



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: October 7, 2016  
MAHS Docket No.: 16-011051  
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, an in-person hearing was held on September 27, 2016, from Lansing, Michigan. [REDACTED], the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator. [REDACTED] provided Commuter Assisted Real Time Translation (CART) services.

Prior hearing dates of September 8, 2016, and September 15, 2016, were adjourned based on the availability of interpreter services.

During the September 27, 2016, hearing proceeding, the Department's Hearing Summary Packet was admitted as Exhibit A, pp. 1-30, and Petitioner's additional documentation was admitted as Exhibit 1, pp. 1-16.

### **ISSUE**

Did the Department properly determine Petitioner's eligibility for Medical Assistance (MA)?

Did the Department properly determine Petitioner's eligibility for Food Assistance Program (FAP)?

### **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 has a monthly deductible, or spend-down, that she must meet each month for Medicaid coverage (MA-G2S) to be active for any part of the month. (Exhibit A, pp. 3 and 7; Hearing Facilitator Testimony)
2. Petitioner's MA spend-down was \$ [REDACTED] for May 2016, and \$ [REDACTED] for June 2016 and ongoing. (Hearing Facilitator Testimony)
3. Petitioner is an ongoing recipient of FAP with a group size of one. (Exhibit A, p. 23)
4. Petitioner provided verification of medical expenses on numerous dates between March 21, 2016, and August 8, 2016. (Exhibit A, pp. 4-6, 8-14, and 22)
5. The Department included the verified amounts from insurance premiums as well as the other allowable medical expenses in calculating the FAP and MA budgets. (Exhibit A, pp. 3-14, 16-19, and 22-24)
6. On May 19, 2016, a Notice of Case Action was issued to Petitioner stating the FAP monthly allotment would decrease to \$ [REDACTED] effective July 1, 2016. (Exhibit 1, pp. 6-7)
7. On July 6, 2016, a Notice of Case Action was issued to Petitioner stating the FAP monthly allotment would decrease to \$ [REDACTED] effective August 1, 2016. (Exhibit 1, pp. 8-9)
8. On July 6, 2016, a Health Care Coverage Determination Notice was issued to Petitioner stating she was eligible for MA with a deductible of \$ [REDACTED] for June 1-13, 2016, and eligible for full coverage MA from June 14-30, 2016. (Exhibit A, pp. 27-30)
9. On July 26, 2016, Petitioner filed a hearing request contesting the Department's actions. (Exhibit A, p. 2)
10. On August 9, 2016, a Notice of Case Action was issued to Petitioner stating her FAP monthly allotment would increase to \$ [REDACTED] effective September 1, 2016. (Exhibit A, pp. 23-26)

### **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).

### Medical Assistance (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.

Income eligibility exists for all or part of the month tested when the medical group's allowable medical expenses equal or exceed the fiscal group's excess income. BEM 545, (January 1, 2016, and July 1, 2016), pp. 2-3.

Deductible is a process which allows a client with excess income to become eligible for Group 2 MA if sufficient allowable medical expenses are incurred. Each calendar month is a separate deductible period. The fiscal group's monthly excess income is called a deductible amount. Meeting a deductible means reporting and verifying allowable medical expenses that equal or exceed the deductible amount for the calendar month tested. BEM 545, pp. 10-11.

Allowable medical expenses include: service animal (e.g., guide dog) or service animal maintenance; transportation for any medical reason; and medical services from one of the numerous types of listed providers. It does not include medicine chest and first aid supplies, such as nonprescription cold remedies. BEM 545, pp. 15-16.

Health insurance premiums are counted as a need item in the Group 2 MA budget when paid by the medical group. BEM 544, (July 1, 2013 and July 1, 2016), pp. 1-2.

In calculating the MA budget, a protected income level (PIL) is utilized. The PIL is a set allowance for non-medical need items such as shelter, food and incidental expenses. The PIL is based on shelter area (by counties) and fiscal group size. BEM 544, p. 1. For a group size of one, and residing in ██████ County, the Group 2 MA PIL is ██████. RFT 200 (December 1, 2013), p. 1-2 and RFT 240 (December 1, 2013), p. 1.

### Food Assistance Program (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.

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 Supplemental Security Income (SSI) as unearned income. BEM 503, (July 1, 2016), p. 32. State SSI Payments (SSP) are issued quarterly and the Department counts the corresponding monthly SSP benefit amount as unearned income. BEM 503, p. 33. The Department also counts the gross benefit amount of SSA issued Retirement, Survivors, and Disability Insurance (RSDI) as unearned income. (BEM 503, p. 28)

A shelter expense is allowed when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554, (June 1, 2016) p. 12. Property taxes, state and local assessments and insurance on the structure are also allowable expenses. BEM 554, p. 13. However, if an expense is partially reimbursed or paid by an agency or someone outside of the FAP group, the Department will allow only the amount that the group is responsible to pay, unless specific policy directs otherwise. For 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, p. 2.

Heat and utility (h/u) 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 full 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 full 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 full 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 certification month or in the immediately preceding 12 months prior to the application month are eligible for the full h/u standard. FAP groups not eligible for the full 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.

For FAP groups with one or more senior/disabled/disabled veteran (SDV) member, the allowable, verified medical expenses that exceed \$██████ are also considered. For FAP, allowable medical expenses include: medical and dental care; prescriptions drugs; over-the-counter medication and other health-related supplies (bandages, sterile gauze, incontinence pads, etc.) when recommended by a licensed health professional; premiums for health and hospitalization policies; cost of securing and maintaining a seeing eye or hearing dog or other assistance animal (Animal food and veterinary

expenses are included); and costs of transportation to secure medical treatment. (BEM 554, pp. 1 and 8-12)

As of July 1, 2016, the FAP standard deduction for a group size of 1-3 persons was \$ [REDACTED] and the individual utility standards include \$ [REDACTED] for electric and \$ [REDACTED] for telephone. RFT 255, (July 1, 2016), p. 1.

Petitioner's testimony indicated concern that the Department had not properly considered the cost of her medical insurance premiums and medical expenses. Medical insurance premiums are considered in both MA and FAP budgets pursuant to the above cited BEM policies. In the MA budgets, the medical insurance premiums are separated from the other types of medical expenses. Review of the MA budgets show a specific line for the cost of insurance premiums, which are considered before the monthly deductible amount is calculated. The remaining medical expenses are considered in the line for current and old bills and subtracted from the calculated deductible amount. As explained by the Hearing Facilitator, once sufficient verified allowable medical expenses are incurred to meet the monthly deductible amount, those expenses are applied to the MA budget. For FAP, the cost of the insurance premiums is not separated from the other allowable medical expenses and medical expenses in excess of \$ [REDACTED] are considered in the line for medical deduction. Overall, the Department's evidence shows that as verifications were received, the medical expenses, both insurance premiums and other medical expenses, were entered into the computerized case record and applied to the MA and FAP budgets in accordance with Department policy. (Exhibit A, pp. 3-14, 16-19, and 22-24; Hearing Facilitator Testimony)

Petitioner's testimony also indicated concern with the shelter expenses. The Department policies are specific regarding what types of expenses are considered for each program. For MA, BEM 544 specifies that a protected income level (PIL) is utilized, which is a set allowance for non-medical need items such as shelter, food and incidental expenses. Accordingly, the Department does not consider the actual amount of the shelter costs or non-medical expenses in determining MA eligibility. For FAP, the Department followed the BEM 554 policy and only allowed the portion of the housing expense Petitioner is responsible to pay and insurance costs based on the most recent verifications of these expenses, as well as the applicable standards for the individual utilities Petitioner is responsible to pay. (Exhibit A, pp. 15-19; Hearing Facilitator Testimony)

As discussed, the housing expense was entered as "rent" based on the verification from MSHDA listing a contract rent amount and the rent amount to be paid by Petitioner. (Exhibit A, p. 15) Petitioner testified that entering the housing expense as rent was not correct because she does not rent her home. However, for the FAP budget it does not make a difference whether the housing expense is rent, mortgage, second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. (See

BEM 554, p. 13) The amount of the housing expense is considered in the FAP budget the same way regardless of the type of payment being made.

Petitioner also testified that she has additional expenses, however, nothing was found in Department policy that would allow for consideration of expenses beyond those specifically allowed for each program. For example, Petitioner testified that she follows a special diet. As noted above, BEM 544 specifies that the PIL is utilized to consider non-medical need items such as food. Additionally, BEM 554, pp. 9-10, specifies that the cost of special diets is excluded and therefore cannot be considered as an allowable medical expense. There is no authority that would allow this Administrative Law Judge to change or make exceptions to the Department policies that specify the limited types of expenses considered in the MA and FAP budgets.

Overall, the available evidence indicates that the Department has properly calculated the MA and FAP budgets to determine Petitioner's eligibility for these programs.

#### **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 the Department acted in accordance with Department policy when it determined Petitioner's eligibility for MA and FAP.

Accordingly, the Department's decisions are **AFFIRMED**.

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]