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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: August 11, 2017  
MAHS Docket No.: 17-009013  
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; 42 CFR 438.400 to 438.424; 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. Petitioner was present for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist.

### **ISSUES**

1. Did the Department properly calculate Petitioner's Food Assistance Program (FAP) allotment effective [REDACTED]?
2. Did the Department fail to process Petitioner's eligibility for the Medicare Savings Program (MSP) 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 recipient of FAP benefits.
2. On [REDACTED], Petitioner applied for Medical Assistance (MA) benefits.
3. On [REDACTED], the Department sent Petitioner a Health Care Coverage Determination Notice (determination notice) notifying her she was eligible for MA benefits effective [REDACTED], ongoing. The determination notice indicated

that her children were not eligible for MSP benefits effective [REDACTED]; however, the determination notice did not address Petitioner's MSP eligibility. [Exhibit A, pp. 25-28.]

4. For [REDACTED], ongoing, Petitioner received \$ [REDACTED] in benefits. [Exhibit B, pp. 7-8.]
5. On [REDACTED], Petitioner filed a hearing request, protesting the Department's action.

### **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.

### **Preliminary matters**

On [REDACTED], the Department sent Petitioner a Notice of Case Action (case action) notifying her that she was approved for FAP benefits for [REDACTED] [REDACTED], in the amount of \$ [REDACTED] and \$ [REDACTED] effective [REDACTED], ongoing. [Exhibit A, pp. 9-14.] Also, on [REDACTED], the Department sent Petitioner another case action notifying her that her FAP benefits decreased to \$ [REDACTED] effective [REDACTED]. [Exhibit A, pp. 18-21.] And finally, on [REDACTED], the Department sent Petitioner another case action notifying her that her FAP benefits decreased to \$ [REDACTED] effective [REDACTED]. [Exhibit A, pp. 30-33.] On [REDACTED], Petitioner filed a hearing request, protesting her FAP benefits. Specifically, Petitioner testified that she is disputing her FAP benefits from [REDACTED] to current. However, the undersigned Administrative Law Judge (ALJ) lacks the jurisdiction to address Petitioner's FAP benefits from [REDACTED] because her hearing request was not filed

within 90 days of the case actions. See BAM 600 (October 2016 and April 2017), p. 6, (the client or Authorized Hearing Representative (AHR) has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days). The three case actions sent in this case addressed Petitioner's FAP allotment from [REDACTED]; however, due to her failure to submit a timely hearing request, the undersigned cannot address these time periods. As such, Petitioner's FAP hearing request is DISMISSED for the time period of [REDACTED] for lack of jurisdiction. However, the undersigned will address Petitioner's FAP allotment from [REDACTED], ongoing. Policy states that the Petitioner can dispute the current level of benefits. See BAM 600, p. 5. And, therefore, because Petitioner's hearing request was also disputing her current level of benefits and it was received on [REDACTED], the undersigned has the jurisdiction to address her FAP allotment effective [REDACTED], ongoing. See BAM 600, p. 5.

Additionally, Petitioner disputed the Department's failure to process her MSP eligibility, which will also be addressed below.

### **FAP benefits** [REDACTED]

In the present case, the undersigned reviewed the FAP budget from [REDACTED] in the present matter. [Exhibit B, pp. 7-8.]

First, it was not disputed that the certified group size is three and that Petitioner is a senior/disabled/disabled veteran (SDV) member.

Next, the Department calculated Petitioner's gross unearned income to be \$ [REDACTED] which Petitioner disputed. [Exhibit B, p. 7.] This amount consisted of Petitioner's \$ [REDACTED] in gross Retirement, Survivors and Disability Insurance (RSDI) benefits, each of her two children receiving \$ [REDACTED] in Social Security benefits (\$ [REDACTED] totaling for both children), and \$ [REDACTED] in child support income, resulting in a total of \$ [REDACTED]. The Department presented a State On-Line Query (SOLQ) showing she received \$ [REDACTED] in gross RSDI benefits. [Exhibit B, pp. 1-3.] The Department also showed that Petitioner received an average of \$ [REDACTED] in child support direct (court-ordered) payments from [REDACTED]. [Exhibit B, pp. 5-6.]

The Department counts the gross RSDI benefit amount as unearned income. BEM 503 (April 2017), p. 28. Policy additionally states the Department uses the average of child support payments received in the past three calendar months, unless changes are expected. BEM 505 (April 2017), p. 4. Include the current month if all payments expected for the month have been received. BEM 505, p. 4. Do not include amounts that are unusual and not expected to continue. BEM 505, p. 4.

Based on the foregoing information and evidence, the Department properly calculated Petitioner's gross unearned income to be \$ [REDACTED] BEM 503, p. 28, and BEM 505, p. 4. The Department properly used Petitioner's gross RSDI income of \$ [REDACTED] plus the \$ [REDACTED] in total Social Security benefits the children receive, plus the three-calendar-month

average of \$ [REDACTED] in child support income she receives, which results in the \$1,445 gross unearned income calculation.

Next, the Department properly applied the \$ [REDACTED] standard deduction applicable to Petitioner's group size of three. [Exhibit B, p. 7 and RFT 255 (October 2016), p. 1.] Then, the Department calculated Petitioner's medical deduction to be zero; however, this is incorrect. Petitioner was responsible for her \$ [REDACTED] Medicare premium for [REDACTED]. A review of her SOLQ showed that she received a net monthly benefit income of \$ [REDACTED] [Exhibit B, p. 1.] When the undersigned takes the \$ [REDACTED] premium and subtracts this from the \$ [REDACTED] gross RSDI income, the results is a net RSDI income of \$ [REDACTED]. Policy states that for groups with one more SDV member, the Department uses medical expenses for the SDV member that exceed \$ [REDACTED] BEM 554 (January 2017), p. 1. Allowable medical expenses include Medicare premiums. BEM 554, pp. 9-10. Based on this policy, the Department should have budgeted her Medicare premium as an allowable medical deduction, but it failed to do so. As such, the Department is ordered to recalculate Petitioner's medical deduction effective [REDACTED]. Now, it should be noted that the undersigned is conducting a separate analysis below to see if Petitioner was eligible for MSP benefits, which includes the benefit month of [REDACTED]. If Petitioner is deemed eligible for MSP benefits for [REDACTED], the Department might not be able to apply this deduction as it will be paid by the State of Michigan. Nevertheless, for purposes of this budget, at the time the Department calculated it, Petitioner paid for her premium; and the Department failed to budget it as a medical deduction, which is against policy. See BEM 554, pp. 1 and 8-12.

Also, the Department presented the FAP – Excess Shelter Deduction budget (shelter budget), which indicated that Petitioner's monthly housing expense is zero, which Petitioner disputed. [Exhibit B, p. 9.] Petitioner testified that her monthly housing expense should be \$ [REDACTED] which consists of her monthly payment plan to pay for her property taxes. The Department, though, testified that it never received any such verification. When reviewing the evidence record, the undersigned discovered that the Department had been budgeting \$ [REDACTED] for her monthly housing expenses as recent as [REDACTED]. [Exhibit A, p. 36.] The Department indicated that this amount was a best estimate calculation of her monthly property taxes as shown in her "Property & Tax Information" that the caseworker relied on. [Exhibit A, p. 8.] But effective [REDACTED], the Department removed the property expense from the budget because it did not receive any proof of a payment plan for the property taxes. On [REDACTED], the Department did send Petitioner a Verification Checklist (VCL) requesting proof of property taxes, which was due back by [REDACTED]. [Exhibit A, pp. 5-6.] However, the Department argued that Petitioner failed to provide any proof of her property taxes; but as stated above, it wasn't until [REDACTED] that the Department finally removed this expense. Petitioner failed to provide any proof of her property tax payment plan for the evidence record.

The Department allows a shelter expense when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554, p. 12. Property taxes, state and local assessments and insurance on the structure are allowable expenses. BEM 554, p. 13.

The Department verifies shelter expenses at application and when a change is reported. BEM 554, p. 14. If the client fails to verify a reported change in shelter, remove the old expense until the new expense is verified. BEM 554, p. 14.

Based on the foregoing information and evidence, the Department properly removed Petitioner's shelter expense (property taxes) from the [REDACTED] budget. The Department established that it requested verification of her property taxes in [REDACTED] and she failed to provide any such verifications. [Exhibit A, pp. 5-6.] As such, the Department properly removed the shelter expense (property taxes) in accordance with Department policy. BEM 554, p. 14.

Finally, the Department also provided Petitioner with the \$ [REDACTED] mandatory heat and utility (h/u) standard, which encompasses all utilities (water, gas, electric, telephone) and is unchanged even if a client's monthly utility expenses exceed the \$ [REDACTED] amount. [Exhibit B, p. 9; BEM 554, pp. 14-16; and RFT 255, p. 1.]

In sum, because the Department did not properly calculate Petitioner's medical deduction, the Department is ordered to recalculate Petitioner's FAP allotment effective [REDACTED], ongoing, in accordance with Department policy.

### **MSP application**

The second issue Petitioner disputed was the Department's failure to process her eligibility for MSP benefits when she applied for MA benefits on [REDACTED]. The Department reviewed its system and discovered several determination notices that were generated addressing her MA eligibility. However, it appeared that the determination notice dated [REDACTED], was the determination notice generated in response to her MA application dated [REDACTED]. [Exhibit A, pp. 25-26.] A review of the determination notice finds that the Department conducted an MSP eligibility for her children because it stated they were not eligible for MSP benefits effective [REDACTED]. [Exhibit A, p. 26.] However, the determination notice fails to show that it determined Petitioner's eligibility for MSP benefits.

The Medicare Savings Programs are Supplemental Security Income (SSI)-related MA Categories. BEM 165 (October 2016), p. 1. The three Medicare Savings Programs are Qualified Medicare Beneficiaries (also known as full-coverage QMB); Specified Low-Income Medicare Beneficiaries (also referred to as limited coverage QMB and SLMB); and Additional Low-Income Medicare Beneficiaries (also known as ALMB or Q1). BEM 165, p. 1.

The Department determines eligibility and benefit amounts for all requested programs. BAM 105 (October 2016), p. 18. If the group is ineligible or refuses to cooperate in the application process, certify the denial within the standard of promptness to avoid receiving an overdue task in Bridges. BAM 115 (October 2016 and January 2017), p. 23. Medicaid denials receive a DHS-1606, Health Care Coverage Determination Notice. BAM 115, p. 23. The Department sends the DHS-1606 detailing Medicaid approvals. BAM 115, p. 24.

Based on the foregoing information and evidence, the undersigned finds that the Department failed to process Petitioner's eligibility for MSP benefits when she submitted her MA application on [REDACTED]. The Department agreed. In the present case, the evidence is sufficient to show that Petitioner also applied for MSP benefits on [REDACTED]. The undersigned based this analysis on the determination notice dated [REDACTED], which appeared to be the determination notice generated in response to her MA application dated [REDACTED]. [Exhibit A, pp. 25-26.] In this determination notice, the Department processed the children's eligibility for MSP benefits, but failed to show that it processed Petitioner's eligibility for MSP benefits. [Exhibit A, pp. 25-26.] Based on this information, it shows to the undersigned that an MSP eligibility determination was conducted for the [REDACTED] application, but only for the children, and not Petitioner. Therefore, the undersigned finds that Department failed to satisfy its burden of showing that it properly determined Petitioner's eligibility for MSP benefits effective [REDACTED]. See BAM 105, p. 18 and BAM 115, pp. 23-24. It should be noted that Petitioner was found to be eligible for MSP benefits effective [REDACTED] [Exhibit A, p. 41.]

### **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 did not act in accordance with Department policy when it improperly calculated Petitioner's FAP benefits effective [REDACTED]; and (ii) the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it failed to process her eligibility for MSP benefits effective [REDACTED].

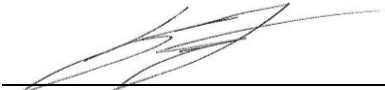
Accordingly, the Department's FAP and MSP decision is **REVERSED**.

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. Recalculate the FAP budget, including the medical deduction, for [REDACTED], ongoing;
2. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from [REDACTED], ongoing;
3. Initiate registration and processing of Petitioner's MSP eligibility for her application dated [REDACTED];
4. Issue supplements to Petitioner for any MSP benefits she was eligible to receive but did not in accordance with Department policy; and
5. Notify Petitioner of its decision.

**IT IS ALSO ORDERED** that Petitioner's **FAP** hearing request concerning her benefits from [REDACTED] is **DISMISSED** for lack of jurisdiction.

EJF/jaf



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**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]

**Petitioner**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]