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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: October 31, 2016
MAHS Docket No.: 16-011927
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, an in-person hearing was held on October 26, 2016, from Detroit, Michigan. The Petitioner was represented by the Authorized Hearing Representative (AHR)/guardian, [REDACTED] and Petitioner's witness, [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) allotment effective September 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.
2. For June 2016, Petitioner received a FAP allotment of [REDACTED] Exhibit C, p. 1.
3. For July 2016, Petitioner received a FAP allotment of [REDACTED] Exhibit C, p. 1.
4. On July 15, 2016, Petitioner's guardian/AHR submitted a Redetermination (DHS-1010) in which she indicated the following: (i) her household size is one; (ii) she receives monthly Social Security benefits in the amount of [REDACTED] (iii) she

reported monthly medical expenses ██████ for Blue Cross Blue Shield (BCBS) insurance premium; (iv) monthly guardianship/fiduciary expenses of ██████ and (v) there was no report of any changes in shelter expenses. Exhibit D, pp. 1-6.

5. On July 15, 2016, the AHR also submitted verification of check stubs to show proof of the monthly guardianship/fiduciary and medical expenses. Exhibit D, p. 7. However, the Department found those verifications to be ineligible.
6. On July 28, 2016, the Department sent Petitioner a Verification Checklist (VCL) requesting verification of the guardianship/conservator expenses and other unearned income. Exhibit D, pp. 9-10. The verifications were due back by August 8, 2016. Exhibit D, pp. 9-10.
7. The Department failed to request verification of the BCBS medical expenses as Petitioner properly reported those expenses in the redetermination.
8. The Department previously budgeted the guardianship/conservator expenses as an allowable medical deduction; however, the Department indicated that the AHR failed to provide verification of the guardianship/conservator expenses before the due date. See Exhibit 1, p. 5. As such, the Department removed the guardianship/conservator expenses as a medical deduction. See Exhibit 1, p. 14.
9. For August 2016, Petitioner received a FAP allotment of ██████ Exhibit C, p. 1.
10. On August 2, 2016, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits decreased effective September 1, 2016, to ██████. See Exhibit 1, pp. 13-16. However, Petitioner actually received ██████ in FAP benefits beginning September 1, 2016. See Exhibit C, p. 1.
11. On August 10, 2016, Petitioner's AHR filed a hearing request, protesting the FAP allotment and the denial of Petitioner's Disabled Adult Children (DAC) – Medical Assistance (MA) benefits. Exhibit A, pp. 3-6.

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's AHR also requested a hearing in which she disputed the closure of Petitioner's ongoing DAC-MA coverage. Exhibit A, p. 3. Shortly after commencement of the hearing, it was determined that the Petitioner's DAC-MA coverage had been reinstated, with no lapse in coverage. As such, Petitioner's DAC-MA issue had been resolved. Accordingly, Petitioner's DAC-MA hearing request is DISMISSED. See BAM 600 (October 2015), pp. 1-6.

Second, the Department presented Petitioner's Benefit Summary Inquiry, which showed that she received █████ in FAP benefits for June 2016; █████ in FAP benefits for July 2016; and █████ in FAP benefits for August 2016. Exhibit C, p. 1. The AHR testified that she was not disputing the FAP allotment for these months. Instead, the AHR testified that she disputed the decrease in FAP benefits beginning September 2016. See Exhibit C, p. 1. As such, the undersigned Administrative Law Judge (ALJ) finds that the Department properly calculated Petitioner's FAP allotment from June 2016 to August 2016.

Third, on September 10, 2016, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits decreased to █████ effective October 1, 2016. Exhibit 1, p. 10. The undersigned lacks the jurisdiction to address her FAP benefits for October 2016 because this negative action occurred subsequent to her hearing request. Exhibit A, p. 3. Petitioner's AHR can request another hearing if she disputes the Notice of Case Action dated September 10, 2016. BAM 600, p. 6 (the client or 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).

Third, on August 2, 2016, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits decreased to █████ effective September 1, 2016. Exhibit 1, pp. 13-14. During the hearing, though, it was discovered that Petitioner actually received █████ in FAP benefits for September 2016. See Exhibit C, p. 1. As such, the undersigned will determine if the Department properly calculated Petitioner's FAP allotment of █████ beginning September 1, 2016. Exhibit A, p. 3; Exhibit 1, p. 13; and BAM 600, pp. 1-6.

FAP benefits effective September 1, 2016

In the present case, the AHR indicated that Petitioner's certified group size is one and that Petitioner is a senior/disabled/disabled veteran (SDV) member. As part of the evidence record, the Department presented the September 2016 for review. Exhibit B, p. 1.

First, the Department calculated Petitioner's gross unearned income to be [REDACTED] Exhibit B, p. 1. However, the Department improperly calculated Petitioner's income. In Petitioner's redetermination, the AHR reported that Petitioner receives [REDACTED] in monthly benefits. See Exhibit D, pp. 1-6. Policy states that the Department counts the gross benefit amount of Retirement, Survivors, and Disability Insurance (RSDI) benefits as unearned income. BEM 503 (July 2016), p. 28. As such, the undersigned finds that the Department improperly calculated Petitioner's unearned income in accordance with Department policy. See BEM 503, p. 28. Accordingly, the Department is ordered to recalculate Petitioner's unearned income effective September 1, 2016.

Then, once the Department adds together the total income Petitioner receives, the Department will minus any deductions that she might qualify for. See Exhibit B, p. 1. The first deduction the Department properly applied was the [REDACTED] standard deduction applicable to Petitioner's group size of one. See Exhibit B, p. 1 and RFT 255 (July 2016), p. 1.

Next, because Petitioner is an S/D/V member, she qualifies for any medical expenses that exceed [REDACTED] as a deduction. BEM 554 (June 2016), p. 1. In this case, the Department did not budget any medical expenses for September 2016. Exhibit B, p. 1. However, the AHR and her witness argued that Petitioner should be eligible for medical expenses. Specifically, the AHR argued that Petitioner's medical expenses consist of her [REDACTED] insurance premium and her monthly guardianship/fiduciary expenses. The undersigned will address each medical expense below:

As to Petitioner's BCBS insurance premium, the undersigned finds that the Department should have applied this expense as a medical deduction effective September 1, 2016. Allowable medical expenses include premiums for health and hospitalization policies (excluding the cost of income maintenance type health policies and accident policies, also known as assurances). BEM 554, pp. 9-10. 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. In this case, the AHR properly reported the BCBS insurance premium in the redetermination dated July 15, 2016. Exhibit D, pp. 1-6. However, the Department failed to request verification of the BCBS medical expenses as required per policy. See BEM 554, p. 11. Nonetheless, the Department indicated that it ultimately received verification of the BCBS insurance premium on August 31, 2016. Thus, it is unnecessary for the undersigned to order the Department to request verification of this

medical expense. As such, the Department will apply the [REDACTED] insurance premium as a medical deduction effective September 1, 2016, in accordance with Department policy. See BEM 554, pp. 9-11.

As to Petitioner's monthly guardianship/fiduciary expenses, there was no dispute by either party that this was an allowable medical expense. This issue with this medical expense was in regards to a verification request. On July 15, 2016, the AHR reported the guardianship/conservator expenses in the redetermination and also submitted verification check stubs to show proof of the monthly guardianship/fiduciary expenses on that same day. Exhibit D, pp. 1-7. However, the Department testified that it found those verifications to be ineligible. As such, the Department requested verification of the guardianship/conservator expenses, which were due back by August 8, 2016. Exhibit D, pp. 9-10 and BAM 130 (July 2016), p. 1 (the Department obtains verification when information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory). The Department testified that the AHR failed to provide verification of the guardianship/conservator expenses before the due date. Thus, the Department removed the guardianship/conservator expenses as a medical deduction. See Exhibit 1, p. 14. Based on the above information, the undersigned disagrees with the Department's interpretation that the verification was ineligible. The Department provided a copy of the guardianship/conservator expenses submitted on July 15, 2016. See Exhibit D, p. 7. The undersigned found that the verifications were legible and therefore, the Department could have determined if the check stubs was an acceptable verification source for an allowable medical expense. Accordingly, the Department will redetermine whether Petitioner is eligible for the guardianship/conservator expense effective September 1, 2016, based on the submitted verifications. See BEM 554, pp. 11-12.

It should be noted that the AHR testified that Petitioner is also responsible for a monthly [REDACTED] prescription co-pay; however, this was her first time notifying the Department of the medical expense. Because the AHR acknowledged that this was her first time she was reporting this expense, Petitioner is not eligible to apply this expense as a medical deduction for the FAP budget beginning September 1, 2016. See BEM 554, p. 11 (verification of medical expenses).

Finally, the Department provides Petitioner with an excess shelter deduction, which is comprised of her housing costs and utility expenses. The Notice of Case Action dated August 2, 2016, indicated that Petitioner's monthly housing expense is [REDACTED]. Exhibit 1, p. 14. However, Petitioner's AHR disputed this amount and testified that her monthly obligation is [REDACTED]. A review of Petitioner's redetermination found that the AHR did not report any amount in the shelter expenses section. Exhibit D, p. 5. As such, the Department testified it relied on Petitioner's previously submitted verification of shelter expenses, which showed that her monthly housing expense was [REDACTED]. Nonetheless, because the Department is already ordered to recalculate the FAP budget, this can include the Department recalculating the shelter expenses as well. See BEM 554, pp. 12-13.

Additionally, the Department 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 1, p. 14; BEM 554, pp. 14-16; and RFT 255, p. 1.

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 acted in accordance with Department policy when it properly calculated Petitioner's FAP allotment from June 1, 2016 to August 31, 2016; and (ii) the Department did not act in accordance with Department policy when it improperly calculated Petitioner's FAP allotment effective September 1, 2016.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to June 2016 to August 2016 and **REVERSED IN PART** with respect to September 2016.

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. Begin recalculating the FAP budget for September 1, 2016, ongoing, (including unearned income, medical expenses, and shelter expenses) in accordance with Department policy;
2. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from September 1, 2016; and
3. Notify Petitioner of its decision.

IT IS ALSO ORDERED that Petitioner's **MA-DAC** hearing request is **DISMISSED**.

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]
[REDACTED]
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CC:

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