



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 12, 2016
MAHS Docket No.: 16-002209
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 April 4, 2016, from Detroit, Michigan. The Petitioner represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED] Eligibility Summary.

ISSUE

Did the Department properly calculate the amount of Petitioner's Food Assistance Program (FAP) benefits and process her Medicare Savings Program (MSP) benefits?

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 recipient of FAP and MSP benefits.
2. Petitioner's daughter who is a household member is employed and earning income.
3. Petitioner receives unearned income from RSDI in the amount of \$1241 monthly.
4. On an unverified date, the Department notified Petitioner that she was approved for FAP benefits in the amount of \$451 effective February 1, 2016.

5. Petitioner's MSP case closed effective October 1, 2015, based on a failure to complete a redetermination.
6. Petitioner reapplied for MSP benefits on October 2, 2015, and was approved for the period of October 1, 2015, ongoing.
7. The Social Security Administration (SSA) withheld \$104.90 from Petitioner's monthly RSDI benefits for the months of October 2015, November 2015, and December 2015 for her Medicare premium. The SSA stopped withholding effective January 2016.
8. On February 16, 2016, Petitioner requested a hearing disputing the calculation of her FAP benefits and the Department's processing of her MSP benefits.

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

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 requested a hearing disputing the Department's actions with respect to her FAP benefits. At the hearing, Petitioner explained that her FAP allotment fluctuates and it was established that Petitioner was disputing the calculation of her FAP benefits for the month of February 2016 in the amount of \$451. The Department explained that Petitioner's FAP benefits fluctuate because of the medical deduction applied. The Department stated that based on the dates in which medical expenses are reported, the changes in Petitioner's Medical Assistance (MA) deductible and the dates/times in which the MA deductible is met impact the FAP budget and the calculation of her monthly FAP benefits. The Department presented a FAP EDG Net Income Results Budget which was reviewed to determine if the Department properly calculated Petitioner's FAP benefits for February 2016. (Exhibit A).

All countable earned and unearned income available to the client and group must be considered in determining a client's eligibility for program benefits. BEM 500 (January 2016), pp. 1 – 5. The Department determines a client's eligibility for program benefits

based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (July 2015), pp. 1-2. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, p. 5. A standard monthly amount must be determined for each income source used in the budget. BEM 505, p. 7. An employee's wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (July 2014), pp. 6-7.

The Department concluded that Petitioner's group had earned income of \$657 which it testified consisted of her daughter's earnings from employment. Although Petitioner confirmed that her daughter was employed, the Department did not identify which income amounts or pay dates it relied on however, and failed to present sufficient documentation or evidence in support of its earned income calculation. Thus, the Department failed to establish that it properly calculated Petitioner's earned income.

The Department concluded that Petitioner had unearned income in the amount of \$1241 which it testified consisted of Petitioner's monthly RSDI benefits. The Department considers the gross amount of money earned from RSDI in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (October 2015), pp.28. Petitioner confirmed the amounts relied upon by the Department and verified her unearned income; therefore, the Department properly calculated Petitioner's unearned income.

The deductions to income on the net income budget were also reviewed. Petitioner is a senior/disabled/veteran (SDV) member of the FAP group. BEM 550 (October 2015), pp. 1-2. Groups with one or more SDV members are eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Medical expenses for the SDV member(s) that exceed \$35.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (October 2015), p. 1; BEM 556 (July 2013), p. 3.

In this case, the Department determined that Petitioner's earned income deduction was \$132, however, because as discussed above, the earned income was not sufficiently established, it follows that the earned income deduction is also incorrect. There was no evidence presented that Petitioner's group had any out of pocket dependent care or child support expenses. Therefore, the budget properly did not include any deduction for dependent care expenses or child support. Based on the confirmed four-person group

size, the Department properly applied the \$167 standard deduction. RFT 255 (October 2015), p. 1. The Department determined that Petitioner was eligible for an excess shelter deduction of \$940, which was determined using \$1200 in housing expenses for monthly rent and the \$539 heat and utility standard. Petitioner confirmed that at the time the budget was completed, her housing expenses were \$1200 and that she was responsible for heat and utilities. Therefore, the Department properly determined the total shelter amount, however, because the excess shelter deduction is calculated using gross income and as discussed above, the Department failed to establish that the earned income was correct, it follows that the excess shelter deduction of \$940 is also unsupported by the evidence presented at the hearing.

With respect to the medical deduction, the Department stated that at the time the budget was completed, Petitioner had not incurred sufficient expenses to meet her monthly MA deductible and was thus not eligible for a medical deduction to the FAP budget. The Department stated that it had previously been using an old bill and applying it towards Petitioner's medical deduction to her FAP case, however, once the old bill was removed, Petitioner did not have any applicable medical expenses, as she had not verified expenses for her MA deductible. The Department stated that at the end of February 2016, the FAP budget was recalculated and new medical expenses were reported, thus resulting in an increased FAP allotment. Petitioner did not present any documentation or otherwise establish that she voluntarily reported changes during the benefit period concerning her medical expenses. See BEM 554, pp.8-12. Thus, the Department properly excluded the medical deduction from the calculation of Petitioner's FAP budget.

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 because of the Department's inability to explain how it calculated Petitioner's earned income, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated the amount of Petitioner's FAP benefits effective February 1, 2016.

MA

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.

Medicare Savings Programs (MSP) are SSI-related MA categories and are neither Group 1 nor Group 2. There are three MSP categories: Qualified Medicare Beneficiaries; Specified Low-Income Medicare Beneficiaries (SLMB); and Additional Low Income Beneficiaries (ALMB). BEM 165 (October 2015), p. 1. ALMB pays

Medicare Part B premiums provided funding is available. BEM 165, pp. 1-2. In this case, Petitioner was an ongoing recipient of MSP benefits under the ALMB category. The Department testified that Petitioner's MSP case closed effective October 1, 2015, on the basis that she failed to return a redetermination. Petitioner reapplied for MSP benefits and was subsequently approved for the period of October 1, 2015, ongoing. Petitioner asserted that the SSA had continued to withhold \$104.90 from each month's RSDI benefit issuance to pay her Part B Medicare premium despite the Department's statement that her MSP case was approved and the ALMB category effective October 1, 2015. Petitioner stated that SSA withheld funds for the months of October 2015, November 2015 and December 2015 and requested reimbursement of the premiums she paid that should have been paid by the Department.

BAM 810 provides that the Part B Buy-In program is used to pay Part B premiums and the program is an agreement between DCH and SSA. The policy further provides that the Part B buy-in effective date is: determined by SSA for SSI recipients; the month QMB or SLMB coverage begins if the only basis for buy-in is Medicare Savings Program eligibility; determined by DCH for ALMB; or the earliest date the client is both MA and Medicare Part B eligible for all other persons covered by the Buy-In Program, except that buy-in under Group 2 MA is not retroactive more than two years. The buy-in is processed at the end of the calendar month that a case is opened in Bridges and that it takes SSA about 120 days after that date in order to adjust the RSDI check and issue a refund for premiums paid while the buy-in was being processed. See BAM 810 (July 2015), pp.7-9. With respect to Part B payments for the ALMB, full payment of Medicare premiums is through the Part B Buy-In program provided funding is available. The Department determines if funding is available. BAM 810, p. 8.

The Department testified that after it approved Petitioner's MSP eligibility under the ALMB category effective October 1, 2015, it sent the Buy-In unit emails advising that Petitioner's MSP benefits under the ALMB category needed to be reinstated with an effective date of October 1, 2015 and requesting an approximate reimbursement date. (Exhibit B). The Department referenced an email that the Buy-In unit sent in response to the Department's request to activate Petitioner's ALMB benefits. Specifically, the email from the Buy-In unit indicates that in order for a client to be eligible for ALMB coverage, the client cannot have Medicaid. The email goes on to indicate that the scope/coverage must be 2H and that current scope/coverage is 2F. (Exhibit B). The Department was instructed by the Buy-In unit to file a help desk ticket so that the MA interface shows the appropriate 2H coverage. (Exhibit B). The Department stated that it has been in communication with the Buy-In unit and the help desk, but as of the hearing date, the issue had not been resolved, so it was unclear if SSA was notified of the request for reinstatement in order for Petitioner's reimbursement to be issued.

With respect to ALMB and other MA, Department policy provides that a person is not eligible for ALMB if the person is eligible for and receiving MA under another category. However, for deductible clients: persons in active deductible status (scope/coverage 2H) are not considered eligible for another MA category; and persons identified as

ALMB eligible at the time they report meeting their deductible remain ALMB eligible. Persons who are eligible for MA benefits under another category (example, scope/coverage 1F), but do not want such assistance can be eligible for ALMB. They will still need to be coded as eligible for the buy-in (2H). See BEM 165, p. 6.

Although the Department established that it contacted the Buy-In unit to advise of Petitioner's eligibility for MSP ALMB benefits for the period of October 1, 2015, ongoing, the Department did not establish that it properly processed Petitioner's MSP case, made payment through the Buy-In unit to SSA for amounts due for Medicare premiums owed, or that it asked that Petitioner be refunded by SSA in accordance with Department 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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it processed Petitioner's MSP benefits for October 1, 2015, ongoing.

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. Process Petitioner's MSP case for October 1, 2015, ongoing, in accordance with Department policy, and
2. Issue supplements to SSA for MSP benefits Petitioner should have received from October 1, 2015, ongoing;
3. Recalculate Petitioner's FAP budget for February 1, 2016, ongoing;

4. Issue FAP supplements to Petitioner from February 1, 2016, ongoing, in accordance with Department policy; and
5. Notify Petitioner in writing of its decision.



ZB/tlf

Zainab Baydoun

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

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