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: September 27, 2016
MAHS Docket No.: 16-011966
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 21, 2016, from Detroit, Michigan. The Petitioner was represented by [redacted] (Petitioner); and his spouse, [redacted]. The Department of Health and Human Services (Department) was represented by [redacted], Hearings Facilitator.

ISSUES

Did the Department properly process Petitioner and his spouse's Medical Assistance (MA) eligibility?

Did the Department properly calculate Petitioner's MA – Group 2 Spend-Down (G2S) deductible?

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

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 benefits. Exhibit A, p. 8.

2. Petitioner and his spouse are ongoing recipients of MA benefits. Exhibit A, p. 8.

3. In June 2016, Petitioner submitted a State Emergency Relief (SER) application.

4. As a result of the SER application, the Department redetermined Petitioner and his spouse's FAP and MA eligibility.

5. For groups with one or more senior/disabled/disabled veteran (SDV) members, the Department allows medical expenses for the SDV member(s) that exceed [redacted]

6. Petitioner and his spouse are SDV members and the Department took their medical expenses into consideration when determining their FAP allotment.

7. Since on or about 2013, the Department, in error, kept budgeting a large one-time-only medical deduction for Petitioner's FAP benefits. Exhibit A, p. 16. The Department budgeted a total of [redacted] as Petitioner's medical deduction. Exhibit A, p. 16.

8. As a result of the Department's error, it removed the one-time-only medical deduction, which resulted in the decrease in Petitioner's FAP allotment.

9. On July 1, 2016, the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits decreased to $[redacted] effective August 1, 2016 because their shelter deduction amount had changed and their medical expense deduction amount has changed. Exhibit A, pp. 4-5. The Department continued to budget [redacted] in medical deductions for the Petitioner. Exhibit A, p. 5.

10. Petitioner and his spouse were also found eligible for MA - G2S coverage, subject to a [redacted] deductible; however, the Department did not issue a Health Care Coverage Determination Notice (determination notice) notifying him and his spouse of their MA deductible. Exhibit A, p. 1.

11. On August 16, 2016, Petitioner filed a hearing request, protesting the Department's action. Exhibit A, p. 2.

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.

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.

Preliminary matters

First, Petitioner also filed a hearing request in which he disputed the closure of their MA benefits. Exhibit A, p. 2. However, the evidence suggested the contrary. There was no evidence showing that their MA benefits had closed. As part of the evidence record, the Department presented an "Eligibility Summary," which showed that both Petitioner and his spouse are receiving ongoing MA coverage, subject to a deductible. Exhibit A, p. 8. Based on this information, their MA benefits have not closed; therefore, the undersigned will not further address the allegation that their MA benefits had closed. Now, if their MA benefits do close, they can file another hearing request to dispute the closure. BAM 600 (October 2015), pp. 1-6 (The client or Authorized Hearing Representative (AHR) has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days).

Second, based on Petitioner's hearing request, the undersigned will address the following issues separately: (i) whether the Department properly processed Petitioner and his spouse's MA eligibility; and whether the Department properly calculated Petitioner and his spouse's G2S deductible; and (ii) whether the Department properly decreased Petitioner's FAP benefits effective August 1, 2016.

MA benefits and G2S deductible

First, Petitioner argued that the deductible coverage provided by the Department for him and his spouse were inadequate. Exhibit A, p. 2. In fact, Petitioner testified that he was told verbally that their MA coverage was put into a [redacted] deductible with no letter stating it. See Exhibit A, p. 2 (Hearing Request). Petitioner was accurate that the Department did not issue any determination notice notifying him and his spouse of their MA deductible. Exhibit A, p. 1. Also, the Department testified that the deductible went into effective August 1, 2016, but Petitioner's "Eligibility Summary" showed that it went into effective July 1, 2016. Exhibit A, p. 8.

Policy states that upon certification of eligibility results, the Department automatically notifies the client in writing of positive and negative actions by generating the

appropriate notice of case action. BAM 220 (July 2016), p. 2. The notice of case action is printed and mailed centrally from the consolidated print center. BAM 220, p. 2.

Additionally, BEM 545 states that the Department need to notify groups about MA Group 2 eligibility determinations and tells the Department when to send them. BEM 545 (July 2016), p. 13. The Department sends the group a DHS-1606, Health Care Coverage Notice when it:

- Approve or deny MA.
- Add periods of MA coverage to an active deductible case.
- Transfer an active deductible case to ongoing MA coverage.

BEM 545, p. 13.

Based on this information, the Department failed to satisfy its burden of showing that it properly processed Petitioner and his spouse's MA eligibility effective July 1, 2016. First, the Department testified that the MA deductible went into effect August 1, 2016, but the Department presented evidence showing that it went into effect July 1, 2016. Exhibit A, p. 8. Second, the evidence is persuasive to show that the Department should have sent notice to Petitioner informing them that their MA cases were subject to a deductible. BAM 220, p. 2 and BEM 545, p. 13. Because the Department failed to satisfy its burden of showing that it properly processed Petitioner and his spouse's MA eligibility effective July 1, 2016, the Department will redetermine their MA eligibility effective July 1, 2016.

Additionally, Petitioner disputed their MA deductible. Petitioner and his spouse were found eligible for G2S subject to a [redacted] deductible. Even though the Department acknowledged that a determination notice was never issued in this case, the undersigned addressed the calculation of their deductible below:

In the present case, Petitioner and his spouse both live together and reside in Wayne County. Therefore, Petitioner and his spouse's fiscal group size is two. See BEM 211 (January 2016), p. 8. Moreover, the Department will consider Petitioner and his spouse's total income when determining the calculation of their deductible. See BEM 211, p. 8.

G2S is a Security Income (SSI)-related Group 2 MA category. See BEM 166 (July 2013), p. 1. BEM 166 outlines the proper procedures for determining G2S eligibility. BEM 166, p. 1.

In this case, the Department presented Petitioner and his spouse's MA-G2S budgets for the benefit period of August 1, 2016, ongoing. Exhibit B, p. 1-2. It should be noted that the August 2016 most likely had the same calculations for the July 2016 deductible budget.

First, the Department properly calculated Petitioner and his spouse's gross total unearned income to be [redacted] Exhibit B, p. 1-2. This amount consisted of Petitioner's monthly RSDI income of $[redacted] and his spouse's monthly RSDI income of [redacted]. See Exhibit B, pp. 1-2 and BEM 503 (July 2016), p. 28 (the Department counts the gross benefit amount of RSDI as unearned income).

Second, the Department then properly subtracted the [redacted] disregard to establish Petitioner and his spouse's total net unearned income of [redacted]. BEM 541 (January 2016), p. 3.

Third, the Department deducted [redacted] in insurance premiums for Petitioner and his spouse. Exhibit B, pp. 2-3. However, the Department failed to establish how it determined that Petitioner and his spouse were responsible for [redacted]0 in insurance premiums.

Policy states that the Department counts as a need item the cost of any health insurance premiums (including vision and dental insurance) and Medicare premiums paid by the medical group (defined in "EXHIBIT I") regardless of who the coverage is for. BEM 554 (July 2016), p. 1. Example: Medical group of five pays health insurance premiums for six (themselves and another person not in the medical group). BEM 554, p. 1. Allow health insurance premiums for six. BEM 554, p. 1.

- Do not include premiums paid by the employer or any other non-medical group source.
- Include Medicare premiums paid by the medical group that may later be reimbursed by the Buy-In program (See BAM 810).
- Convert premiums paid other than monthly to a monthly cost.

BEM 554, pp. 1-2.

In this case, Petitioner is responsible for his Medicare Part B premium, which is [redacted] monthly and policy allows the Department to take his insurance premium into consideration. BEM 554, pp. 1-2. However, Petitioner's spouse is not responsible for any insurance premiums. Thus, the undersigned was confused during the hearing how the Department calculated a total insurance premium amount of [redacted]. As such, the undersigned had the Department review its system (Bridges) to see why it calculated such a high insurance premium and it appeared the Department, in error, kept budgeting one-time-only hospital insurance premiums as ongoing, rather than one-time-only expenses. Nonetheless, the Department failed to satisfy its burden of showing how it calculated Petitioner's and his spouse's total insurance premium to be [redacted] in accordance with Department policy. Because the Department failed to establish that it properly calculated Petitioner and his spouse's insurance premium, it failed to establish that it properly calculated their MA-G2S budget in accordance with Department policy. See BEM 554, pp. 1-2.

Accordingly, because the Department failed to satisfy its burden of showing that it properly processed Petitioner and his spouse's MA eligibility and that it failed to establish that it properly calculated their MA-G2S budget, the Department is ordered to redetermine Petitioner and his spouse's MA eligibility from July 1, 2016, in accordance with Department policy.

FAP benefits

In the present case, Petitioner also disputed the decrease in his FAP benefits from [redacted] to [redacted] August 1, 2016. Exhibit A, p. 8. As such, the Department presented the August 2016 FAP budget for review. Exhibit A, pp. 18-19.

It was not disputed that the certified group size is two and that Petitioner and his spouse are SDV members.

First, the Department properly calculated Petitioner's gross unearned income to be [redacted], which comprised of their RSDI income. Exhibit A, p. 18 and BEM 503, p. 28.

Second, the Department applied the [redacted] standard deduction applicable to Petitioner's group size of two. RFT 255 (July 2016), p. 1.

Third, the Department calculated Petitioner's medical expense deduction to be [redacted] which Petitioner disputed. As stated in the *Findings of Facts* section, since on or about 2013, the Department, in error, kept budgeting a large medical deduction for Petitioner's FAP benefits. Exhibit A, p. 16. The Department budgeted a total of [redacted] as Petitioner's medical deduction. Exhibit A, p. 16. As a result of the Department's error, it removed the one-time-only medical deduction, which resulted in the decrease in Petitioner's FAP allotment. The Department, though, still provided Petitioner with an [redacted] medical deduction. When the undersigned asked how the Department came to determination that Petitioner was eligible for an [redacted] medical deduction, the Department was unable to provide sufficient evidence and/or testimony to answer the undersigned's inquiry.

In response, Petitioner and his spouse claimed that they are responsible for medical expenses that far exceed the [redacted] deduction calculated by the Department. In fact, Petitioner provided proof of medical expenses that she is responsible for. Exhibit A, pp. 1-4.

Policy states that for groups with one or more SDV member, the Department allows medical expenses that exceed [redacted]. BEM 554 (June 2016), p. 1.

The Department estimates an SDV person's medical expenses for the benefit period. BEM 554, p. 11. The expense does not have to be paid to be allowed. BEM 554, p. 11. The Department allows medical expenses when verification of the portion paid, or to be paid by insurance, Medicare, Medicaid, etc. is provided. BEM 554, p. 11. The

Department allows only the non-reimbursable portion of a medical expense. BEM 554, p. 11. The medical bill cannot be overdue. BEM 554, p. 11.

The medical bill is not overdue if one of the following conditions exists:

- Currently incurred (for example, in the same month, ongoing, etc.).
- Currently billed (client is receiving the bill for the first time for a medical expense provided earlier and the bill is not overdue).
- Client made a payment arrangement before the medical bill became overdue.

BEM 554, p. 11.

The Department verifies allowable medical expenses including the amount of reimbursement, at initial application and redetermination. BEM 554, p. 11. The Department verifies reported changes in the source or amount of medical expenses if the change would result in an increase in benefits. BEM 554, p. 11. The Department does not verify other factors, unless questionable. BEM 554, p. 11. Other factors include things like the allowability of the service or the eligibility of the person incurring the cost. BEM 554, p. 11.

Based on the foregoing information and evidence, the undersigned finds that the Department failed to satisfy its burden of showing that it properly calculated Petitioner's medical deduction. The burden is on the Department to show that it properly calculated the medical deduction and it failed to provide sufficient evidence and testimony showing how it came to the conclusion that Petitioner is only eligible for $[redacted] in medical deduction. In fact, Petitioner presented evidence showing that their medical deductions far exceed this amount. As such, the Department will recalculate Petitioner's medical deduction effective August 1, 2016, in accordance with Department policy.

Fourth, the Department provides Petitioner a shelter deduction, which consists of housing costs and utility expenses. In this case, the Department presented the FAP – Excess Shelter Deduction budget (shelter budget), which indicated that Petitioner's monthly housing expenses is [redacted]. Exhibit A, p. 20. It was determined this amount comprised of the monthly average of Petitioner's property taxes ([redacted]) plus the monthly average of his homeowner's insurance ([redacted]), which results in the total amount of [redacted] Policy states that property taxes, state and local assessments and insurance on the structure are allowable shelter expenses. BEM, p. 13. Therefore, the Department properly took into consideration Petitioner's property taxes and homeowner's insurance as shelter expenses in accordance with Department policy. BEM 554, pp. 12-13.

Also, Petitioner argued that he had additional housing costs that the Department should have taken into consideration off. Petitioner testified that his roof needed to be replaced due to its age and that he spent [redacted] in out-of-pocket expenses to repair his roof.

The Department allows charges for repair of a home which was substantially damaged or destroyed due to a natural disaster such as fire or flood. BEM 554, p. 13. Note, do not allow any portion of an expense that has been or will be reimbursed by any source. BEM 554, p. 14. In this case, though, Petitioner's home was not substantially damaged or destroyed due to a natural disaster such as fire or flood. Petitioner's roof had to be replaced due to normal wear and tear throughout the years. Thus, Petitioner is not eligible for the home repair expense as a shelter deduction in accordance with Department policy. BEM 554, pp. 13-14.

Fifth, the Department also provided Petitioner with the [redacted] mandatory heat and utility (h/u) standard, which encompasses all utilities (water, gas, electric, telephone) and is unchanged even if a client's monthly utility expenses exceed the [redacted] amount. See Exhibit A, p. 20; BEM 554, pp. 14-16; and RFT 255, p. 1. This is the best amount Petitioner is eligible to receive for his utility expense deduction.

Nevertheless, because the Department failed to satisfy its burden of showing that it properly calculated Petitioner's medical deduction, the Department is ordered to recalculate Petitioner's FAP budget effective August 1, 2016.

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 (i) the Department failed to satisfy its burden of showing that it properly processed Petitioner and his spouse's MA eligibility effective July 1, 2016; (ii) the Department failed to satisfy its burden of showing that it properly calculated Petitioner's MA-G2S deductible; and (iii) the Department failed to satisfy its burden of showing that it properly calculated Petitioner's FAP benefits effective August 1, 2016.

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. Reprocess Petitioner and his spouse's MA eligibility for July 1, 2016;

2. Issue supplements to Petitioner and his spouse for any MA benefits they were eligible to receive but did not from July 1, 2016, ongoing;

3. Begin recalculating the FAP budget for August 1, 2016;

4. Issue supplements to Petitioner for any FAP benefits he was eligible to receive but did not from August 1, 2016; and

5. Notify Petitioner of its decision.

EF/tm

Eric J. Feldman
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]

cc: [redacted]