



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: May 6, 2016
MAHS Docket No.: 16-003102
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 April 26, 2016, from Detroit, Michigan. Petitioner did not appear and was represented by his sister and authorized hearing representative, [REDACTED] (AHR). The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED] specialist.

ISSUE

The issue is whether MDHHS properly determined Petitioner's medical expenses in determining Petitioner's Food Assistance Program (FAP) eligibility.

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 FAP recipient.
2. Petitioner was responsible for payment of a monthly \$104.90 Medicare premium.
3. On [REDACTED], MDHHS determined Petitioner was eligible to receive \$16 in FAP benefits, effective July 2015, in part based on \$70 in countable monthly medical expenses.

4. On [REDACTED], Petitioner reported various unpaid medical expenses to MDHHS.
5. On [REDACTED], Petitioner submitted various medical expense documents to MDHHS.
6. On [REDACTED], an administrative hearing decision ordered MDHHS to redetermine Petitioner's FAP eligibility from July 2015.
7. On an unspecified date, MDHHS determined Petitioner's FAP eligibility for the months from July 2015 through October 2015, in part, based on \$70 in medical expenses.
8. On [REDACTED], Petitioner requested a hearing to again dispute FAP eligibility from July 2015 through October 2015 concerning medical expenses.

CONCLUSIONS OF LAW

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. MDHHS (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute FAP eligibility from July 2015 through October 2015. Petitioner's AHR limited her dispute to the amount of medical expenses factored by MDHHS.

MDHHS presented a Notice of Case Action (Exhibit 1, pp. 7-8) dated [REDACTED]. The notice included a budget summary listing all amounts factored by MDHHS in Petitioner's MDHHS eligibility from July 2015. Medical expenses of \$70 were listed. Presumably, the only medical expenses factored by MDHHS were Petitioner's Medicare premium expense of \$104.90. Applying a mandatory \$35 deductible (see BEM 556) results in \$70 in countable medical expenses. Petitioner's AHR contended MDHHS should have factored a higher amount of medical expenses. The dispute appeared to begin with the processing of a redetermination document.

MDHHS presented a Mid-Certification Contact Notice (Exhibit 1, pp. 9-11). The document was signed by Petitioner and submitted to MDHHS on [REDACTED]. Petitioner wrote "no changes" to the ongoing budgeting of \$362,082 in medical expenses.

Petitioner's AHR credibly testified her brother is a kidney and pancreas transplant patient on weekly dialysis. Petitioner's AHR also testified her brother has many unpaid

medical expenses. Although Petitioner's AHR's testimony was credible, even she conceded Petitioner's unpaid monthly medical expenses did not approach the hundreds of thousands of dollars. Petitioner's AHR did allege Petitioner had hundreds of dollars in monthly medical expenses.

The discrepancy between medical expenses alleged by Petitioner's AHR and budgeted by MDHHS could have been easily resolved by presented evidence. Unfortunately, presented evidence from Petitioner and MDHHS provided little insight.

Petitioner's AHR testified she submitted a hospital bill for "quite a large amount" with the Mid-Certification Contact Notice. Petitioner's AHR did not bring the bill to hearing. Petitioner's AHR testified the bill was entered as an exhibit in a previous administrative hearing.

MDHHS presented an administrative law decision (Exhibit 1, pp. 1-6) dated [REDACTED]. The administrative decision also concerned Petitioner's FAP eligibility from July 2015 based on disputed medical expenses. The authoring ALJ's findings included a statement that Petitioner submitted medical bills to MDHHS on [REDACTED], covering dates of service from [REDACTED], [REDACTED], [REDACTED], and an unspecified date from October 2013. The amounts of expenses were not stated in the hearing decision.

The administrative decision dated [REDACTED], ordered MDHHS to reprocess Petitioner's FAP eligibility beginning July 2015. Presumably, MDHHS complied with the order by disregarding Petitioner's medical expenses submitted to MDHHS in August 2015. As it happened, the expenses were not helpful for Petitioner.

MDHHS testimony alleged Petitioner's medical expense submission in August 2015 failed to verify countable medical expenses because they listed "zero balances" due to health insurance payment. MDHHS printed a copy of the submission for Petitioner's AHR's viewing. After viewing the expenses during the hearing, Petitioner's AHR conceded the documents failed to verify medical expenses which should have been factored by MDHHS. Thus, the August 2015 submission cited by the previous ALJ does not verify a valid submission of medical expenses for Petitioner from August 2015.

MDHHS conceded Petitioner's AHR submitted proof of medical expenses on [REDACTED]. The amount of the expenses were not verified, though it was not disputed that November 2015 was the first benefit month affected by the expenses. Petitioner's AHR did not dispute the amount of her brother's FAP eligibility beginning November 2015. Thus, it is presumed that Petitioner's AHR expected MDHHS to apply the medical expenses submitted in September 2015 to Petitioner's FAP eligibility from July 2015. The testifying MDHHS specialist contended that Petitioner's expense submission date justifies excluding the expenses for benefit months before November 2015.

For non-income changes, [MDHHS is to] complete the FAP eligibility determination and required case actions in time to affect the benefit month that occurs 10 days after the change is reported. BAM 220 (July 2015), p. 10. The benefit month cannot be earlier than the month of the change. *Id.*

If Petitioner's only medical expense submission occurred on [REDACTED], then MDHHS *might* (more to come on this) be justified in affecting Petitioner's FAP eligibility beginning November 2015. Petitioner testimony alleged earlier medical expense submission dates.

Petitioner's AHR testified her brother incurs monthly medical expenses of approximately \$800 for payment of a chore service provider. She also testified her brother is eligible for Medicaid subject to a deductible, and MDHHS routinely applies his chore service expense towards his Medicaid deductible. Petitioner's AHR was asked if she submitted proof of chore service payment with the Mid-Certification Contact Notice; she conceded the expenses were not submitted. Generally, MDHHS cannot factor expenses that are not submitted. The purpose for such a rule is that MDHHS cannot factor unknown and/or unverified expenses. In the present case, MDHHS may have already verified Petitioner's ongoing chore service expense; unfortunately, evidence was not presented to verify if MDHHS verified Petitioner's chore service expenses. MDHHS will be ordered to redetermine Petitioner's FAP eligibility subject to any medical expenses applied towards Petitioner's Medicaid deductible for the months from June 2015 through October 2015. MDHHS also has a second problem concerning factored medical expenses.

Throughout the hearing, MDHHS contended medical expenses have to be verified before they can be factored in a client's FAP eligibility; technically, this is not correct. Above MDHHS policy dictates it is Petitioner's reporting date, not the verification submission date, which triggers MDHHS' obligation to process the change. Presented evidence favored Petitioner's AHR in reporting medical expenses either with, or shortly after, submitting the Mid-Certification Contact Notice to MDHHS. Petitioner's AHR was understandably vague (it has been over a year since she allegedly reported expenses) about her date of reporting. Petitioner's AHR's testimony implied a probable medical expense reporting date between the beginning of March 2015 and the middle of June 2015 (any date within this range would justify affecting Petitioner's FAP eligibility from July 2015).

It is known MDHHS initiated a reduction of Petitioner's FAP eligibility on [REDACTED]. Petitioner's AHR's testimony suggested a reporting date shortly thereafter. A [REDACTED] reporting will be presumed from the imperfect evidence.

Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. [For all programs, MDDHS is to] use the DHS-3503, Verification Checklist to request verification. BAM 130 (July 2015), p. 3. [MDDHS must] allow the client 10 calendar days (or other time limit specified in policy) to provide the

verification that is requested. *Id.*, p. 6. [MDHHS] must tell the client what verification is required, how to obtain it, and the due date. *Id.*, p. 3.

The verification of medical expenses comes after the processing of the changes. Petitioner's MDHHS specialist should have added Petitioner's reported medical expenses to Petitioner's FAP eligibility when the expense was first reported. That processing would have triggered a Verification Checklist. MDHHS failed to verify a VCL was ever mailed to Petitioner. It is found MDHHS failed to properly process Petitioner's reported medical expenses.

Though it is found MDHHS improperly processed Petitioner's reported medical expenses, it cannot be stated with certainty that Petitioner's FAP eligibility was improperly calculated. Petitioner's AHR failed to provide specifics (e.g. amount, medical service...) in testimony or documents, of the medical expenses reported on [REDACTED], [REDACTED]. This is partially the fault of Petitioner's AHR to specify her allegation, partially the fault of MDHHS for failing to interview Petitioner's AHR concerning the reporting, and partially the fault of the presiding ALJ for failing to elicit needed evidence.

MDHHS will be ordered to interview Petitioner concerning which medical expenses were reported on [REDACTED], and to reprocess Petitioner's FAP eligibility accordingly. Petitioner's AHR should be warned that Petitioner's FAP eligibility may not be affected if the medical expenses are not subsequently verified.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's FAP eligibility. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Redetermine Petitioner's FAP eligibility from June 2015 through October 2015, subject to the following findings:
 - a. MDHHS failed to process Petitioner's AHR's reporting of medical expenses on [REDACTED] (reprocessing may require an interview of Petitioner to determine medical expenses which were reported)
 - b. MDHHS failed to factor possibly already verified chore services expenses in Petitioner's FAP eligibility from [REDACTED]; and
- (2) Supplement Petitioner for any benefits improperly not issued.

The actions taken by MDHHS are **REVERSED**.

CG/hw



Christian Gardocki
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]

Authorized Hearing Rep.

[REDACTED]

Petitioner

[REDACTED]