



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: February 14, 2017
MAHS Docket No.: 17-000458
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 February 9, 2017, from Detroit, Michigan. The Petitioner was present for the hearing and represented herself. Also, Petitioner's caregiver, [REDACTED], was present for the hearing, but did not provide any testimony. The Department of Health and Human Services (Department) was represented by [REDACTED] Family Independence Manager.

ISSUES

Did the Department properly implement and certify a previous Decision and Order (D&O) regarding an administrative hearing held on November 30, 2016?

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) allotment effective January 1, 2017?

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 October 27, 2016, Petitioner previously filed a hearing request, protesting her FAP benefits. See Exhibit B, p. 2.
3. On November 30, 2016, an administrative hearing was held in which the undersigned Administrative Law Judge (ALJ) issued a hearing decision on December 2, 2016, and ordered the Department to do the following: (i) process

Petitioner's two medical bills submitted on September 30, 2016, in accordance with Department policy; (ii) recalculate Petitioner's FAP budget (including medical expenses) for October 1, 2016; (iii) issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from October 1, 2016; and (iv) notify Petitioner of its decision (Reg. No. 16-016238). Exhibit B, pp. 1-7.

4. The Department subsequently redetermined Petitioner's FAP eligibility, which resulted in a decrease in her FAP benefits.
5. On December 14, 2016, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits decreased to [REDACTED] effective January 1, 2017 because her shelter deduction and medical expense deduction had changed. Exhibit A, pp. 4-6.
6. The Department complied with the undersigned ALJ's hearing decision issued on December 2, 2016.
7. On January 9, 2017, Petitioner filed a hearing request, protesting (i) the Department's failure to comply with the undersigned ALJ's hearing decision; and (ii) the calculation of her FAP allotment. 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.

Preliminary matter

At the time of Petitioner's hearing request, she requested a hearing disputing the following: (i) the Department's failure to comply with the undersigned ALJ's hearing decision; and (ii) she disputed the amount of her FAP decrease. Exhibit A, pp. 2-3. The undersigned ALJ will address Petitioner's concerns below:

Implementing the Hearing Decision

At the hearing, Petitioner argued that the Department failed to comply with the hearing decision. Petitioner claimed that the undersigned ALJ ruled in her favor when the undersigned ALJ reversed the Department's action and ordered the Department to recalculate her FAP benefits.

In response, the Department argued that it did comply with the undersigned ALJ's hearing decision, but unfortunately, it resulted in a decrease in benefits. The Department testified that it subsequently sent a Notice of Case Action notifying her that her FAP benefits decreased effective January 1, 2017, ongoing. Exhibit A, pp. 4-6.

All hearing decisions must be recorded in the Department's system, on the Hearing Restore Benefits screen. BAM 600 (October 2016), p. 41. Some hearing decisions require implementation by the local office. BAM 600, p. 41. Implement a decision and order within 10 calendar days of the mailing date on the hearing decision. BAM 600, p. 41. Do not provide a notice of case action. The hearing decision serves as notice of the action. BAM 600, p. 41 and p. 1. If implementation requires a redetermination, send a notice of case action on the redetermination action. BAM 600, p. 41.

Based on the totality of the hearing record, the undersigned ALJ finds that the Department complied with the hearing decision (Reg. No. 16-016238) in accordance with Department policy. See BAM 600, pp. 1 and 41. The two main components of the undersigned ALJ's order were as follows: (i) process Petitioner's two medical bills submitted on September 30, 2016; and (ii) recalculate Petitioner's FAP budget (including medical expenses). Exhibit B, pp. 1-7. The undersigned ALJ reviewed the evidence record, including the Department's testimony, and determined that the Department complied with the undersigned ALJ's order. The evidence established that the Department did process Petitioner's two medical bills submitted on September 30, 2016, which consisted of a prescription statement generated on September 30, 2016, showing that her amount paid was [REDACTED]; and a cumulative yearly medical statement for medical expenses from [REDACTED] showing that her total amount of expenses was [REDACTED] for the period of January 8, 2016, to September 30, 2016. See Exhibit B, pp 3 and 6. Furthermore, the undersigned ALJ finds that the Department recalculated the FAP budget (including the medical expenses) when it issued her a Notice of Case Action dated December 14, 2016. Exhibit A, pp. 10-11. By the Department issuing the Notice of Case Action, this shows that the Department complied with the order to process the medical bills and recalculate the benefits.

FAP allotment

In the present case, the undersigned ALJ reviewed Petitioner's hearing request in which she also disputed the amount of her FAP benefits. Exhibit A, pp. 2-3. As such, the undersigned ALJ will address Petitioner's FAP benefits beginning January 1, 2017.

It was not disputed that the certified group size is one and that Petitioner is a senior/disabled/disabled veteran (SDV) member. The Department presented the January 2017 FAP budget for review from the Notice of Case Action dated December 14, 2016. Exhibit A, pp. 4-5.

First, the Department properly calculated Petitioner's gross unearned income to be [REDACTED], which she did not dispute. Exhibit A, p. 5.

Next, the Department properly applied the [REDACTED] standard deduction applicable to Petitioner's group size of one. RFT 255 (October 2016), p. 1.

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 (June 2016), p. 1. To inquire on how the Department came to the determination that her medical deduction is [REDACTED] the undersigned ALJ asked the Department. The Department indicated that Petitioner's medical expenses consisted of the following: (i) her [REDACTED] Medicare Part D premium; (ii) [REDACTED] prescription co-pays; (iii) the monthly average of her medical expenses from [REDACTED], which was [REDACTED] (statement was based on a nine month period (January 2016 to September 2016) and total expenses was [REDACTED], thus, the Department took the 9 month average by dividing the [REDACTED] by 9 months, resulting in the [REDACTED]); and (iv) the monthly average of her prescription payments from [REDACTED], which was [REDACTED] (statement was based on a twelve month period (September 2015 to September 2016) and total expenses was [REDACTED] thus, the Department took the 12 month average by dividing the [REDACTED] by 12 months, resulting in the [REDACTED] calculation). Exhibit A, pp. 7-8. When the undersigned ALJ adds these amount together, the resulting total is [REDACTED] however, minus the [REDACTED] threshold to be eligible for the medical deduction, results in the [REDACTED] medical deduction the Department calculated. Exhibit A, p. 5.

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.

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. The undersigned ALJ reviewed the medical expenses the Department took into consideration and discovered that Petitioner submitted additional medical expenses that it did not take into consideration. See Exhibit 1, pp. 1-26. For example, the Department reviewed Petitioner's medical expenses paid to [REDACTED] for the time period of January 8, 2016 to September 30, 2016. Exhibit A, p. 7. However, the undersigned ALJ discovered that Petitioner also submitted for the evidence record a medical expense she paid on November 10, 2016 ([REDACTED] [REDACTED]), which was not taken into consideration by the Department. Exhibit 1, p. 1. As such, the undersigned ALJ finds that the Department failed to show by a preponderance of evidence that it properly calculated her medical deduction effective January 1, 2017. See BEM 554, pp. 1 and 8-12. The Department must go through the medical expenses provided by Petitioner and determine if she is eligible for any additional medical expenses that it failed to take into consideration for, i.e. [REDACTED] expense paid on November 10, 2016.

Next, the Department also provides Petitioner with a shelter deduction, which consists of housing costs and utility expenses. The Department properly determined that Petitioner's housing costs was [REDACTED] and that she was only eligible for the [REDACTED] non-heat electric standard and [REDACTED] telephone standard deductions. Exhibit A, p. 5; BEM 554, pp. 12-22; RFT 255, p. 1. It should be noted that Petitioner reported her housing expenses increased to [REDACTED] effective March 1, 2017. However, the undersigned ALJ is reviewing the benefit month of January 2017, which had the proper housing costs of [REDACTED]. The Department is now aware that her housing expenses increased to [REDACTED] beginning March 2017. If the Department does not process the reported change in her housing expenses, Petitioner can attempt to file another hearing request, protesting the Department's failure to process the reported change. See BEM 554, p. 14 (The Department verifies shelter expenses at application and when a change is reported. If the client fails to verify a reported change in shelter, remove the old expense until the new expense is verified).

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 January 1, 2017.

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 complied with the Decision and Order issued on December 2, 2016 (Reg. No. 16-016238); and (ii) the Department failed to satisfy its burden of showing that it properly calculated Petitioner's FAP allotment effective January 1, 2017.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to Decision and Order issued on December 2, 2016 (Reg. No. 16-016238); and **REVERSED IN PART** with respect to FAP allotment effective January 1, 2017.

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 Petitioner's FAP budget (including medical expenses) for January 1, 2017;
2. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from January 1, 2017; and
3. 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]
[REDACTED]
[REDACTED]

[REDACTED]

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

CC: [REDACTED]
[REDACTED]