



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR



Date Mailed: March 8, 2016
MAHS Docket No.: 16-000800
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 March 1, 2016 from Lansing, Michigan. Petitioner personally appeared and represented herself. [REDACTED] (Hearing Facilitator) represented the Department of Health and Human Services (Department).

ISSUES

Did the Department properly reduce Petitioner's Food Assistance Program (FAP) monthly allotment?

Did the Department properly determine Petitioner's eligibility for the Medicare Savings Program (MSP)?

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 65 years or older during the relevant time period.
2. Petitioner had a household size of 1.
3. Petitioner was receiving FAP benefits with a \$ [REDACTED] monthly allotment. [Exhibit 1, p. 38].
4. The Department included \$ [REDACTED] as a medical deduction when it budgeted Petitioner's \$ [REDACTED] monthly FAP amount. [Exh. 1, p. 38].

5. Petitioner is disabled and received \$ [REDACTED] per month for Retirement, Survivors, and Disability Insurance (RSDI) from the Social Security Administration (SSA). [Exh. 1, p. 35].
6. On August 20, 2015, the Department mailed Petitioner a Health Care Coverage Determination Notice (DHS-1606) which indicated: (1) Effective September 1, 2015, Petitioner is no longer eligible for MSP assistance because she failed to return a redetermination form. [Exh. 1, p. 7].
7. On August 25, 2015, Petitioner submitted an Assistance Application (DHS-1171) requesting FAP and Cash Assistance benefits. On the cover of the application, Petitioner wrote a note which indicated, “[t]o cover medicines insurance has stopped paying for.” [Exh. 1, pp. 11-33].
8. On September 1, 2015, the Department mailed Petitioner a Health Care Coverage Determination Notice (DHS-1606) which indicated that Petitioner is eligible for MSP full coverage effective September 1, 2015. [Exh. 1, pp. 31-33].
9. On October 1, 2015, the SSA mailed a letter to Petitioner indicating that the State of Michigan will no longer pay her Medicare Part B (medical insurance) premiums after August, 2015 and that she must pay them beginning September, 2015. The letter further noted that she will receive \$ [REDACTED] for September “around October 2, 2015” and after that receive \$ [REDACTED] on the third of each month. [Exh. 2, p. 1].
10. On December 14, 2015, the SSA sent Petitioner a letter which noted that the State of Michigan will pay her Medicare medical insurance premium beginning December, 2015. According to the letter, Petitioner will receive \$ [REDACTED] around December 22, 2015 which is a refund owed to her for Medicare Part B she paid. This letter further noted that she will receive \$ [REDACTED] for December 2015 “around December 31, 2015” and after that receive \$ [REDACTED] on or about the third of each month. [Exh. 2, p. 4].
11. On January 6, 2016, the Department mailed Petitioner a Notice of Case Action (DHS-1605) which decreased Petitioner’s monthly FAP allotment to \$ [REDACTED] per month effective February 1, 2016. The notice provided the following reasons for the FAP reduction: (1) shelter reduction amount changed because shelter expense changed or income has changed; (2) medical expense deduction amount has changed; (3) net unearned income amount has changed. [Exh. 1, pp. 42-43].
12. When budgeting the monthly FAP reduction from \$ [REDACTED] to \$ [REDACTED] the Department removed the \$ [REDACTED] monthly medical deduction and reduced it to \$ [REDACTED] [Exh. 1, p. 40].
13. On January 11, 2016, Ingham County DHHS Hearing Facilitator (HF), [REDACTED] sent an email to the Buy In Unit which indicated the Department had closed Petitioner’s “cost share” in error and had turned it on in August, 2015.

██████████ further noted that Petitioner should be reimbursed for August, September, October, and November. She asked the Buy In Unit to put this on your next billing. [Exh. 1, p. 34].

14. On January 28, 2016, the Buy In Unit sent an email to ██████████ which indicated that the state paid premiums through August, 2015 and that “buy-in” will be processed effective September, 2015 on the January, 2016 billing. The email further indicates that Medicare files can take up to 120 days to update. [Exh. 1, p. 34].
15. On January 19, 2016, Petitioner requested a hearing to dispute the FAP reduction and the failure to pay MCS from August through November, 2015.
16. On February 3, 2016, the Department mailed the hearing packet to the Michigan Administrative Hearing System (MAHS). [Exh. 1].
17. On February 9, 2016, the MAHS mailed a Notice of Hearing to all interested parties which scheduled the hearing for March 1, 2016.
18. The hearing occurred on March 1, 2016.
19. During the hearing, ██████████ read the explanation of action section of the hearing summary into the record. However, ██████████ also testified as follows:
 - a. When the Department budgeted Petitioner’s \$ ██████████ monthly FAP amount, the medical deduction amount of \$ ██████████ (includes the \$ ██████████ Medicare premium [See Exh. 1, p. 6] and any additional amount must be from medical bills. [See also Exh. 1, p. 38].
 - b. In August, 2015, the Department removed the \$ ██████████ Medicare premium from the budget, which left \$ ██████████ as the medical deduction on the new FAP budget. [Exh. 1, p. 40]. This happened because the caseworker most likely made a change on the system after Petitioner filed a new application for SDA and FAP on August 25, 2015.
 - c. Petitioner should have been reimbursed for Medicare Cost Share for the months of August, September, October and November, 2015. Once it is placed on the SSA’s billing, it can take up to 120 days for Petitioner to get the reimbursement.
 - d. The \$ ██████████ was based on the medical expenses provided plus a \$ ██████████ disregard.
 - e. The Department discovered that it had erroneously been paying the \$ ██████████ as a medical deduction and it was later removed.
20. During the hearing, Petitioner testified:
 - a. Petitioner reapplied for FAP and SDA in August, 2015 because she had problems with her mail and the local office did not receive a copy of her

redetermination packet. When she attempted to use her Bridge card, she did not have any money on it. So, she reapplied.

b. She contacted the caseworker on August 16 or 17 and told him that something was wrong with her case as her food assistance was gone. She did not get a letter from the Department at this time.

c. Her caseworker told her he did not get her redetermination and recommended she reapply for assistance.

d. The Department failed to consider some of her medical bills that she turned in. These expenses were for co-pays on her medicine and bills for medical appointments. All of these expenses were not considered by the Department.

e. Nothing has changed in her situation, but the Department still reduced her FAP. The \$ [REDACTED] medical expense does not line up with her actual 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).

In the instant matter, Petitioner requested a hearing concerning the following programs: Food Assistance Program (FAP) and the Medicare Savings Program (MSP). Both issues will be discussed separately below.

Food Assistance Program

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 describes income budgeting policy. When the Department budgets the amount of FAP for a group, it first determines whether there is a senior¹, disabled person² or a veteran member of that group. BEM 550 (10-1-2015), p. 1. A non-

¹ A "senior" is a person at least 60 years old. BEM 550, p. 1.

² A "disabled" person who receives one of the following: (1) a federal, state or local public disability retirement pension and the disability is considered permanent under the Social Security Act; (2) Medicaid program which requires a disability determination by MRT or Social Security Administration; (3) Railroad Retirement and is eligible for Medicare or meets the Social

categorically eligible Senior/Disabled/Veteran (SDV) FAP group³ must have income below the net income limits. BEM 550, p. 1. A non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. BEM 550, p. 1.

See BEM 554 for allowable FAP expenses. Bridges uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (10-1-2015), p. 8. For groups with **no** senior/disabled/disabled veteran (SDV) member, Bridges uses the following: (1) dependent care expense; (2) excess shelter up to the maximum in RFT 255; (3) court ordered child support and arrearages paid to non-household members. BEM 554. For groups **with** one or more SDV member, Bridges uses the following; see BEM 550: (1) dependent care expense; (2) excess shelter (3) court ordered child support and arrearages paid to non-household members; and (4) medical expenses for the SDV member(s) that exceed \$35. BEM 554, p. 8.

Allowable medical expenses include Medicare premiums. BEM 554, pp. 9-10. Allowable medical expenses are limited to the following:

- Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner authorized by State law or other qualified health professional.
- Hospitalization or nursing care. Include these expenses for a person who was a group member immediately prior to entering a hospital or nursing home.
- Prescription drugs and the postage for mail-ordered prescriptions.
- Costs of medical supplies, sickroom equipment (including rental) or other prescribed medical equipment (excluding the cost for special diets).
- Over-the-counter medication (including insulin) and other health-related supplies (bandages, sterile gauze, incontinence pads, etc.) when recommended by a licensed health professional.
- Premiums for health and hospitalization policies (excluding the cost of income maintenance type health policies and accident policies, also known as assurances). If the policy covers more than one person, allow a prorated amount for the SDV person(s).
- Medicare premiums.

Security disability criteria (4) a person who receives or has been certified and awaiting their initial payment for one of the following: (a) Social Security disability or blindness benefits; (b) Supplemental Security Income (SSI), based on disability or blindness, even if based on presumptive eligibility.

³ An SDV FAP group is one which has an SDV member. BEM 550, p. 1.

- Dentures, hearing aids and prosthetics including the cost of securing and maintaining a seeing eye or hearing dog or other assistance animal. (Animal food and veterinary expenses are included.)
- Eyeglasses when prescribed by an ophthalmologist (physician-eye specialist) or optometrist.
- Actual costs of transportation and lodging necessary to secure medical treatment or services. If actual costs **cannot** be determined for transportation, allow the cents-per-mile amount at the standard mileage rate for a privately owned vehicle in lieu of an available state vehicle. To find the cents-per-mile amount go to the Michigan Department of Management and Budget at www.michigan.gov/dtmb, select Services & Facilities from the left navigation menu, then select Travel. On the travel page, choose Travel Rates and High Cost Cities using the rate for the current year.
- The cost of employing an attendant, homemaker, home health aide, housekeeper, home help provider, or child care provider due to age, infirmity or illness. This cost must include an amount equal to the maximum FAP benefits for one person if the FAP group provides the majority of the attendant's meals. If this attendant care cost could qualify as both a medical expense and a dependent care expense, it **must** be treated as a medical expense.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Here, the Department representative testified that the Department discovered an error with regard to Petitioner's medical expense. The Department representative indicates that for some time it had erroneously credited Petitioner with a \$ [REDACTED] in her monthly FAP budget. The record does not sufficiently explain the reason for the error.

The record reveals that Petitioner was receiving monthly unearned income (RSDI) in the amount of \$ [REDACTED] [Exh. 1, p. 35]. Petitioner's total monthly income of \$ [REDACTED] which is reduced by a standard deduction of \$ [REDACTED] and the Department removed the \$ [REDACTED] medical deduction and replaced it with an \$ [REDACTED] medical deduction. The Department representative did not sufficiently explain the reason(s) why the Department left only \$ [REDACTED] as the medical deduction. This Administrative Law Judge finds that it is unlikely that Petitioner provided the Department with \$ [REDACTED] of allowable medical expenses during the relevant time period. Petitioner credibly testified that she has provided the Department with copies of her medical bill and medication expenses, but the Department budgeted that she had \$ [REDACTED] in medical expenses. According to BEM 554, these medical expenses are allowed and should have been included in 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 the Department did not act in accordance with Department policy when it reduced Petitioner's monthly FAP allotment.

Medicare Savings Program

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 is a federal health insurance program administered by the Social Security Administration (SSA). Medicare has three parts: Part A, hospital insurance (HI), and Part B, supplementary medical insurance (SMI), Part D, prescription drug coverage. A person receiving Medicare may have to pay a monthly premium for his Medicare. A person is also responsible for some of the cost of Medicare-covered services. These costs are called coinsurances and deductibles. BAM 810 (7-1-2015), p. 1.

Medicaid coverage includes Medicare cost-sharing benefits. This means Medicaid pays Medicare Part B premiums or Part A and B premiums, coinsurances and deductibles for certain Medicaid recipients. A person who can receive Medicare Part A free of charge is encouraged to apply for it. BAM 810, p. 1. [Emphasis in original].

Medicare Savings Programs are SSI-related MA categories. BEM 165 (1-1-2016), p. 1. The three MSP categories are: (1) Qualified Medicare Beneficiaries (QMB); (2) Specified Low-Income Medicare Beneficiaries (SLMB); and (3) Additional Low-Income Medicare Beneficiaries (ALMB). QMB pays for Medicare premiums (Medicare Part A and Medicare Part B), Medicare coinsurances and Medicare deductibles. SLMB pays Medicare Part B premiums. ALMB pays Medicare Part B premiums provided funding is available. BEM 165, pp. 1-2.

An ex parte review is required before Medicaid closures when there is an actual or anticipated change, unless the change would result in closure due to ineligibility for all Medicaid. When possible, an ex parte review should begin at least 90 days before the anticipated change is expected to result in case closure. The review includes consideration of all MA categories; see BAM 115 and 220. BEM 165, p. 8.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The events that took place in this matter is somewhat complicated. However, a review of the record shows that the Department concedes that it closed Petitioner's MSP case in error. See Exh. 1, p. 34. The record does not show that the Department conducted an ex parte review as required under BEM 165, p.

8. The Department's also indicates that following closure of Petitioner's MSP case, she was entitled to reimbursement for August, September, October and November, 2015. [Exh. 1, p. 34]. The Department did not dispute that Petitioner's MSP case was improperly closed and that she was entitled to reimbursement. The only issue concerns the length of time for implementation. The record shows that it could take up to 120 days to implement the change.

The material, competent and substantial evidence on the whole record shows that Petitioner's MSP case was closed in error and that she is entitled to reimbursement for August through November, 2015.

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 closed Petitioner's MSP case and failed to provide her with reimbursement.

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. The Department shall initiate a redetermination of Petitioner's eligibility for FAP benefits and include any allowable medical expenses.
2. The Department shall initiate a redetermination of Petitioner's MSP benefits.
3. The Department shall initiate a redetermination as to whether Petitioner is entitled to retroactive and/or supplemental FAP and MSP benefits to the extent permissible under applicable policies.
4. After the Department completes the redetermination process, the Department shall provide Petitioner with written notification of its decision.

IT IS SO ORDERED.



CP/las

C. Adam Purnell
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from MAHS within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion. MAHS may grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

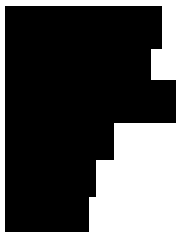
A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

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

cc:



DHHS

[REDACTED]

Petitioner

[REDACTED]