



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: July 20, 2017
MAHS Docket No.: 17-007338
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 July 12, 2017, from Lansing, Michigan. Petitioner appeared and represented himself. [REDACTED] Assistance Payments Supervisor (APS), appeared on behalf of the Department of Health and Human Services (Department). [REDACTED], Eligibility Specialist (E.S.) testified as a witness for the Department.

ISSUE

Did the Department properly reduce Petitioner's Food Assistance Program (FAP) monthly allotment amount?

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 actively receiving FAP benefits with a \$ [REDACTED] monthly allotment and a group size of 1. [Department's Exhibit 2, pp. 40-41].
2. On February 28, 2017, the Department received Petitioner's completed redetermination form which indicated, among other things, that he had medical coverage ([REDACTED]), \$ [REDACTED] per month in retirement income, \$ [REDACTED] for "SSD" (Social Security Disability), and \$ [REDACTED] in earned income from "consulting." [Dept. Exh. 1, pp. 1-8].

3. On March 6, 2017, the Department mailed Petitioner a Verification Checklist, which requested verifications of his self-employment (business receipts), current mortgage statement, and current tax returns with all schedules. The verifications were due by March 16, 2017. [Dept. Exh. 1, pp. 10-11].
4. On March 15, 2017, the Department received the following from Petitioner: (1) a completed 2015 Michigan Tax Return (MI-1040); (2) a completed U.S. Individual Income Tax Return (1040); (3) a completed Shelter Verification (DHS-3688) form; (4) "Invoice for Services" for \$ [REDACTED] (12/30/16), \$ [REDACTED] (1/31/17), and \$ [REDACTED] (2/01/17) for \$ [REDACTED] [Dept. Exh. 1, pp. 12-15].
5. On March 16, 2017, the Department mailed Petitioner a Notice of Case Action (DHS-1605), which reduced his FAP to \$ [REDACTED] per month effective for the period of April 1, 2017, to March 31, 2018. [Dept. Exh. 1, pp. 21-24].
6. On March 28, 2017, Petitioner provided the Department with a document that indicated that he had two medical appointments and in handwriting indicated, "\$ [REDACTED] each visit." [Dept. Exh. 1, p. 29].
7. On March 28, 2017, Petitioner sent a letter to his caseworker ([REDACTED]) concerning a health care coverage questionnaire. [Dept. Exh. 1, pp. 38].
8. On May 19, 2017, Petitioner provided the Department with: (1) copies of receipts from May 2, 2017 (\$ [REDACTED]), May 17, 2017 (\$ [REDACTED]) and May 18, 2017 (\$ [REDACTED]) (2) a copy of a Medicare Part B Summary Notice dated May 8, 2017, and a letter to [REDACTED] which indicates that he had just received Medicare evidence that he wants to be applied to his FAP case. He requests that his Medicare deductions be considered from his social security check and indicates that he has a \$ [REDACTED] premium is a monthly expense. Petitioner also referenced pharmacy bills in the amount of \$ [REDACTED] and a bill for glasses (\$ [REDACTED] and \$ [REDACTED] for dental bills). Petitioner suggested that his earnings for January through April should be corrected and that he only earns an average of \$ [REDACTED] during this time period. [Dept. Exh. 1, p. 32].
9. On May 22, 2017, the Department mailed Petitioner a Quick Note which responded to Petitioner's May 19, 2017, letter. The Department referred Petitioner to the March 6, 2017 verification checklist, for explanation of change in benefits concerning Medicaid, but also indicated that for a potential increase in FAP benefits, Petitioner may submit "original receipts (not visa slips) showing the date of service, provider and amount due." For prescriptions, the Department indicated that Petitioner may "turn in the original receipt during the month of the expense." [Dept. Exh. 1, p. 37].
10. Petitioner requested a hearing on May 31, 2017, to dispute the Department's calculation of his FAP benefits. [Request for Hearing].

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.

Income

The Department uses countable income to determine eligibility and benefit levels. BEM 500, (1-1-2016), p. 1. Income remaining after applying the policy in the income related items is called **countable**. BEM 500, p. 3. [Emphasis in original]. For FAP purposes, all earned and unearned income available to an applicant or recipient is countable. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. Unearned income means all income that is not earned. BEM 500, p. 4.

The Department uses gross income when determining countable income. BEM 500, p. 4. Gross income is the amount of income before any deductions such as taxes or garnishments. The amount counted may be more than the client actually receives. However, the amount of self-employment income before any deductions is called total proceeds. BEM 500, p. 4. The gross amount of self-employment income means the amount after deducting allowable expenses from total proceeds, but before any other deductions. BEM 500, p. 4.

All income is converted to a standard monthly amount. BEM 505, (7-1-2016), p. 3. The Department will convert stable and fluctuating income that is received more often than monthly to a standard monthly amount. BEM 505, p. 3.

BEM 550 (1-1-2017) describes income budgeting policy. When the Department budgets the amount of FAP for a group, it first determines whether there is a senior¹, disabled person² or a veteran member of that group. BEM 550, p. 1. A non-categorically eligible

¹ A "senior" is a person at least 60 years old. BEM 550 p 1.

² A "disabled" person who receives one of the following: (1) a federal, state or local public disability retirement pension and the disability is considered permanent under the Social Security Act; (2) Medicaid program which requires a disability determination by MRT or Social Security Administration; (3) [REDACTED] Retirement and is eligible for Medicare or meets the Social Security disability criteria (4) a person who receives or has been certified and awaiting their

Senior/Disabled/Veteran (SDV) FAP group³ must have income below the net income limits. BEM 550, p. 1. A non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. BEM 550, p. 1.

The Department will use only available, countable income to determine eligibility. It will always calculate income on a calendar month basis to determine eligibility and benefit amounts and use income from a month specified in this item for the benefit month being considered. BEM 550, p. 1.

The Department will budget the entire amount of earned and unearned countable income. Gross countable earned income is reduced by a 20% earned income deduction. Every case is allowed the standard deduction shown in RFT 255. The Department documents income budgeting on either a manually-calculated or an automated FAP worksheet. BEM 550, p. 1.

Self-Employment

Income from self-employment is covered in BEM 502 (1-1-2017). Individuals who run their own businesses are self-employed. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board. BEM 502, p. 1.

The amount of self-employment income before any deductions is called total proceeds. Countable income from self-employment equals the total proceeds **minus** allowable expenses of producing the income. BEM 502, p. 3.

Allowable expenses (except MAGI related MA) are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502, p. 3.

For self-employment income, BEM 502, pp. 3-4, indicates that allowable expenses include all of the following:

- Identifiable expenses of labor, stock, raw material, seed, fertilizer, etc.
- Interest and principal on loans for equipment, real estate or income-producing property.
- Insurance premiums on loans for equipment, real estate and other income-producing property.

initial payment for one of the following: (a) Social Security disability or blindness benefits; (b) Supplemental Security Income (SSI), based on disability or blindness, even if based on presumptive eligibility.

³ An SDV FAP group is one which has an SDV member. BEM 550 p 1.

- Taxes paid on income-producing property.
- Transportation costs while on the job (example: fuel).
- Purchase of capital equipment.
- A child care provider's cost of meals for children. Do **not** allow costs for the provider's own children.
- Any other identifiable expense of producing self-employment income except those listed below.

The Department must verify countable income at **all** of the following:

- Application, including a program add, prior to authorizing benefits.
- At member add, only the income of the member being added.
- Redetermination.
- When program policy requires a change be budgeted.

Exception: For FIP, RCA, SDA, and FAP, verify income that decreases or stops. Do not verify starting or increasing income unless income change information is unclear, inconsistent or questionable. Select **starting or increasing income** as the verification source. Selecting **client statement** as the verification source results in Bridges incorrectly pending eligibility and generating a verification checklist. BEM 502, p. 6. [Emphasis added].

The client has primary responsibility for obtaining verification. Do not deny assistance because an individual is unable to verify income. Assist the client in obtaining verification when requested. BEM 502, p. 6.

BEM 502, p. 7, indicates for all types of assistance except Medicaid, the Department will adhere to the following verification sources for self-employment income:

- Primary source - Income tax return provided:
 - The client hasn't started or ended self-employment, or received an increase/decrease in income, etc.
 - The tax return is still representative of future income.
 - The client filed a tax return.
- Secondary source - DHS-431, Self-Employment Statement, with all income receipts to support claimed income.

- Third source - DHS-431, Self-Employment Statement, without receipts.

Department policy also indicates that for all programs, self-employment expenses may be verified by a Self-Employment Statement, with receipts. BEM 502, p. 7. [Emphasis added].

FAP Allowable Expenses and Expense Budgeting

Bridges uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (1-1-2017), p. 1. For groups with **no** senior/disabled/disabled veteran (SDV) member, Bridges uses the following: (1) dependent care expense; (2) excess shelter up to the maximum in RFT 255; (3) court ordered child support and arrearages paid to non-household members. For groups **with** one or more SDV member, Bridges uses the following; see BEM 550: (1) dependent care expense; (2) excess shelter (3) court ordered child support and arrearages paid to non-household members; and (4) medical expenses for the SDV member(s) that exceed \$35. BEM 554, p 1. [Emphasis added].

An expense is allowed if all of the following are present: (1) the service is provided by someone outside of the FAP group; (2) someone in the FAP group has the responsibility to pay for the service in money and (3) verification is provided, if required. BEM 554, p. 1.

The Department **must** verify the responsibility to pay and the amount of certain expenses. The Department must document verification in the case record. The Department shall **not** budget expenses that require verification until the verification is provided. The Department must determine eligibility and the benefit level without an expense requiring verification if it cannot be verified. The Department may **not** include a medical expense that might be covered by a reimbursement if the amount of the reimbursement cannot be verified. The Department treats subsequently provided verification from an eligible FAP group as a change. A supplement for lost benefits is issued **only** if the expense could **not** be verified within 30 days of the application and the local office was at fault. BEM 554, p. 3.

Expenses are used from the same calendar month as the month for which the Department is determining benefits. Expenses remain unchanged until the FAP group reports a change. BEM 554, p. 3.

At application and redetermination, the Department will consider **only** the medical expenses of SDV persons in the eligible group or SDV persons disqualified for certain reasons. The Department will estimate an SDV person's medical expenses for the benefit period. The Department will base the estimate on all of the following:

- Verified allowable medical expenses.

- Available information about the SDV member's medical condition and health insurance.
- Changes that can reasonably be anticipated to occur during the benefit period.

See BEM 554, p. 9.

According to BEM 554, p. 10-11, allowable medical expenses are limited to the following:

- Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner authorized by State law or other qualified health professional.
- Hospitalization or nursing care. Include these expenses for a person who was a group member immediately prior to entering a hospital or nursing home.
- Prescription drugs and the postage for mail-ordered prescriptions.
- Costs of medical supplies, sickroom equipment (including rental) or other prescribed medical equipment (excluding the cost for special diets).
- Over-the-counter medication (including insulin) and other health-related supplies (bandages, sterile gauze, incontinence pads, etc.) when recommended by a licensed health professional.
- Premiums for health and hospitalization policies (excluding the cost of income maintenance type health policies and accident policies, also known as assurances). If the policy covers more than one person, allow a prorated amount for the SDV person(s).
- Medicare premiums.
- Dentures, hearing aids and prosthetics including the cost of securing and maintaining a seeing eye or hearing dog or other assistance animal. (Animal food and veterinary expenses are included.)
- Eyeglasses when prescribed by an ophthalmologist (physician-eye specialist) or optometrist.
- Actual costs of transportation and lodging necessary to secure medical treatment or services. If actual costs **cannot** be determined for transportation, allow the cents-per-mile amount at the standard mileage rate for a privately owned vehicle in lieu of an available state vehicle. To find the cents-per-mile amount go to the Michigan Department of Management and Budget at www.michigan.gov/dtmb,

select Services & Facilities from the left navigation menu, then select Travel. On the travel page, choose Travel Rates and High Cost Cities using the rate for the current year.

- The cost of employing an attendant, homemaker, home health aide, housekeeper, home help provider, or child care provider due to age, infirmity or illness. This cost must include an amount equal to the maximum FAP benefits for one person if the FAP group provides the majority of the attendant's meals. If this attendant care cost could qualify as both a medical expense and a dependent care expense, it **must** be treated as a medical expense.
- A Medicaid deductible is allowed if the following are true.

The medical expenses used to meet the Medicaid deductible are allowable FAP expenses.

The medical expenses are not overdue.

The Department will estimate an SDV person's medical expenses for the benefit period. The expense does **not** have to be paid to be allowed. Allow medical expenses when verification of the portion paid, or to be paid by insurance, Medicare, Medicaid, etc. is provided. Allow **only** the non-reimbursable portion of a medical expense. The medical bill cannot be overdue.

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. See BEM 554, p. 11.

The Department will verify allowable medical expenses including the **amount of reimbursement**, at initial application and redetermination. Verify reported changes in the source or amount of medical expenses if the change would result in an increase in benefits. BEM 554, p. 11.

Do not verify other factors, unless questionable. Other factors include things like the allowability of the service or the eligibility of the person incurring the cost. BEM 554, p. 11.

BEM 554, p. 12, indicates that acceptable verification sources include, but are not limited to:

- Current bills or written statement from the provider, which show all amounts paid by, or to be paid by, insurance, Medicare or Medicaid.
- Insurance, Medicare or Medicaid statements which show charges incurred and the amount paid, or to be paid, by the insurer.
- DHS-54A, Medical Needs, completed by a licensed health care professional.
- SOLQ for Medicare premiums.
- Written statements from licensed health care professionals.
- Collateral contact with the provider. (Most commonly used to determine cost of dog food, over-the-counter medication and health-related supplies, and ongoing medical transportation).

In the instant matter, Petitioner requested a hearing because the Department reduced his monthly FAP benefits from \$ [REDACTED] to \$ [REDACTED]. Petitioner contends the Department failed to properly process evidence that he sent concerning his self-employment income and expenses (medical). The Department, on the other hand, contends that Petitioner's FAP case was correctly calculated using his 2015 income tax returns as a primary source verification and the expense receipts that were provided. Petitioner states that he provided additional expense receipts that were not budgeted.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The first issue concerns whether Petitioner forwarded the Department with the verifications that were necessary for the determination of his income. Here, Petitioner says that the Department should not have used his 2015 income tax returns to determine his projected income. [Exh. 1, pp. 12-15]. However, BEM 502, p. 7 provides that an income tax return shall be used as the primary source provided the following conditions exist: (1) the client hasn't started or ended self-employment, or received an increase/decrease in income, etc.; (2) the tax return is still representative of future income; and (3) the client filed a tax return. Here, the record shows that the second condition was not met because Petitioner had started self-employment and he received changes in his income. According to BEM 502, p. 7, the Department should not have relied upon the 2015 income tax return, but instead should

have forwarded Petitioner with a DHS-431 form to be completed and returned along with his self-employment receipts as a secondary source.

Next, this Administrative Law Judge finds Petitioner's contention that he submitted his Medicare expenses, pharmacy receipts and deductible amounts to the Department but that these items were not calculated. The record shows that the Department did not follow BEM 554 because it did not obtain the necessary and relevant medical expenses from Petitioner, before processing his FAP case. According to BEM 554, p. 3, the Department **must** verify the responsibility to pay and the amount of certain expenses and must document verification in the case record. In addition, BEM 554, p. 3, indicates that the Department shall **not** budget expenses that require verification until the verification is provided. The Department cannot determine FAP eligibility and benefit level without an expense requiring verification if it cannot be verified.

In this matter, Petitioner was attempting in good faith to provide the Department with necessary verifications for self-employment income and expenses, but the Department did not appear to extend itself to assist Petitioner in obtaining these verifications. See BEM 502, p. 6. The Quick Note that was provided was insufficient communication and did not provide Petitioner with clear instructions regarding what was needed in order for Petitioner to have an accurate eligibility determination for his FAP benefit amount.

Based on the material, competent, and substantial evidence on the whole record, this Administrative Law Judge finds that the Department did not follow all applicable policies when reduced Petitioner's FAP benefits.

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 reduced Petitioner's FAP benefits from \$ [REDACTED] to \$ [REDACTED].

DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED**.

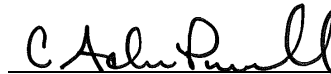
THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reprocess and redetermine Petitioner's FAP benefits back to April 1, 2017.

2. Provide Petitioner with written communication of the above findings following the redetermination.
3. To the extent required by policy, the Department shall provide Petitioner with retroactive and/or supplemental FAP benefits.

IT IS SO ORDERED.

CAP/md



C. Adam Purnell
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]

Petitioner

[REDACTED]