



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 20, 2017
MAHS Docket No.: 16-019506
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 12, 2017, from Redford, Michigan. The Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by Renee Dargin, Eligibility Specialist and Gloria Thompson, Family Independence Manager.

ISSUE

Did the Department properly calculate the amount of Petitioner's Food Assistance Program (FAP) benefits?

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 recipient of FAP benefits.
2. On September 10, 2016, the Department sent Petitioner a Notice of Case Action advising him that effective October 1, 2016, his FAP benefits were being decreased to \$93 monthly. (Exhibit B)
3. The Budget Summary on the September 10, 2016, Notice of Case Action indicates that the Department determined Petitioner was eligible for a medical deduction of \$39. (Exhibit B)

4. On or around [REDACTED], 2016, Petitioner requested a hearing to dispute the decrease in his FAP benefits effective October 1, 2016. (See Hearing Decision issued under MAHS Docket No. 16-014486)
5. On October 3, 2016, Petitioner provided the Department with a typed list of his medical expenses/unpaid medical bills and copies of the bills to the Department. (Exhibit A)
6. On November 17, 2016, an administrative hearing was held, at the conclusion of which Administrative Law Judge (ALJ) Eric Feldman found that the Department failed to establish that it properly calculated Petitioner's FAP benefits, specifically the applicable medical deduction and shelter expenses. (See Hearing Decision issued under MAHS Docket No. 16-014486)
7. Because the medical expenses were provided to the Department after Petitioner's [REDACTED], 2016, hearing request, ALJ Feldman did not address the Department's failure to process the medical expenses and apply them to Petitioner's FAP budget as a medical deduction. Petitioner was advised that he was entitled to request a new hearing to have the matter resolved. (See Hearing Decision issued under MAHS Docket No. 16-014486)
8. On or around November 21, 2016, Petitioner resubmitted the typed list of his medical expenses/unpaid medical bills and provided copies of the bills to the Department to be processed and applied to his FAP medical deduction. (Exhibit A)
9. On December 1, 2016, the Department sent Petitioner a Notice of Case Action advising him that effective January 1, 2017, his FAP benefits were being increased to \$135 monthly. (Exhibit C)
10. The Budget Summary on the December 1, 2016, Notice of Case Action and the FAP EDG Net Income Results Budget indicate that the Department determined Petitioner was still eligible for a medical deduction of \$39. (Exhibit C)
11. On or around [REDACTED], 2016, Petitioner requested a hearing disputing the Department's actions with respect to the calculation of and amount of his FAP benefits, specifically, the Department's failure to process the medical expenses he submitted and apply them to his FAP budget as an allowable medical deduction for the appropriate months. (See Petitioner's Hearing Request)
12. Petitioner has a confirmed household size of two which includes himself and his wife.
13. As of January 1, 2017, Petitioner and his wife receive confirmed unearned income from Retirement Survivors Disability Insurance (RSDI) benefits in the combined amount of \$1592.

14. Petitioner has shelter expenses consisting of a monthly mortgage and property taxes. (Exhibit E)

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 this case, Petitioner requested a hearing disputing the Department's actions with respect to his FAP case. Petitioner testified that at issue was the Department's calculation of his FAP benefits and failure to properly process the medical expenses submitted and apply them to the medical deduction on his FAP budget. The evidence established that on October 3, 2016, and again on or around November 21, 2016, Petitioner provided the Department with a typed list of his medical expenses/unpaid medical bills and copies of the actual bills to be processed and applied to his FAP medical deduction. (Exhibit A). The processing of the medical expenses submitted was not addressed by ALJ Feldman in the hearing held on November 17, 2016, as verification of the expenses was not received by the Department until after the [REDACTED] 2016, hearing request. See BAM 600 (October 2016). Therefore, Petitioner requested a subsequent hearing on December 6, 2016, disputing the calculation of his FAP benefits and the Department's failure to properly process the medical expenses submitted.

At the hearing, the Department confirmed receiving the expenses/bills from Petitioner and stated that the bills, along with updated shelter verifications were processed and applied to the FAP budget. The Department stated that after processing the verifications submitted, it recalculated Petitioner's FAP budget and determined that he and his wife would be eligible for FAP benefits in the amount of \$135 monthly, effective January 1, 2017. The Department presented a December 1, 2016, Notice of Case Action advising Petitioner of the increase in his FAP benefits. (Exhibit C). A review of the December 1, 2016, Notice of Case Action however, indicates that Petitioner's medical deduction remained unchanged at \$39, suggesting that the Department did not process the medical expenses submitted. The Notice of Case Action also does not indicate that

Petitioner was determined to be eligible for FAP supplements for prior months as a result of the recalculated medical deduction. See BAM 406 (July 2013).

The Department presented a FAP EDG Net Income Results Budget for January 2017 which was reviewed to determine if the Department properly concluded that Petitioner was eligible to receive \$135 in monthly FAP benefits. (Exhibit D)

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits. BEM 500 (January 2016), pp. 1-5. The Department considers the gross amount of money earned from RSDI in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (January 2017), pp. 28-32. The Department concluded that Petitioner had unearned income of \$1592 which it testified consisted of gross monthly RSDI benefits for himself and his wife. Petitioner confirmed that the income amount was correct.

The deductions to income on the net income budget were also reviewed. Petitioner's group includes a senior/disabled/veteran (SDV) member. BEM 550 (October 2015), pp. 1-2. Groups with one or more SDV members are eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Medical expenses for the SDV member(s) that exceed \$35.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (June 2016), p. 1; BEM 556 (July 2013), p. 3.

In this case, Petitioner did not have any earned income; and there was no evidence presented that he had any out-of-pocket dependent care, or child support expenses. Therefore, the budget properly did not include any deduction for earned income, dependent care, or child support. Based on his confirmed two-person group size, the Department properly applied the \$151 standard deduction. RFT 255 (October 2016), p. 1.

In calculating the \$657 excess shelter deduction, the Department testified that it considered \$832.08 in total housing expenses which it stated consisted of a monthly mortgage in the amount of \$762.68 and property taxes in the amount of \$87 monthly. However, based on the figures identified and relied upon by the Department, Petitioner's housing expenses would total greater than \$832.08. Verification of Petitioner's housing expenses was presented for review at the hearing. (Exhibit E). Petitioner provided the Department with: a 2016 City of [REDACTED] tax bill showing a total amount due of \$832.82 (which when converted monthly equals \$69.40); a Stipulated Tax Foreclosure Avoidance Agreement regarding 2014 And Any Prior Year's Delinquent

Taxes which indicates that Petitioner is required to pay \$87 monthly; and verification of his monthly mortgage payment of \$762.68. (Exhibit E); BEM 554, pp. 3-4;13-14. There was no evidence presented that the 2014 tax payment was allowed in a previous FAP budget, thus, the Department should consider it in calculating the total housing expenses and current excess shelter deduction. Although the Department properly considered the \$526 heat and utility standard, because the Department did not properly calculate Petitioner's housing expenses, the Department did not properly calculate the excess shelter deduction.

With respect to the calculation of the medical deduction, the Department initially testified that it only received the typed list of expenses referenced above and three medical bills from Petitioner. However, during the hearing, the Department representative looked in Petitioner's case file and found at least ten additional bills that were date stamped as received. (Exhibit A). While the Department testified that it processed the medical expenses submitted by Petitioner and recalculated his FAP budget to include the applicable expenses, the budget presented for review continues to show the same medical deduction of \$39 which remained unexplained by the Department, despite the Department having confirmed receiving Petitioner's medical expenses.

The Department could not identify or otherwise explain how the \$39 medical deduction was determined and what bills/expenses, if any, were considered in the calculation. The undersigned ALJ allowed the Department additional time during the hearing to attempt to obtain a medical expense summary or other documentation that the Department indicated was necessary to support its calculation, however, after more than 15 minutes off the record, the Department was unsuccessful in its attempts to obtain the supporting documentation. Additionally, while the Department testified that some of the bills submitted by Petitioner did not contain dates of service and were not applicable, the Department did not identify which of the bills submitted would be acceptable per Department policy and which are not and for what reason.

As indicated above, for FAP groups with SDV members, the Department must apply a medical expense deduction in calculating FAP eligibility for verified out-of-pocket medical expenses in excess of \$35 incurred by the SDV member of the group. BEM 554, p. 1; BEM 556 (July 2013), pp. 4-5. The Department must estimate an SDV member's medical expenses for the benefit period based on (i) verified allowable medical expenses; (ii) available information about the SDV member's medical condition and health insurance; and (iii) changes that can reasonably be anticipated to occur during the benefit period. BEM 554, pp. 8-12.

Additionally, the Department must process changes that the client voluntarily reports and verifies during the benefit period or another source reports and there is sufficient information and verification to determine the allowable amount without contacting the FAP group. BEM 554, pp. 8-12. Expenses are budgeted for the month they are billed or otherwise become due. BEM 554, p. 3. Medical bills may not be overdue, which means they are currently incurred, currently billed, or the client made a payment

arrangement before the medical bill became overdue. The list of allowable medical expenses that are to be considered by the Department are found in BEM 554, at pp. 9-11. The Department will allow medical expenses when verification of the portion paid, or to be paid by insurance, Medicare, Medicaid, etc. is provided and will only allow the non-reimbursable portion of a medical expense. BEM 554, p. 11. A medical expense does not have to be paid to be allowed. BEM 554, pp. 8-12.

For FAP groups that do not have a 24-month benefit period, a one-time-only medical expense may be budgeted for one month or averaged over the balance of the benefit period. BEM 554, pp. 8-9. FAP groups that have 24-month benefit periods must be given the following options for one-time-only medical expenses billed or due within the first 12 months of the benefit period: (i) the expense can be budgeted for one month; (ii) the expense can be averaged over the remainder of the first 12 months of the benefit period; or (iii) averaged over the remainder of the 24-month benefit period. BEM 554, pp. 8-9.

At the hearing, Petitioner disputed the calculation of the \$39 medical deduction and reviewed the medical expenses/bills he submitted, indicating that all of the statements reflect service dates that he had previously discussed with the Department representatives present for the hearing. (Exhibit A). Petitioner raised concerns regarding the Department's repeated failure to properly process the expenses and indicated that the Department's continuous failure to timely process the expenses may result in the bills becoming overdue and no longer applicable. The evidence established that Petitioner submitted verified medical expenses to the Department on more than one occasion and the Department has failed to properly process the expenses and apply them to the medical deduction on Petitioner's FAP budgets for the months the expenses were billed or otherwise became due as required by Department policy. The Department further failed to establish that it issued FAP supplements to Petitioner for current or prior months FAP benefits in accordance with BAM 406.

Therefore, based on the evidence presented, the Department has failed to establish that it properly calculated Petitioner's excess shelter deduction and medical deduction and failed to act in accordance with Department policy in processing the medical expenses and calculating Petitioner's FAP benefits.

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 did not act in accordance with Department policy when it calculated the amount of Petitioner's FAP benefits and processed his medical expenses towards the medical deduction.

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. Process Petitioner's verified medical expenses and apply in accordance with Department policy towards the medical deduction on the FAP budgets for the applicable months;
2. Issue FAP supplements Petitioner is eligible to receive for the months in which it is determined he was eligible for a medical deduction that was not previously applied;
3. Recalculate Petitioner's FAP budget for January 2017, ongoing,
4. Issue FAP supplements to Petitioner for benefits he was eligible to receive but did not for January 1, 2017, ongoing, and
5. Notify Petitioner in writing of its decision.

ZB/tlf



Zainab A. Baydoun

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

DHHS Hearings Coordinator – 15 – 1843
BSC4 Hearing Decisions
M. Holden
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MAHS

Petitioner

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