



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: March 17, 2017
MAHS Docket No.: 16-019328
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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. After due notice, telephone hearing was held on March 8, 2017, from Lansing, Michigan. The Petitioner was represented by himself. The Department was represented by [REDACTED] (Family Independence Manager), and [REDACTED] (Eligibility Specialist).

ISSUE

Did the Department of Health and Human Services (Department) properly determine Petitioner's eligibility for 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 is an ongoing Food Assistance Program (FAP) recipient.
2. On May 16, 2016, the Department approved Petitioner for Medicare Savings Program (MSP) benefits effective May 1, 2016. Exhibit A, p 4.
3. Petitioner receives monthly Retirement, Survivors, and Disability Insurance (RSDI) in the gross monthly amount of \$ [REDACTED] Exhibit A, p 7.
4. Petitioner has a \$ [REDACTED] monthly housing expense and is obligated to pay for heating expenses separate from his housing. Exhibit A, p 8.
5. Petitioner did not receive a medical deduction in May of 2016. Exhibit A, p 12.

6. Petitioner received a monthly \$ [REDACTED] medical deduction from June 1, 2016, through September 30, 2016. Exhibit A, p11, 14, 16, 18.
7. Petitioner did not receive a medical deduction in October of 2016. Exhibit A, p 22.
8. Petitioner did not receive a medical deduction in February of 2017. Exhibit A, p 9.
9. On December 29, 2016, the Department received Petitioner's request for a hearing protesting the monthly allotment of Food Assistance Program (FAP) benefits. Exhibit A, p2.

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 Department will consider only the medical expenses of senior/disabled/veteran (SDV) persons in the eligible group or SDV persons disqualified for certain reasons. A FAP group is not required to, but may voluntarily report changes during the benefit period. Department of Health and Human Services Bridges Eligibility Manual (BEM) 554 (October 1, 2015), pp 8 – 9.

The Medical Expenses amount is determined by totaling allowable monthly medical expenses (rounded to whole dollar amounts) and reducing this amount by a \$35 medical deduction. Department of Health and Human Services Bridges Eligibility Manual (BEM) 556 (July 1, 2013), p 4.

Responsibility to pay means that the expense is in the name of a person in the FAP group. Do not allow any expense if the entire expense is directly paid by an agency or someone outside of the group. An expense that is fully reimbursed is not allowed. If an expense is partially reimbursed or paid by an agency or some-one outside of the FAP group, allow only the amount that the group is responsible to pay, unless specific policy directs otherwise. BEM 554, p 2.

Petitioner is an ongoing FAP recipient as a SDV group of one and the Department approved him for Medicare Savings Program (MSP) benefits effective May 1, 2016. Petitioner receives RSDI benefits in the gross monthly amount of \$ [REDACTED] based on

disability. Although Petitioner was approved for MSP benefits, which cover his Medicare Part B premium, effective May 1, 2016, Petitioner had funds deducted from his RSDI benefits until the Department's buy-in unit could coordinate payment with the Social Security Administration. The approval for MSP benefits did not affect Petitioner's eligibility for FAP benefits until June of 2016, when he was given a medical deduction for the funds deducted from his RSDI benefits pending action by the buy-in unit. When the Department began paying Petitioner's Medicare Part B premiums in September of 2016, the Social Security Administration stopped reducing his RSDI benefits, and the Department stopped giving him a medical deduction on his FAP benefits.

Petitioner is considered a SDV FAP recipient, which entitles him to a deduction for medical expenses over \$█ when his eligibility for FAP benefits is determined by the Department. Medicare premiums are an allowable expense as defined by BEM 554.

However, BEM 554 prohibits a deduction for an expense that is fully reimbursed. In this case, Petitioner was approved for MSP benefits that reimburse him for the Medicare Part B premiums that were deducted from his gross RSDI benefits. Despite this prohibition, the Department granted Petitioner a medical deduction from June 1, 2016, through September 30, 2016. As of October 1, 2016, Petitioner's FAP benefits were reduced when he no longer received this medical deduction.

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness. The Michigan Administrative Hearing System (MAHS) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service. Department of Human Services Bridges Administrative Manual (BAM) 600 (October 1, 2015), pp 3-4.

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Rule 400.904(1). Moreover, the Department of Human Services Bridges Administrative Manual (BAM) 600 (October 1, 2015), p. 6, provides in relevant part as follows:

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days.

Federal regulations governing state food assistance programs contain the following regulations in 7 CFR 273.15(g):

A household shall be allowed to request a hearing on any action by the State agency or loss of benefits which occurred in the prior 90 days. Action by the State agency shall include a denial of a request for restoration of any benefits lost more than 90 days but less than a year prior to the request. In addition, at any time within a certification period a household may request a fair hearing to dispute its current level of benefits.

The Department's representative testified that no notice of case action was sent to Petitioner for any changes to his FAP benefits since June 1, 2016, and that such notices are never sent when the only change to a FAP recipients circumstances are changes with the funding of a person's social security benefits like in this case.

This Administrative Law Judge finds that Petitioner made a timely request for a hearing protesting the Department's refusal to reconsider its determination of FAP benefits less than a year prior to the request.

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 determined Petitioner's eligibility for Food Assistance Program (FAP) benefits as of June 1, 2016, because his medical expenses were not determined in accordance with BEM 554.

DECISION AND ORDER

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:

Initiate a determination of the Petitioner's eligibility for Food Assistance Program (FAP) benefits effective June 1, 2016, in accordance with policy with adequate notice to Petitioner.

KS/nr



Kevin Scully
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]