



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: September 23, 2016
MAHS Docket No.: 16-011663
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Zainab A. 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 September 15, 2016, from Detroit, Michigan. The Petitioner appeared for the hearing with her daughter ██████████ and represented herself. The Department of Health and Human Services (Department) was represented by ██████████, Assistance Payment Supervisor.

ISSUE

Did the Department properly calculate the amount of Petitioner's Food Assistance Program (FAP) benefits effective September 1, 2016?

Did the Department properly process Petitioner's medical expenses and apply them towards her Medical Assistance (MA) deductible?

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 MA benefits.
2. Petitioner was receiving FAP benefits in the amount of ██████████. (Exhibit C)

3. On June 9, 2016, the Department received a completed Verification of Employment form for Petitioner's daughter's employment at [REDACTED]. (Exhibit A)
4. In connection with a semi-annual contact report, Petitioner's eligibility to receive FAP benefits was reviewed.
5. Petitioner's daughter's employment at [REDACTED] ended on or around August 1, 2016, and she received her last paycheck on or around August 11, 2016.
6. Petitioner reported her daughter's loss of employment on or around August 15, 2016.
7. Petitioner's FAP benefits were reduced to [REDACTED] monthly effective September 1, 2016. (Exhibit C)
8. Petitioner was approved for MA under the Group 2 Aged, Blind, and Disabled (G2S) category with a monthly deductible.
9. Petitioner submitted medical expenses to the Department to verify that she had incurred sufficient expenses to meet her deductible.
10. The Department acknowledged receiving medical expenses from Petitioner on various dates; however, the Department failed to establish that it properly processed the expenses and applied them to Petitioner's deductible for the applicable months.
11. On August 8, 2016, Petitioner requested a hearing disputing the decrease in her FAP benefits and the Department's failure to process her medical expenses.

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 raised two concerns: the Department's failure to continue her FAP benefits at the [REDACTED] amount pending the outcome of the hearing; and the decrease in her FAP benefits to [REDACTED] effective September 1, 2016.

With respect to the continuation of Petitioner's FAP benefits at the prior [REDACTED] amount pending the administrative hearing, Department policy provides that while waiting for the hearing decision, recipients must continue to receive the assistance authorized prior to the notice of negative action when the request was filed timely. Upon receipt of a timely hearing request, the Department is to reinstate program benefits to the former level for a hearing request filed because of a negative action. BAM 600 (October 2015), p. 24. For FAP cases, this policy applies only if the benefit period has not expired. BAM 600, p. 24. In the present case, the Department testified that Petitioner's FAP benefits were recalculated in connection with a semi-annual contact report, thus, her FAP benefit period expired and the continuation of FAP benefits at the amount authorized prior to the request for hearing did not apply in this case.

At the hearing, the Department testified that effective September 1, 2016, Petitioner's FAP benefits were reduced to [REDACTED] monthly. The Department presented a FAP EDG Net Income Results Budget, which was reviewed to determine if the Department properly calculated the amount of Petitioner's FAP benefits. (Exhibit B).

All countable earned and unearned income available to the client 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 2016), 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. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. BEM 505, pp. 7-8.

The Department concluded that Petitioner's group had earned income in the amount of [REDACTED] which it testified consisted of her daughter's wages from employment at [REDACTED]. Specifically, the Department stated that it considered: (i) [REDACTED] paid on [REDACTED]; (ii) [REDACTED] paid on [REDACTED]; (iii) [REDACTED] paid on [REDACTED]; and (iv) [REDACTED] paid on [REDACTED]. The Department testified that it relied on one paystub and a verification of employment provided on [REDACTED], to calculate the income. (Exhibit A). Despite being given an opportunity to do so, the Department failed to fax the complete verification of employment relied on and only presented one page. (Exhibit A). Additionally, it was unclear why the Department was considering income from April

2016 in the determination of Petitioner's September 2016 FAP eligibility, when more recent income information was available and could be obtained.

At the hearing, Petitioner testified that the earnings relied upon by the Department were not accurate. Petitioner stated that her daughter's employment at [REDACTED] ended on [REDACTED], and that she received her final paycheck the second week of August 2016. Petitioner asserted that she timely reported the loss of employment to the Department and the Department confirmed that it had information from the employer to verify that Petitioner's daughter received her last paycheck on [REDACTED]. For FAP cases, Department policy provides that income decreases that result in a benefit increase must be effective no later than the first allotment issued ten days after the date the change was reported, provided necessary verification was returned. BEM 505, p.10. Thus, based on Petitioner's timely reporting of the loss of employment income, a new budget should have been completed effective September 1, 2016 and the income not considered in Petitioner's September 2016 benefit allotment. As such, the Department did not properly calculate Petitioner's earned income.

With respect to unearned income, the Department considers the gross amount of money earned from RSDI in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (July 2016), pp. 28. The budget shows unearned income of [REDACTED], which Petitioner confirmed was the correct amount of her RSDI benefit.

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 (June 2016), p. 1; BEM 556 (July 2013), p. 3.

In this case, because the Department should not have included earned income from Petitioner's daughter's employment, Petitioner is not entitled to the 20% earned income deduction. There was no evidence presented that Petitioner had any out of pocket dependent care or child support expenses. Therefore, the budget properly did not include any deduction for dependent care expenses and child support. The budget shows a medical deduction of \$0, which Petitioner disputed. Petitioner asserted that she submitted documentation to verify medical expenses incurred that should be applied to the medical deduction to her FAP budget. The Department stated that although Petitioner did submit expenses, they are not countable. Upon further review and based

on the applicable Department policies, the expenses submitted by Petitioner do not meet the criteria referenced in BEM 554 and were properly excluded from the FAP budget as a medical deduction. See BEM 554 (June 2016), pp. 8-11. Based on her confirmed two-person group size, the Department properly applied the [REDACTED] standard deduction. RFT 255 (July 2016), p. 1. In calculating Petitioner's excess shelter deduction, the Department properly considered her confirmed housing expenses of [REDACTED] and the [REDACTED] standard heat and utility deduction. BEM 554, pp. 16-19; RFT 255, p.1.

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 errors in the calculation of earned income discussed above, the Department did not act in accordance with Department policy when it calculated the amount of Petitioner's FAP benefits effective September 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.

In this case, Petitioner requested a hearing disputing the Department's actions with respect to her MA benefits. At the hearing, Petitioner stated that at issue was the Department's failure to properly process the medical expenses she submitted to verify that she met her deductible. Among other expenses submitted, Petitioner referenced an April 2015 expense in the amount of [REDACTED] and asserted that the Department had not processed the expense properly.

Group 2 MA income eligibility exists for the calendar month tested when there is no excess income or the allowable medical expenses (defined in Exhibit 1) equal or exceed the excess income. When old bills, personal care services, the cost of hospitalization (defined in Exhibit IC), or long term care equals or exceeds the group's excess income for the month tested, income eligibility exists for the entire month. When old bills, personal care services, the cost of hospitalization, or long term care do not equal or exceed the group's excess income for the month being tested, income eligibility begins either: the exact day of the month the allowable expenses exceed the excess income or the day after the day of the month the allowable expenses equal the excess income. BEM 545 (October 2015 and January 2016), p. 1.

If the client still has excess income, BEM 545 provides that a client may be eligible for Group 2 MA if sufficient allowable medical expenses are incurred through a deductible process. BEM 545, p. 10. The Department will open an MA case without ongoing Group

2 MA coverage as long as the fiscal group has excess income and at least one fiscal group member meets all other Group 2 MA eligibility factors. These cases are called active deductible cases and each calendar month is a separate deductible period, with MA coverage added each time the group meets its deductible. BEM 545, p. 10.

The fiscal group's monthly excess income is called a deductible amount. To meet a deductible, a MA client must report and verify allowable medical expenses (defined in Exhibit I) that equal or exceed the deductible amount for the calendar month being tested. The group must report expenses by the last day of the third month following the month in which client wants MA coverage. BEM 545, p. 11. The Department is to add periods of MA coverage each time the group meets its deductible. BEM 545, p.11. A group may report additional expenses that were incurred prior to the MA eligibility begin date referenced above. The Department is not to alter the MA eligibility begin date if coverage has already been authorized on Bridges, however, any expenses the group reports that were incurred from the first of such month through the day before the MA eligibility begin date might be countable as old bills and applied to future months deductible. See Exhibit 1B and Example 7 in Exhibit IV of BEM 545. BEM 545, pp. 12-13.

At the hearing, the Department acknowledged that Petitioner submitted medical expenses on more than one occasion and that some of the expenses were received by the Department. The Department initially testified that it could not process the expenses because they did not contain a date of service and did not contain verification regarding what portion Medicare would be paying towards the expense. During the hearing however, the Department performed a search of Petitioner's electronic case file and it was discovered that the Department had record of at least 42 pages worth of medical expenses submitted by Petitioner on various dates, for multiple dates of service. Included among those was the [REDACTED] expense referenced by Petitioner. The Department did not establish that it properly processed the expenses and applied them towards Petitioner's MA deductible for the applicable period. The Department also did not establish that it followed the old bills policy with respect to the processing of the expenses. As such, it remained unclear based on the Department's evidence what, if any expenses were processed and applied to Petitioner's deductible and for what months.

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 medical expenses.

DECISION AND ORDER

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 errors in

the calculation of earned income discussed above, the Department did not act in accordance with Department policy when it calculated the amount of Petitioner's FAP benefits effective September 1, 2016.

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 medical expenses.

Accordingly, the Department's FAP and MA decisions are **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. Recalculate Petitioner's FAP budget for September 1, 2016, ongoing;
2. Issue FAP supplements to Petitioner from September 1, 2016, ongoing, in accordance with Department policy;
3. Process Petitioner's medical expenses incurred and apply them towards her MA deductible the applicable periods;
4. Activate Petitioner's MA coverage for the months during which her MA deductible was met, if any, in accordance with Department policy;
5. Pay Petitioner's provider and supplement Petitioner for MA benefits that she was eligible to receive but did not for the applicable months; and
6. Notify Petitioner of its decisions in writing.

ZB/tlf



Zainab A. 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

DHHS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
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Via Email:

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