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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

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Date Mailed: November 22, 2016
MAHS Docket No.: 16-014486
Agency No.: ██████████
Petitioner: ██████████

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 November 17, 2016, from Detroit, Michigan. The Petitioner was represented by ██████████. The Department of Health and Human Services (Department) was represented by ██████████, Eligibility Specialist; and ██████████, Family Independence Manager (both Department representatives participated by telephone).

ISSUE

Did the Department properly decrease Petitioner's Food Assistance Program (FAP) allotment to ██████████ effective October 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, pp. 5-6.
2. Petitioner's group size is two (Petitioner and spouse).
3. For groups with one or more senior/disabled/disabled veteran (SDV) members, the Department allows medical expenses for the SDV member(s) that exceed ██████████
4. Petitioner and his spouse are SDV members and the Department took their medical expenses into consideration when determining their FAP allotment.

5. Since on or about February 2015, the Department kept budgeting one-time-only medical expense deductions for Petitioner's FAP benefits. Exhibit A, p. 9. The Department budgeted a total of [REDACTED] as Petitioner's medical expense deductions. Exhibit A, p. 9.
6. During an update of Petitioner's FAP benefits, the Department discovered the one-time-only medical expense deductions that it had been budgeting and removed them from the FAP budget effective October 1, 2016, which resulted in the decrease in Petitioner's allotment.
7. The Department now only budgets [REDACTED] as Petitioner's medical expense deduction. Exhibit A, p. 11.
8. On September 10, 2016, the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits decreased to [REDACTED] effective October 1, 2016 because his shelter deduction amount had changed and their medical expense deduction amount has changed. Exhibit A, pp. 7-8.
9. On September 20, 2016, Petitioner filed a hearing request, protesting the Department's action. Exhibit A, p. 3.

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.

In the present case, Petitioner disputed the decrease in his FAP benefits from [REDACTED] to [REDACTED] effective October 1, 2016. Exhibit A, p. 5. As such, the Department presented the October 2016 FAP budget for review. Exhibit A, pp. 11-12.

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 Retirement, Survivors, and Disability Insurance (RSDI) income. Exhibit A, p. 11.

Second, the Department properly applied the [REDACTED] standard deduction applicable to Petitioner's group size of two. RFT 255 (October 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 February 2015, the Department kept budgeting one-time-only medical expense deductions for Petitioner's FAP benefits. Exhibit A, p. 9. The Department budgeted a total of [REDACTED] as Petitioner's medical expense deductions. Exhibit A, p. 9. As a result, during an update of Petitioner's FAP benefits, the Department removed the one-time-only medical expense deductions that it had been budgeting and this resulted in Petitioner's FAP benefits decreasing. The Department, though, still provided Petitioner with a [REDACTED] medical deduction. Exhibit A, p. 11. When the undersigned Administrative Law Judge (ALJ) 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 ALJ's inquiry.

In response, Petitioner claimed that they are responsible for medical expenses that far exceed the [REDACTED] deduction calculated by the Department. In fact, Petitioner provided a list of medical bills he submitted to the Department on October 3, 2016. Exhibit 1, pp. 1-2. However, the undersigned ALJ did not have the actual copies of the bills Petitioner submitted to the Department. Nevertheless, this list that summarized the medical bills was also submitted to the Department on October 3, 2016. Petitioner testified that this was the first time he submitted any medical bills to the Department in the 2016 year.

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 ALJ finds that the Department failed to satisfy its burden of showing that it properly calculated Petitioner's medical deduction.

First, the burden is on the Department to show that it properly calculated the medical deduction. In this case, though, the Department failed to provide sufficient evidence and testimony showing how it came to the conclusion that Petitioner is only eligible for [REDACTED] in medical deductions. As such, the Department will recalculate Petitioner's medical deduction effective October 1, 2016, in accordance with Department policy.

Second, Petitioner provided a list of medical bills that he submitted to the Department on October 3, 2016. Exhibit 1, pp. 1-2. However, the undersigned ALJ is unable to review or take these medical bills into consideration. These medical bills were submitted to the Department *after* Petitioner's hearing request. Exhibit A, p. 3. Petitioner acknowledged that he has not submitted any other medical bills in the 2016 year. Because Petitioner's medical expenses were submitted after the hearing request, the undersigned ALJ lacks any jurisdiction to address these bills and is unable to determine if whether the Department processed the bills. Petitioner can request another hearing to dispute if the Department failed to process his reported medical expenses on October 3, 2016, in accordance with Department policy. BAM 600 (October 2016), pp. 1-6.

Next, the Department also provides Petitioner with a shelter deduction, which consists of housing costs and utility expenses. In this case, Petitioner's Notice of Case Action dated September 10, 2016, indicated that his monthly housing expenses is [REDACTED] which he disputed. Exhibit A, pp. 7-8. Instead, Petitioner testified that his monthly mortgage payment is [REDACTED] and he also has monthly property taxes of [REDACTED]. The undersigned ALJ addresses each shelter expense below:

As to Petitioner's monthly mortgage payment, Petitioner provided a letter dated December 14, 2015, which reported that his monthly mortgage payment changed to [REDACTED] beginning May 1, 2016. Exhibit 1, p. 3. Petitioner testified that he provided proof of his mortgage increase when he submitted his redetermination.

In response, the Department argued that it never received this reported change. In fact, the Department reviewed its system and discovered a redetermination in December 2015 in which Petitioner wrote "no changes" for his shelter expenses. The

Department brought this up to show that Petitioner never reported any changes in his mortgage payment.

The Department allows a shelter expense when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554, p. 12. Do not prorate the shelter expense even if the expense is shared. BEM 554, p. 12. Shelter expenses are allowed when billed. BEM 554, p. 12. The expenses do not have to be paid to be allowed. BEM 554, p. 12.

Housing expenses include rent, mortgage, a 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. BEM 554, pp. 12-13.

The Department verifies shelter expenses at application and when a change is reported. BEM 554, p. 13. If the client fails to verify a reported change in shelter, remove the old expense until the new expense is verified. BEM 554, p. 13.

Based on the above information, the undersigned ALJ finds that the Department improperly calculated Petitioner's housing expenses effective October 1, 2016. The undersigned ALJ finds Petitioner's testimony credible that he reported to the Department that his mortgage payment increased to [REDACTED] and the Department failed to act on this reported change. Petitioner's credibility is supported by the fact that he provided proof of his increased mortgage payment. By providing this documentation, this undersigned ALJ finds that this substantiates Petitioner's claim that he both reported and provided verification to the Department that this mortgage payment had increased. As such, because Petitioner already provided acceptable verification of his mortgage payment, the Department will apply Petitioner's housing costs to be [REDACTED] effective October 1, 2016, ongoing, in his FAP budget. See BEM 554, pp. 14-15.

Second, Petitioner also claimed that he had monthly property taxes of [REDACTED] and provided proof as well. Exhibit 1, p. 4. Policy states that property taxes, state and local assessments and insurance on the structure are allowable expenses. BEM 554, p. 13. However, Petitioner acknowledged that this was the first time at the hearing that he notified the Department of his property taxes. As such, the undersigned ALJ is unable to take Petitioner's property taxes into consideration as this was first time he was reporting such an expense. BEM 554, pp. 13-14. However, for future benefit periods, the Department is now aware of his property taxes as he reported them and provided verification of it during the hearing.

Finally, 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 A, p. 8; BEM 554, pp. 14-16; and RFT 255, p. 1. This is the best amount Petitioner is eligible to receive for his h/u deduction.

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

Accordingly, the Department's FAP 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. Recalculate the FAP budget (including medical expenses and shelter expense) for October 1, 2016;
2. Apply Petitioner's housing costs to be [REDACTED] effective October 1, 2016;
3. Issue supplements to Petitioner for any FAP benefits he was eligible to receive but did not from October 1, 2016; and
4. 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]
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CC:

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