



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: December 2, 2016
MAHS Docket No.: 16-016238
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, a telephone hearing was held on [REDACTED], from Detroit, Michigan. The Petitioner was represented by [REDACTED] (Petitioner). The Department of Health and Human Services (Department) was represented by [REDACTED], Family Independence Manager; and [REDACTED] Family Independence Specialist.

ISSUE

Did the Department properly decrease Petitioner's Food Assistance Program (FAP) benefits effective [REDACTED]?

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. On [REDACTED] Petitioner submitted a Redetermination in which she reported ongoing medical expenses; and it was reported that her rent is \$ [REDACTED] monthly. Exhibit A, pp. 14-19.
3. Petitioner receives \$ [REDACTED] in monthly unearned income, which consists of the following: (i) \$ [REDACTED] in Supplemental Security Income (SSI) income; (ii) \$ [REDACTED] in Retirement, Survivors, and Disability Insurance (RSDI) income; and \$ [REDACTED] monthly average in State SSI Payments (SSP) (\$ [REDACTED] issued quarterly).

4. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits decreased to \$ [REDACTED] effective [REDACTED], because her shelter deduction amount has changed and her medical expense deduction amount has changed. Exhibit A, pp. 4-6.
5. On [REDACTED], Petitioner submitted two medical bills to the Department. Exhibit A, pp. 10-11.
6. On [REDACTED] and [REDACTED], Petitioner submitted a Mid-Certification Contact Notice (mid-certification) in which she reported ongoing medical expenses and her rent is \$ [REDACTED]. See Exhibit A, pp. 20-26.
7. On [REDACTED], Petitioner filed a hearing request, protesting her FAP reduction. Exhibit A, pp. 2-3.

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's certified group size is one; and she is considered a senior/disabled/disabled veteran (SDV) member. As part of the evidence record, the Department presented the [REDACTED] FAP budget from the Notice of Case Action dated [REDACTED]. Exhibit A, p. 5. As such, the undersigned Administrative Law Judge (hereinafter referred to as "the undersigned") reviewed the [REDACTED] budget.

First, the Department calculated Petitioner's gross unearned income to be \$ [REDACTED] which she did not dispute. Exhibit A, p. 5, and see BEM 503 (July 2016), pp. 28, 32, and 33.

Then, once the Department adds together the total income Petitioner receives, the Department will minus any deductions that she might qualify for. See Exhibit A, p. 5. The first deduction the Department properly applied was the \$ [REDACTED] standard deduction applicable to Petitioner's group size of one. Exhibit A, p. 5, and RFT 255 (October 2016), p. 1.

The Department also provides a deduction for dependent care expenses. For groups with one or more SDV member, the Department uses dependent care expenses. BEM

554 (June 2016), p. 1. Petitioner claimed that she has dependent care expenses for her adult daughter because she is responsible to pay for her daughter's costs at the nursing home. Petitioner acknowledged the daughter is not a member of the FAP group, and she has not resided with her for some time. The Department allows an unreimbursed dependent care expense for a child or an incapacitated adult who is a member of the FAP group, when such care is necessary to enable a member of the FAP group to work. BEM 554, p. 7. Based on this policy, Petitioner would not qualify for the dependent care expense for her daughter because the daughter is not a member of the FAP group. As such, the Department properly determined that Petitioner is not eligible for any dependent care expenses. See BEM 554, pp. 1 and 7.

Next, the Department also provides a deduction for Petitioner's medical expenses. The Department currently budgets Petitioner's medical expenses to be \$[REDACTED] monthly. Exhibit A, 5. For groups with one or more SDV member, the Department allows medical expenses that the SDV member that exceeds \$[REDACTED] BEM 554, p. 1. To inquire on how the Department came to the determination that her medical deduction is \$[REDACTED] the undersigned asked the Department; however, the Department was unable to provide sufficient evidence and/or testimony to answer the undersigned's inquiry.

In response, Petitioner disputed her medical deductions and argued the following: (i) she is responsible for ongoing medical expenses that consisted of her \$[REDACTED] Medicare Part D premium, \$[REDACTED] in prescription co-pays, and her doctor visits ([REDACTED]); (ii) she is also responsible for her daughter's medical expenses, including her daughter's insurance; and (iii) she indicated that her total medical expenses for [REDACTED] was \$[REDACTED]

Additionally, the undersigned determined that Petitioner submitted the following two medical expenses on [REDACTED]: (i) prescription statement generated on [REDACTED], showing that her amount paid was \$[REDACTED] and (ii) cumulative yearly medical statement for medical expenses from [REDACTED] showing that her total amount of expenses was \$[REDACTED] for the period of [REDACTED] Exhibit A, pp. 10-11. The evidence was unclear if the Department processed these two medical expenses.

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 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 [REDACTED], in accordance with Department policy.

Second, Petitioner claimed that she has three ongoing medical expenses (Medicare premium, prescription co-pays, and doctor visits). However, when the undersigned inquired what Petitioner's total medical expenses were for [REDACTED], she testified that it was \$[REDACTED] which is less than the \$[REDACTED] the Department budgets. Technically, the Department is over budgeting her medical expenses if she is claiming that she is only responsible for \$[REDACTED] in expenses. As such, this is another reason why the Department must recalculate Petitioner's medical expenses, in order to determine the proper deduction amount she is eligible to receive effective [REDACTED]. BEM 554, pp. 1 and 8-12.

Third, the Department presented evidence that Petitioner submitted two medical bills on [REDACTED]. Exhibit A, pp. 10-11. However, there was no evidence if whether the Department processed the two medical bills. Therefore, the Department will process Petitioner's two medical bills submitted on [REDACTED], in accordance with Department policy. See BEM 554, p. 11.

Fourth, Petitioner also sought to have her daughter's medical expenses that she pays for, e.g. daughter's insurance, to be included in her medical deduction. However, the undersigned disagrees. The Department only allows medical expenses for the SDV member, which is Petitioner, not her daughter, who is not a member of the FAP group. BEM 554, p. 1. For example, an allowable medical expense includes premiums for health and hospitalization policies (excluding the cost of income maintenance type health policies and accident policies, also known as assurances). BEM 554, p. 10. If the

policy covers more than one person, allow a prorated amount for the SDV person(s). BEM 554, p. 10. Based on this information, this shows how the Department would not be able to budget the daughter's insurance as a medical deduction for the Petitioner. Instead, policy directs the Department to prorate only the expenses that cover the SDV member. Because the daughter is not a member of the FAP group, the Department is unable to budget any medical expenses that Petitioner is responsible to pay for her daughter in accordance with Department policy. See BEM 554, pp. 1 and 8-12.

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 [REDACTED], indicated that her monthly housing expenses is \$ [REDACTED] which she disputed. Exhibit A, p. 5. Instead, Petitioner testified that her monthly rent is \$ [REDACTED]. Petitioner argued that she has notified the Department that her rent is \$ [REDACTED].

In response, the Department obtained Petitioner's past reviews to see if whether she in fact notified the Department that her rent is \$ [REDACTED]. On [REDACTED], Petitioner submitted a Redetermination in which she reported her rent is \$ [REDACTED] monthly. Exhibit A, pp. 14-19. Also, on [REDACTED] and [REDACTED], Petitioner submitted a mid-certification in which she reported her rent is \$ [REDACTED]. See Exhibit A, pp. 20-26.

The Department verifies shelter expenses at application and when a change is reported. BEM 554, p. 14. If the client fails to verify a reported change in shelter, remove the old expense until the new expense is verified. BEM 554, p. 14. Verify the expense and the amount for housing expenses, property taxes, assessments, insurance and home repairs. BEM 554, p. 14.

Based on the above information, the Department properly determined that her housing expenses is \$ [REDACTED]. On [REDACTED], Petitioner reported that her housing expenses is \$ [REDACTED] and the Department properly budgeted this amount. See Exhibit A, pp. 14-19. However, the evidence established that she did not report her change in rent until her mid-certification received on [REDACTED]. Exhibit A, pp. 20-26. Petitioner presented no documentation showing that she reported the shelter increase prior to the mid-certification dated [REDACTED]. Policy states for FAP only, the Department acts on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220 (October 2016), p. 7. Changes which result in an increase in the household's benefits must be effective no later than the first allotment issued 10 days after the date the change was reported, provided any necessary verification was returned by the due date. BAM 220, p. 7. What this policy means is that because Petitioner reported her shelter change on [REDACTED], her [REDACTED] benefits would be the first month that would show her rent to be \$ [REDACTED]. For example, Petitioner reported her shelter change on [REDACTED]. The Department has to act on the change by [REDACTED]. Petitioner's [REDACTED] benefits will be the first month affected because the 10th day after the change is reported falls in the next benefit period. Now, if the Department failed to act on her reported change in shelter expenses, Petitioner can request another hearing to dispute the Department's failure to process her reported change. The undersigned

lacks the jurisdiction to address Petitioner's shelter expenses effective [REDACTED] because this occurred subsequent to her hearing request. See BAM 600 (October 2016), pp. 1-6. Accordingly, the Department properly determined that Petitioner's housing expenses was \$ [REDACTED] for [REDACTED] in accordance with Department policy. See BEM 554, p. 14.

Finally, Petitioner's budget showed that she was not receiving the \$ [REDACTED] mandatory heat and utility (h/u) standard, but only the \$ [REDACTED] non-heat electric standard and \$ [REDACTED] telephone standard deductions. Exhibit A, p. 5. Petitioner's testimony established that she was not eligible for the \$ [REDACTED] mandatory h/u standard; but instead, she was only eligible for the individual utility standards that she has a responsibility to pay. BEM 554, p. 20. Accordingly, the Department properly determined that Petitioner was only eligible for the \$ [REDACTED] non-heat electric standard and the \$ [REDACTED] telephone standard deductions in accordance with Department policy. Exhibit A, p. 5; RFT 255, p. 1; and BEM 554, pp. 21-22.

In summary, because the Department failed to satisfy its burden of showing that it properly calculated Petitioner's medical expenses, the Department is ordered to recalculate Petitioner's FAP budget effective [REDACTED].

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 allotment effective [REDACTED].

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. Process Petitioner's two medical bills submitted on [REDACTED], in accordance with Department policy;
2. Recalculate Petitioner's FAP budget (including medical expenses) for [REDACTED] 016;
3. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from [REDACTED]; and

4. Notify Petitioner of its decision.

EJF/jaf



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).

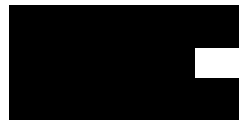
A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for 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



Petitioner

