

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

IN THE MATTER OF:

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MAHS Reg. No.: 15-022595
Issue No.: 2004; 3008
Agency Case No.: ██████████
Hearing Date: February 08, 2016
County: Macomb-District 20
(Warren)

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 February 8, 2016, from Warren, Michigan. Petitioner appeared and represented herself. Her daughter ██████████ appeared as her witness. The Department was represented by ██████████, Hearing Facilitator, and ██████████, Back up Hearing Facilitator.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefits?

Did the Department properly process Petitioner's Medicaid (MA) case?

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 MA benefits.
2. In response to concerns about changes in her cases, the Department reviewed Petitioner's case and acknowledged that there were errors in the manner in which her cases were processed.

3. On December 2, 2015, the Department received two requests for hearing filed by Petitioner requesting a review of her FAP and MA cases for 2015 (Exhibit A, pp. 4-7; Exhibit B).

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).

Petitioner requested a hearing expressing concerns over changes in her FAP and MA benefits despite the fact that her income and rental obligations had not changed. She requested a review of her case for 2015.

MA Case

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.

A client is entitled to a hearing for (i) the denial of an application and/or supplemental payments; (ii) reduction in the amount of program benefits or service; (iii) suspension or termination of program benefits or service; (iv) restrictions under which benefits or services are provided; (v) delay of any action beyond standards of promptness; and (vi) for FAP only, the current level of benefits or denial of expedited service. BAM 600 (October 2015), pp. 4-5.

In this case, Petitioner requested a hearing of her MA case alleging changes in her case. However, the eligibility summary showed that since April 2015, Petitioner had MA coverage under the Group 2 SSI-related (G2S) program, with coverage subject to a monthly \$953 deductible (Exhibit A, p. 14). The Department explained that, because of a Department error that resulted in old bills continuing to be budgeted and applied to the monthly deductible, Petitioner's MA was activated each month and her deductible was found to have been satisfied.

In her hearing request, Petitioner acknowledged that, because of her income, she was subject to the monthly deductible (Exhibit A, p. 4). Although she expressed concerns that her deductible had increased to \$874, the eligibility summary does not show such an increase (Exhibit A, p. 14). Petitioner did not express any concerns that she had

medical bills she submitted to the Department that the Department had failed to process. In the absence of any action (or failure to act) by the Department concerning Petitioner's MA case, Petitioner has failed to establish any basis for a hearing concerning her MA case.

Although Petitioner expressed concerns that her MA case had closed, the evidence at the hearing established that the case closed effective February 1, 2016 because Petitioner had failed to submit the MA redetermination sent to her on November 16, 2015 (Exhibit A, p. 10). The Benefit Notice sent to Petitioner advising her of the MA case closure was sent on January 8, 2016 (Exhibit A, pp. 67-68). Because the Department did not take any action to close Petitioner's MA case until January 8, 2016, which was after Petitioner's December 2, 2015 request for hearing, the issue of the MA case closure was not properly presented for the current hearing.

Petitioner testified at the hearing that she had requested that her cases remain open pending the hearing (Exhibit A, pp. 70-71). However, because the December 2, 2015 hearing request was not in response to the January 8, 2015 Benefit Notice, it is not a timely hearing request with respect to the January 8, 2015 Benefit Notice advising her of the case closure. Accordingly, the Department was not required to reinstate MA benefits. See BAM 600 (October 2015), p. 24.

Based on the evidence presented, the Department properly processed Petitioner's MA case.

FAP Case

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 expressed concerns about changes in her FAP benefits despite the fact that her income and shelter expenses had not changed and requested a review of her case since January 2015.

Unless a client requests a hearing within 90 days of the date the Department has notified her of a negative action concerning her FAP case, the client's hearing request may address only the *current* level of benefits. BAM 600, pp. 4-5. The Department provided a July 1, 2015 Notice of Case Action advising Petitioner that her FAP benefits were decreasing to \$16 monthly for the period August 1, 2015 to December 31, 2015 (Exhibit A, p. 64). The eligibility summary showed that Petitioner received \$16 in monthly FAP benefits from August 2015 through December 2015 (Exhibit A, p. 12). Because Petitioner filed her hearing request on December 2, 2015, the hearing request was not timely filed within 90 days of the Department's July 1, 2015 notice. Therefore,

with respect to Petitioner's FAP case, the review is limited to Petitioner's current level of FAP benefits at the time of her December 2, 2015 hearing request, unless the client is eligible for a FAP supplements under the circumstances described in BAM 406 (July 2013), p. 3.

The evidence showed that on December 10, 2015, after Petitioner submitted her hearing request, the Department recalculated Petitioner's FAP budget for June 2015 and July 2015 and determined that Petitioner was eligible for an \$81 supplement for each month, bringing her monthly FAP allotment for those months to \$194. Because the Department took this action after the hearing request was filed, it is not properly presented for review in connection with the December 2, 2015 hearing request. Petitioner is advised that she may request a hearing concerning the calculation of her supplement.

The Department did not provide a FAP net income budget for December 2015 showing the information used to calculate Petitioner's FAP benefits that month. However, because the Department testified that the January 2016 FAP net income budget showed the corrected information that should have been used to calculate Petitioner's FAP benefits, the information in this budget is reviewed.

The January 2016 budget showed unearned income of \$1512, which is Petitioner's gross monthly Retirement, Survivors and Disability Insurance (RSDI) income (Exhibit A, pp. 55-57). The FAP net income budget deductions to gross income were also reviewed. Because Petitioner receives RSDI based on a disability, she is a senior/disabled/veteran (SDV) member of her FAP group. See BEM 550 (July 2015), pp 1-2. FAP groups with a SDV member and no earned income are eligible for deductions from the group's total income for expenses for dependent care, excess shelter, child support, and verified monthly out-of-pocket medical expenses that exceed \$35 incurred by the SDV member. BEM 554 (October 2014), p. 1; RFT 255 (October 2014), p. 1. As a one-person FAP group, Petitioner is also eligible for a \$154 standard deduction to income. RFT 255, p. 1.

Petitioner confirmed that she did not have day care or child support expenses. The net income budget properly showed the \$154 standard deduction available to Petitioner's group and no dependent care or child support deductions. The excess shelter deduction is based on (i) monthly shelter expenses, which Petitioner confirmed was \$386, and (ii) the applicable utility standard for any utilities the client is responsible to pay. BEM 556 (July 2013), pp. 4-5. The Department agreed that, because Petitioner had a room air conditioner and was responsible for electrical expenses, she was eligible for the \$539 heat and utility (h/u) standard, the most beneficial utility standard a client may receive. See BEM 544, pp. 14-20; RFT 255, p. 1. Although an excess shelter deduction budget was not provided with the January 2016 FAP net income budget, a review of the calculation of the \$350 excess shelter deduction shown on the FAP net income budget shows that the Department properly considered Petitioner's rent and the h/u standard in calculating the excess shelter deduction.

The only issue remaining is Petitioner's medical expenses. An SDV member's allowable out-of-pocket medical expenses over \$35 that are not overdue are valid deductions to the member's FAP budget. BEM 554, p. 8. The expenses must be incurred, or reasonably expected to be incurred, during the client's benefit period. BEM 554, pp. 8-9. At application and redetermination, a client is eligible for a medical expense deduction for estimated medical expenses for the benefit period based on verified allowable medical expenses, available information about the SDV member's medical condition and health insurance, and changes that can reasonably be anticipated to occur during the benefit period. BEM 554, p. 8. Also, during the benefit period, the client may voluntarily report changes and the Department may process the changes if they are either (i) voluntarily reported and verified during the benefits period (such as expenses reported and verified for MA deductible) or (ii) if 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. A client who does 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. BEM 554, pp. 8-9. A client with a 24-month benefit period who incurs a one-time-only medical expense billed or due within the first 12 months of the benefit period must be given the option to budget it for one month, average it over the remainder of the first 12 months of the benefit period or average it over the remainder of the 24-month benefit period. BEM 554, p. 9.

In this case, the January 2016 FAP net income budget showed that Petitioner was eligible for a \$208 medical expense deduction. Medical expenses include medical insurance premiums. BEM 554, pp. 8, 12. In this case, Petitioner is responsible for her \$104.90 Part B Medicare premium (Exhibit A, p. 55). There was also evidence that she pays a \$24.90 health/hospitalization insurance premium (Exhibit A, p. 49). Therefore, Petitioner has monthly health insurance premiums totaling \$130. When this is reduced by the \$35 threshold, Petitioner's medical expense deduction totals \$95, leaving \$113 in medical expenses (the difference between the \$208 in the budget and the \$95 in insurance expenses) unaccounted. Petitioner and the Department both explained that Petitioner has ongoing monthly medical expenses. However, the Department has failed to establish the basis for the additional \$113 in medical expenses it used to calculate Petitioner's medical expense deduction. Therefore, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated the current level of Petitioner's FAP benefits at the time of her December 2015 request for hearing.

At the hearing, Petitioner also expressed concerns that her FAP case closed effective February 1, 2016 despite the fact that she had requested in her December 2, 2015 hearing request and a subsequent December 10, 2015 letter to the Department that her benefits continue (Exhibit A, pp. 4-7, 70-71).

A client is not eligible for ongoing FAP benefits when a benefit period expires. BAM 600, p. 24. The Department established that Petitioner had a two-year certification period that ran from January 1, 2015 through December 31, 2016 and had a mid-year

certification to continue her benefits beyond December 31, 2015. The Department explained that Petitioner's case closed because she did not complete a mid-certification sent to her on November 2, 2015 (Exhibit A, p. 11). Because Petitioner's FAP certification period expired on December 31, 2015, Petitioner was not eligible for ongoing FAP benefits pending the hearing. See BAM 210 (October 2015), p. 9.

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 processed Petitioner's MA case but failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's December 2015 ongoing FAP benefits.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to processing Petitioner's MA case **AND REVERSED IN PART** with respect to calculating Petitioner's December 2015 ongoing FAP budget.

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 case for December 2015 ongoing;
2. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from December 1, 2015 ongoing; and
3. Notify Petitioner in writing of its decision.



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

Date Signed: **2/17/2016**

Date Mailed: **2/17/2016**

ACE / tlf

