



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: January 25, 2017
MAHS Docket No.: 16-018852
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 himself. [REDACTED], the Petitioner's wife, also appeared as a witness. An Interpreter, [REDACTED], appeared as a [REDACTED] interpreter on behalf of the Petitioner. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist.

ISSUE

1. Did the Department properly determine the Petitioner and his family was eligible for Emergency Services Only (ESO) Medical Assistance (MA)?
2. Did the Department correctly determine the Petitioner's Food Assistance Program (FAP) group to include the Petitioner's three minor children only?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department issued a Health Care Coverage Determination Notice (HCCDN) dated [REDACTED], and [REDACTED]. Exhibits 1 and 2. The first Notice found Petitioner and his family eligible for full coverage MA. The second Notice found the Petitioner and his family eligible for ESO MA based upon their immigration status.

2. The Department issued a Notice of Case Action dated [REDACTED], approving the Petitioner's minor children for FAP benefits of \$ [REDACTED] monthly. The Petitioner and his wife were denied FAP due to not being an eligible alien or filed to provide proof of immigration status and were not included in the FAP group. Exhibit 3.
3. On [REDACTED], the Petitioner's wife and the Petitioner provided proof of alien status to the Department that advised they were both residents since [REDACTED] with a category code of [REDACTED] for Petitioner and [REDACTED] for his wife. Exhibit 4.
4. The Petitioner pays for rent in the amount of \$ [REDACTED] and has earned income. Exhibit 5 and Exhibit 3. The Petitioner did not provide the Department proof that he pays 1/3 of the heating expenses.
5. The Department calculated the FAP group benefits based upon a group size of three (3), based upon the Petitioner's three (3) minor children with alien status of [REDACTED]. All children were under [REDACTED] years of age.
6. The Department did not provide the request for verifications for shelter expenses and citizenship marked as Exhibit 6 at the hearing.
7. The Petitioner requested a timely hearing on [REDACTED], protesting the Departments actions.

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.

In this case, the Department changed the Petitioner's full coverage MA to Emergency Services Only (ESO) when it determined that Petitioner and his family were eligible for ESO based upon their immigration status. Exhibit 2. At application, the Department is required to verify citizenship or alien status as part of its eligibility determination. In order to qualify for both FAP and full coverage MA, the individual must have a class code of RE, am As, SI or SQ. A person can also be eligible for full coverage MA if they have resided in the U.S. for more than five (5) years. **In addition, children under age 18 are eligible for FAP.** (Emphasis supplied). BEM 225, (October 1, 2016), p. 33.

An alien limited to emergency services only (ESO) coverage during the five-year bar means the following aliens who entered the U.S. on or after 8/22/96.

A permanent resident alien with class codes other than RE, AM or AS, and an alien paroled under INA section 212(d)(5) for at least one year.

The individual is limited to emergency services only (ESO) Medicaid coverage the first five years in the U.S. EERM 225, p. 33

As explained at the hearing, once the Department verified the Petitioner and his family's alien status of less than [REDACTED] years in the U.S. and not meeting the codes specified above, the Department correctly determined that the Petitioner and his family were not eligible for full coverage MA but for ESO only.

At the hearing, the Petitioner credibly testified that he paid 1/3 of the heating expense. The Department did not include a heat or utility allowance as the Petitioner had not verified this expense. Department policy provides:

If the FAP group has **any** responsibility for the heating/cooling expense, use the h/u standard.

Verification

Verify the heating/cooling expense at application or when a change is reported.

Verification Sources

Acceptable verification sources include, but are not limited to:

- Current bills or a written statement from the landlord.
- Collateral contact with the landlord.
- Cancelled checks, receipts or money order copies, if current. The receipt must contain minimum information

to identify the expense, the amount of the expense, the expense address, the provider of the service and the name of the person paying the expense. BEM 554 (October 1, 2016), p.20

As stated at the hearing, the Petitioner may choose to provide verification of heating expense as reference above. Once the verification is provided, the Department will recalculate the FAP budget.

A review of the FAP group size of three (3) as determined by the Department based upon the minor children, FAP eligibility was correct as the Petitioner and his wife are not eligible for FAP based upon their alien status. BEM 225.

As regards the Department's determination of the Petitioner's FAP benefit amount, the Department testified at the hearing that it used all of the net pays contained in Exhibit 5. The Department used earned income of \$ [REDACTED] when determining FAP eligibility. Exhibit 3. However, the correctness of its earned income determination could not be confirmed as correct. First, the income shown on Exhibit 4 was listed as **net** income, not gross income. BEM 500, (October 1, 2016, p. 4. Department policy requires that the Department determine gross income, which is before taxes and other deductions such as garnishments are made as required by Department policy found in BEM 505 (July 1, 2016), p. 9, and BEM 550 (October 1, 2016), p. 1. When the net pays are used contained in Exhibit 5, and applying the correct formula for determining earned income based upon weekly pays, the calculation did not result in earned income of \$ [REDACTED]. Second, no FAP budget was provided. In addition, the Department did not provide after the hearing shelter verification; thus, Exhibit 6 was not considered. The Department used \$ [REDACTED] as rent, which was confirmed as correct by the Petitioner. Thus, based upon the evidence presented, the Department failed to establish that it correctly determined the Petitioner's FAP group benefit amount correctly.

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 acted in accordance with Department policy when it determined that the Petitioner and his family were eligible for ESO MA based upon their alien status.

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 acted in accordance with Department policy when it when it calculated the FAP group gross income.


Accordingly, the Department's decision is **AFFIRMED** as regard the Department's determination that Petitioner and his family is eligible for medical assistance based upon Emergency Services Only.

REVERSED as regards the Department calculation of Petitioner's FAP benefits.

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. The Department shall recalculate the Petitioner's FAP benefits and determine the FAP group income from employment in accordance with Department policy.
2. The Department shall provide the Petitioner written notice of its FAP benefit determination as ordered.

LMF/jaf



Lynn M. Ferris

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]

Petitioner

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

[REDACTED]