



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 3, 2017
MAHS Docket No.: 17-001383
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 three way telephone hearing was held on February 27, 2017, from Detroit, Michigan. The Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by Kathleen Scorpio-Butina, Hearing Facilitator.

ISSUE

Did the Department properly calculate the amount of Petitioner's 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 was an ongoing recipient of FAP benefits.
2. In connection with a redetermination, Petitioner's eligibility to receive FAP benefits was reviewed.
3. Petitioner was approved for and received \$194 in FAP benefits for the month of December 2016.
4. Petitioner's FAP benefits were reduced to \$16 effective January 1, 2017.

5. Petitioner receives gross monthly income from Retirement, Survivors and Disability Insurance (RSDI) benefits in the amount of \$1,558. (Exhibit B)
6. Petitioner has confirmed housing expenses consisting of property taxes and homeowner's insurance. Petitioner is responsible for heat and utility (h/u) expenses.
7. On or around [REDACTED], 2017, Petitioner requested a hearing disputing the Department's actions with respect to the calculation of his FAP benefits for the month of January 2017.

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.

In this case, Petitioner requested a hearing disputing the Department's actions with respect to his FAP case. Petitioner raised two concerns at the hearing: the reduction in his FAP benefits to \$16 effective January 2017 and his FAP benefits for January 2017 not being loaded on to his FAP card. Petitioner stated that he did not receive the \$16 in FAP benefits for the month of January 2017 but confirmed receiving \$16 in FAP benefits for February 2017.

At the hearing, the Department stated that after updating Petitioner's FAP budget at redetermination and removing old medical expenses from the medical deduction, it determined that Petitioner was eligible to receive \$16 monthly in FAP benefits. The Department acknowledged that it did not send Petitioner notice of the decrease in his FAP allotment, until February 2, 2017, when a manual Benefit Notice was issued. (Exhibit A, pp. 7-8). The Department presented a FAP EDG Net Income Results Budget for January 2017 which was reviewed to determine if the Department properly concluded that Petitioner was eligible to receive \$16 in monthly FAP benefits. (Exhibit A, pp. 4-5).

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits. BEM 500 (January 2016), pp. 1-5.

The Department considers the gross amount of money earned from RSDI in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (January 2017), pp. 28-32. The Department concluded that Petitioner had unearned income of \$1558 which it testified consisted of his gross monthly RSDI benefits. The Department presented a SOLQ in support of its testimony. (Exhibit B). While Petitioner confirmed that the gross amount of his RSDI benefit is \$1558, Petitioner stated that about \$15 is withheld from his monthly benefit to pay an outstanding attorney bill. Because gross income includes amounts withheld due to the repayment of a debt or to meet a legal obligation, the Department properly determined that Petitioner had monthly unearned income of \$1558. BEM 500, pp. 4-5.

The deductions to income on the net income budget were also reviewed. Petitioner's group includes a senior/disabled/veteran (SDV) member. BEM 550 (October 2015), pp. 1-2. Groups with one or more SDV members are eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Medical expenses for the SDV member(s) that exceed \$35.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (June 2016), p. 1; BEM 556 (July 2013), p. 3.

In this case, Petitioner did not have any earned income; and there was no evidence presented that he had any out-of-pocket dependent care, or child support expenses. Therefore, the budget properly did not include any deduction for earned income, dependent care, or child support. Based on his confirmed one-person group size, the Department properly applied the \$151 standard deduction. RFT 255 (October 2016), p. 1.

With respect to the \$285 excess shelter deduction, the Department testified that because Petitioner reported no changes on the redetermination, it considered \$322.25 in total housing expenses consisting of monthly property taxes in the amount of \$140.89 and monthly homeowner's insurance in the amount of \$181.36. BEM 554, pp. 13-14. Petitioner confirmed that the housing expenses relied upon by the Department were accurate. The Department also properly considered the \$526 heat and utility standard. BEM 554, pp.14-15.

The budget shows a medical deduction of \$280, which Petitioner disputed. The Department testified that in completing the January 2017 FAP budget, it removed a \$2084 medical deduction that was previously being applied, mainly due to Petitioner's out of pocket responsibility for chore provider services. The Department testified that because Petitioner was approved for the MI Choice Waiver program effective January

2017, he was no longer eligible for the deduction on the FAP budget. The Department stated that the current \$280 medical deduction was based on Petitioner's responsibility for Medicare Part B insurance premiums in the amount of \$110.00, which is reflected on the SOLQ. However, the calculation as explained by the Department is not accurate, as \$110 less \$35 does not total \$280. The Department testified that other ongoing medical expenses may have been considered, however, the Department could not identify the exact amounts.

As indicated above, for FAP groups with SDV members, the Department must apply a medical expense deduction in calculating FAP eligibility for verified out-of-pocket medical expenses in excess of \$35 incurred by the SDV member of the group. BEM 554 (October 2015 and July 2016), p. 1; BEM 556 (July 2013), pp. 4-5. The allowable medical expenses that are to be considered by the Department are found in BEM 554, at pp. 9-11. The Department will allow only the non-reimbursable portion of a medical expense and the medical bill cannot be overdue to be considered in an FAP budget. BEM 554, p. 11. A medical bill is not overdue if: it is currently incurred (for example, in the same month, ongoing); currently billed (client is receiving bill for the first time for a medical expense provided earlier and the bill is not overdue); or the client made a payment arrangement before the medical bill became overdue. BEM 554, p. 11. Additionally, a medical expense does not have to be paid to be allowed; and the Department can accept a written statement from a licensed health care professional as verification. BEM 554, pp. 11-12.

For FAP groups that do not have a 24-month benefit period, a one-time-only medical expense may be budgeted for one month or averaged over the balance of the benefit period. BEM 554, pp. 8-9. For groups that have 24-month benefit period and the medical expense was billed or due within the first 12 months of the benefit period, the expense can be budgeted for one month, averaged over the remainder of the first 12 months of the benefit period, or averaged over the remainder of the 24-month benefit period. BEM 554, p. 9.

Petitioner testified that he submitted medical expenses to the Department that should have been applied to his FAP budget. Petitioner stated that along with ongoing medical expenses, in January 2017, he submitted invoices from the hospital, including one in the amount of \$454. The Department confirmed that it received medical expenses from Petitioner on or around January 13, 2017. However, the Department could not explain when or if the expenses were processed and how they were applied to Petitioner's FAP budget, if at all. It was unclear based on the testimony provided which expenses were processed and applied to Petitioner's FAP budget. Thus, the Department failed to establish that it properly calculated the \$280 medical deduction as reflected on the FAP budget.

Therefore, based on the evidence presented, because the Department failed to establish that it properly calculated Petitioner's medical deduction, the Department

failed to act in accordance with Department policy in processing the medical expenses and calculating Petitioner's FAP benefits for January 2017, ongoing.

Petitioner raised an additional concern at the hearing regarding not receiving his approved \$16 in FAP benefits for the month of January 2017. Petitioner asserted that he called to check the balance on his FAP card on January 7, 2017, and for the days following and the benefits were not loaded on to his card. The Department presented a benefit issuance summary and Client/Vendor Details documents showing that Petitioner's FAP benefits for the month of January 2017 in the amount \$16 were issued/paid and made available on January 7, 2017. (Exhibit C). Thus, Petitioner has failed to establish that he did not receive his FAP benefits for the month of January 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 the Department finds that the Department did not act in accordance with Department policy when it failed to process Petitioner's medical expenses and when it calculated his FAP benefits for January 2017 ongoing.

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. Recalculate Petitioner's FAP budget for January 2017 ongoing taking into consideration the applicable medical expenses that were submitted;
2. Issue supplements to Petitioner for any FAP benefits he was eligible to receive but did not for January 2017 ongoing; and
3. Notify Petitioner in writing of its decision.

ZB/tlf



Zainab A. Baydoun

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

DHHS Hearings Coordinator – 20 – 1843
BSC4 Hearing Decisions
M. Holden
D. Sweeney
MAHS

Petitioner

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