



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: July 22, 2016
MAHS Docket No.: 16-007840
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 July 13, 2016, from Lansing, Michigan. [REDACTED], the Petitioner, appeared on her own behalf. [REDACTED], mother, appeared as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist (ES) and back up Hearing Facilitator.

During the hearing proceedings, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-17.

ISSUE¹

Did the Department properly re-determine Petitioner's Food Assistance Program (FAP) eligibility retroactive to December 7, 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 Some information regarding Petitioner's Medical Assistance (MA) and the Medicare Savings Program (MSP) benefits case was mentioned in the Department's hearing summary packet and in the testimony of the parties during the hearing proceedings. However, a separate, in-person hearing was held on July 6, 2016, regarding the MA and MSP case actions (MAHS Docket No. 16-006951). Accordingly the contested issues regarding MA and MSP benefits will be addressed in the Hearing Decision for the other case.

1. Petitioner is an ongoing recipient of FAP benefits.
2. A May 23, 2016, Hearing Decision (MAHS Docket No. 16-004125) was issued, in part, ordering the Department to re-determine Petitioner's eligibility for FAP back to December 7, 2015. (Exhibit A, pp. 2 and 6)
3. On May 24, 2016, Petitioner submitted medical expenses from 2012 to current that were entered into the Department's computer system. (Exhibit A, pp. 3 and 6-9)
4. On May 24, 2016, a Notice of Case Action was issued to Petitioner stating the FAP monthly allotment would increase to \$ [REDACTED] for June 2016; then decrease to \$ [REDACTED] per month for July 2016 through November 2017. (Exhibit A, pp. 10-12)
5. On May 31, 2016, Petitioner filed a hearing request contesting the Department's FAP determinations. Verification of a rent increase was attached. (Hearing Request)

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.

BEM 550, 554, and 556 address the FAP budget. In calculating the FAP budget, the entire amount of earned and unearned countable income is budgeted. Every case is allowed the standard deduction shown in RFT 255. BEM 550, (October 1, 2015), pp. 1.

The Department counts the gross benefit amount of current Social Security Administration (SSA) issued Retirement Survivors and Disability (RSDI) and Supplemental Security Income (SSI) as unearned income. BEM 503, (April 1, 2016), pp. 28 and 32.

As of October 1, 2015, the FAP standard deduction for a group size of 1-3 persons is \$154.00. The applicable full heat and utility standard (h/u standard) as of October 1, 2015, is \$539.00. RFT 255, (October 1, 2015), p. 1.

A shelter expense is allowed when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554, (October 1, 2015), p. 12. Heat and utility expenses can also be included as allowed by policy. The Department allows only the utilities for which a client is responsible to pay. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. FAP groups whose heat is included in their rent or fees are not eligible for the h/u standard, unless they are billed for excess heat payments from their landlord. However, FAP groups who have received a home heating credit (HHC) in an amount greater than \$20 in the certification month or in the immediately preceding 12 months prior to the certification month are eligible for the h/u standard. FAP groups who have received a Low Income Home Energy Assistance Payment (LIHEAP) payment or a LIHEAP payment was made on their behalf in an amount greater than \$20 in the application month or in the immediately preceding 12 months prior to the application month are eligible for the h/u standard. FAP groups not eligible for the h/u standard who have other utility expenses or contribute to the cost of other utility expenses are eligible for the individual utility standards. The Department is to use the individual standard for each utility the FAP group has responsibility to pay. BEM 554, pp. 14-23.

Verified allowable medical expenses in excess of \$35 are also considered in the FAP budget. BEM 554, pp. 1 and 8. Specifically for medical expense changes reported during the benefit period, the policy states:

During the Benefit Period

Groups that do 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. Bridges will allow the expense in the first benefit month the change can affect.

Exception: Groups that have 24-month benefit periods must be given the following options for one-time-only medical expenses billed or due within the first 12 months of the benefit period:

1. Budget it for one month.
2. Average it over the remainder of the first 12 months of the benefit period.
3. Average it over the remainder of the 24-month benefit period.

Example: Sally has a \$1,200 emergency room bill in 11/08. It is not covered by Medicaid or any medical insurance and she received the first bill for this service in 1/09. Her FAP benefit period is 10/1/08 through 9/30/10. She can elect to use:

- The entire \$1,200 deduction to affect 2/09 benefits. This would probably increase her FAP to the maximum amount for that one month.
- \$150 per month (\$1,200 bill divided by 8 months remaining in the first 12 months of her benefit period) to affect 2/09 through 9/09. This would probably increase her FAP benefits by \$50 per month for eight months.
- \$60 per month (\$1,200 bill divided by 20 months remaining in the benefit period) to affect 2/09 through 9/10. This would probably increase her FAP benefits by \$20 for 20 months. (If she were within \$20 of the maximum, this option would benefit her the most.)

BEM 554, pp. 8-9

Allowable medical expenses include Medicare premiums. BEM 554 p. 10. However, for FAP, the general criteria for an expense to be allowed includes that someone in the FAP group has the responsibility to pay for the service in money. BEM 554, October 1, 2015, p. 1. Further, regarding responsibility to pay, the BEM 554 FAP expense policy states:

Responsibility to pay means that the expense is in the name of a person in the FAP group.

Exception: If the expense is in someone else's name, allow the expense if the FAP group claims the expense **and** the service address on the bill is where they live.

Do **not** allow any expense if the entire expense is directly paid by an agency or someone outside of the group.

An expense that is fully reimbursed is not allowed; see BEM 500, Reimbursements.

If an expense is partially reimbursed or paid by an agency or someone outside of the FAP group, allow **only** the amount that the group is responsible to pay, **unless** specific policy directs otherwise.

Example: HUD pays \$150 toward a FAP group's \$325 rental expense. Allow only the \$175 (\$325 rent - \$150 HUD pays = \$175) that the group is expected to pay.

BEM 554, October 1, 2015, p. 2

A May 23, 2016, Hearing Decision (MAHS Docket No. 16-004125) was issued, in part, ordering the Department to re-determine Petitioner's eligibility for FAP back to December 7, 2015. (Exhibit A, pp. 2 and 6)

There is no evidence showing that Petitioner's FAP eligibility was actually re-determined retroactive to December 7, 2015, in accordance with the Hearing Decision. On May 24, 2016, a Notice of Case Action was issued to Petitioner stating the FAP monthly allotment would increase to \$ [REDACTED] for June 2016; then decrease to \$ [REDACTED] per month for July 2016 through November 2017. (Exhibit A, pp. 10-12) Further, there were no FAP budgets or other documentation included in the Department's exhibit packet showing the FAP eligibility determinations retroactive to December 7, 2015.

Additionally, it does not appear that the FAP eligibility determinations for June 2016 and July 2016 through November 2017 were in accordance with Department policy. For example, the budget summary on the May 24, 2016, Notice of Case Action shows no medical expenses were included in the FAP budget. (Exhibit A, p. 12) The Department not including the cost of Petitioner's Medicare premiums in the FAP budget because Petitioner was approved for the Medicare Savings Program (MSP) was in accordance with the BEM 554 policy. Petitioner was approved for the MSP retroactive to December 2015. (Exhibit A, p. 13) Accordingly, Petitioner would no longer be paying that medical expense and will be reimbursed for the past months back to December 2015. However, on May 24, 2016, Petitioner submitted medical expenses from 2012 to current that were entered into the Department's computer system. (Exhibit A, pp. 3 and 6-9) It does not appear that these were properly included in the FAP budget. The Department's testimony indicated medical expenses can only be applied for one month. (ES Testimony) Under the above cited BEM 554 policy, it appears there is an option to budget medical expenses either for one month or by averaging it over the benefit period. BEM 554, pp. 8-9.

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 did not act in accordance with Department policy when it re-determined Petitioner's FAP eligibility retroactive to December 7, 2015.

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 FAP eligibility retroactive to December 7, 2015, in accordance with Department policy, which would include issuing written notice of the new determination(s) for benefit periods starting December 7, 2015.



CL/mc

Colleen Lack
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

DHHS

[REDACTED]

Petitioner

[REDACTED]