 2015.

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (4/2015), p. 6. The request must be received in the local office within the 90 days. *Id.* One notable exception exists for FAP benefits. The client or AHR may request a hearing disputing the current level of benefits at any time within the benefit period. *Id.*, p. 6.

During the hearing, Petitioner was asked why he waited until November 2015 to dispute his FAP eligibility from March 2015. Petitioner responded that he tried to request a hearing sooner but was unable to contact his specialist. Petitioner's testimony was not particularly detailed. Petitioner's testimony also failed to account for why he did not submit a written hearing request, an action that would not require the cooperation of a specialist.

MDHHS was not asked when written notice of Petitioner's FAP eligibility for March 2015 was mailed. It is presumed that MDHHS mailed written notice to Petitioner before March 2015. Based on Petitioner's hearing request date of [REDACTED], Petitioner was well beyond his 90 day timeframe for requesting a hearing. Petitioner's hearing request will be dismissed concerning his FAP eligibility dispute from March 2015.

As noted above, Petitioner has no time limit on disputing "the current level of benefits." This exception is interpreted to justify a dispute of FAP eligibility from the month of Petitioner's hearing request- November 2015.

Petitioner did not specify a basis to dispute his FAP eligibility; thus, Petitioner's entire FAP budget was examined. BEM 556 directs MDHHS to factor a FAP group's countable income and allowable expenses.

Petitioner testified he received a combination of SSI and SSD benefits from SSA totaling \$679.00. Petitioner provided no supporting evidence.

MDHHS presented an SOLQ. Petitioner's countable SSD was listed as \$504.00. Petitioner's gross payable SSI was listed to be \$249.00. The total verified income was \$749.00. It is also known that unmarried SSI recipients living in independent housing receive \$42.00/three months (an average of \$14.00/month); presented evidence was supportive that Petitioner is such a recipient. Petitioner's unearned income is found to be \$763.00, the same amount MDHHS testified that was factored in Petitioner's FAP determination.

MDHHS uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (October 2014), p. 1. For groups without a senior (over 60 years old), disabled or disabled veteran (SDV) member, MDHHS considers the following expenses: child care, excess shelter (housing and utilities) up to a capped amount and court-ordered child support and arrearages paid to non-household members. For groups containing SDV members, DHHS also considers the medical expenses for the SDV group member(s) and an uncapped excess shelter expense. It was not disputed that Petitioner was disabled, thereby making his group an SDV group.

Verified medical expenses for SDV groups, child support, and day care expenses are subtracted from a client's monthly countable income. Petitioner testimony conceded he had no day care, child support, or medical expenses.

Petitioner's FAP benefit group receives a standard deduction of \$154.00. RFT 255 (October 2015), p. 1. The standard deduction is given to all FAP benefit groups, though the amount varies based on the benefit group size. The standard deduction is subtracted from the countable monthly income to calculate the group's adjusted gross income. Petitioner's FAP group's adjusted gross income is found to be \$613.00.

Petitioner alleged his housing expenses were \$167.00/month as of November 2015. Petitioner provided no supporting evidence.

MDHHS budgeted \$164.00/month for Petitioner's housing expenses. MDHHS presented a Shelter Verification (Exhibit 1, pp. 4-5). The document was signed by a person presumed to be Petitioner's landlord (Petitioner did not know who the signer was) on [REDACTED]. Petitioner's rent was listed as a three digit amount, though the first number was not legible. The last two digits were legible and verified a rental amount of some hundred and \$64.00. It is found MDHHS properly determined Petitioner's rent to be \$164.

Petitioner alleged he was responsible for paying heat. Petitioner provided no supporting evidence. MDHHS factored Petitioner did not have an obligation to pay heat. MDHHS relied on the presented Shelter Verification as support. The Shelter Verification stated Petitioner heating and cooling were included in Petitioner's rent. It is found that MDHHS properly did not credit Petitioner for paying heating/cooling.

It was not disputed that Petitioner was responsible for paying electricity, and telephone. Petitioner is entitled to standard credits of \$119.00 and \$33.00 respectively (see RFT 255). Petitioner's total shelter costs are found to be \$316.00.

MDHHS only credits FAP benefit groups with what is called an "excess shelter" expense. This expense is calculated by subtracting half of Petitioner's adjusted gross income from Petitioner's total shelter obligation. This amount is calculated to be \$10.00.

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. Petitioner's FAP benefit group's net income is found to be \$603.00. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Petitioner's group size and net income Petitioner's proper FAP benefit issuance is found to be \$16.00, the same amount calculated by MDHHS.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner failed to establish a dispute concerning MA and/or QMB eligibility. It is further found that Petitioner failed to timely request a hearing to dispute FAP eligibility from March 2015 through October 2015. Petitioner's hearing request is **PARTIALLY DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined Petitioner's FAP eligibility to be \$16.00, effective November 2015. The actions taken by MDHHS are **AFFIRMED**.



Christian Gardocki
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **1/22/2016**

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

CG / 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:

