



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: March 29, 2017
MAHS Docket No.: 17-002707
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 via three-way telephone conference on March 23, 2017, from Detroit, Michigan. Petitioner and her husband [REDACTED] appeared and represented themselves. The Department of Health and Human Services (Department) was represented by Kathleen Scorpio-Butina, backup hearing facilitator.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefits?

Did the Department properly determine that Petitioner's husband was eligible for Medicaid (MA) subject to a monthly \$1065 deductible?

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 and her husband reside in [REDACTED] County.
2. On [REDACTED], 2016, Petitioner applied for FAP.

3. At the time of application, Petitioner received gross monthly Retirement, Survivors and Disability Insurance (RSDI) income of \$805 and her husband received gross monthly RSDI income of \$688.
4. On December 2, 2016, the Department sent Petitioner a Notice of Case Action notifying her that her application was approved for \$43 in FAP benefits for November 7, 2016 to November 30, 2016 and for \$54 in monthly FAP benefits for December 2016 ongoing (Exhibit A, pp. 1-2).
5. Effective January 1, 2017, Petitioner's monthly RSDI increased to \$807 and her husband's increased to \$690.
6. On January 17, 2017, the Department sent Petitioner a Notice of Case Action notifying her that her monthly FAP benefits were decreasing to \$53 effective February 1, 2017 (Exhibit A, pp. 13-14).
7. On January 17, 2017, the Department sent Petitioner a Health Care Coverage Determination Notice notifying her that effective January 1, 2017 her husband was eligible for MA subject to a \$1065 monthly deductible (Exhibit A, pp. 21-22).
8. On [REDACTED], 2017, Petitioner filed an application for FAP and MA and the Department updated Petitioner's case.
9. On February 21, 2017, the Department sent Petitioner a Notice of Case Action notifying her that her monthly FAP benefits were increasing to \$56 effective March 1, 2017 (Exhibit A, pp. 17-18).
10. On [REDACTED] 2017, the Department received Petitioner's request for hearing disputing her FAP and MA cases.

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).

Petitioner's husband submitted a hearing request disputing the Department's actions concerning the group's FAP and MA cases. At the hearing, Petitioner's husband clarified that the concern was the calculation of the household's monthly FAP benefits and his MA deductible case.

FAP

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.

Petitioner filed a hearing request on [REDACTED], 2017 disputing the amount of her FAP benefits. In a December 2, 2016 Notice of Case Action, Petitioner was approved for monthly FAP benefits of \$54 effective December 2016 ongoing (with \$43 in prorated FAP benefits for application month based on the [REDACTED] 2016 application date). Monthly benefits were decreased to \$53 for February 2017 and increased to \$56 for March 2017 ongoing. Because Petitioner's [REDACTED] 2017 hearing request was filed within 90 days of the December 2, 2016 Notice of Case Action, the initial FAP amount as well as the changes were reviewed at the hearing. See BAM 600 (October 2016), p. 6.

The Department presented a FAP net income budget for November 2016 ongoing showing the calculation of FAP benefits as of the date of the [REDACTED] 2016 FAP application that was reviewed with Petitioner at the hearing (Exhibit A, pp. 9-11). Petitioner and her husband confirmed their receipt of gross monthly RSDI income totaling \$1493 in November 2016. The budget correctly shows total gross unearned income of \$1493.

The deductions to income shown on the FAP net income budget were also reviewed with Petitioner and her husband. Because Petitioner and her husband receive RSDI benefits based on a disability, they are senior/disabled/veteran (SDV) members of their FAP group. See BEM 550 (January 2017), pp 1-2. For groups with one or more SDV members and no earned income, the following deductions are available from the group's total income:

- Standard deduction.
- 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.

BEM 554 (January 2017), p. 1.

Based on Petitioner's two-person FAP group, Petitioner was eligible for a \$151 standard deduction, as shown on the budget. RFT 255 (October 2016), p. 1. Petitioner and her husband confirmed that they had no day care or out-of-pocket medical expenses.

Therefore, the Department properly provided no deduction for those expenses in the budget.

Petitioner's husband has child support expenses. The Department testified that it calculated \$333 in monthly child support expenses by taking the average of the monthly payments for the three months preceding the application month (August, September and October 2016). Department policy provides that a child support expense deduction to the FAP budget is allowed for the amount of court-ordered child support and arrearages paid by the household members to non-household members **in the benefit month**. BEM 554, p. 6 (emphasis provided). In the month of application, [REDACTED] 2016, Petitioner paid \$344 in child support. Therefore, the Department did not act in accordance with policy when it used \$333 for monthly child support in the FAP budget prepared in connection with the application.

The final deduction available, the excess shelter deduction, is based on the FAP group's monthly shelter expenses and the utility standard applicable to the client's case, if any. BEM 556 (July 2013), pp. 4-5. In this case, Petitioner and her husband conceded that the only utility expense they were responsible for was telephone. Therefore, the Department properly applied the \$33 telephone standard in calculating the excess shelter deduction. BEM 554, pp. 20-23; RFT 255, p. 1. The Department did not receive verification of shelter expenses until December 1, 2016, which was after the November 28, 2016 verification checklist due date. However, it was received prior to the date the Department sent the December 2, 2016 Notice of Case Action. Therefore, the Department should have included the rent in determining the excess shelter deduction in the November 2016 budget and did not act in accordance with Department policy when it failed to do so.

The Department updated Petitioner's FAP case effective February 2017 and again in March 2017. The FAP budget for February 2017 reflects the increase in Petitioner's gross monthly RSDI income to \$807 and Petitioner's husband's gross monthly income to \$690, resulting in total gross household income of \$1497. While the January 17, 2017 Notice of Case Action shows that the Department properly considered the increased income and the rent expenses for February 2017, the budget continues to show child support of \$333 rather than \$344.

Because the amount of the child support deduction is incorrect for the November 2016 to the February 2017 FAP budgets and the Department improperly excluded the housing expenses for the November 2016 to January 2017 budgets, the Department did not act in accordance with Department policy in calculating Petitioner's FAP benefits for November 2016 to February 2017.

The FAP budget for March 2017 shows that the Department properly considered the child support expenses of \$344, as well as monthly housing expenses of \$360. Petitioner's household's gross monthly income of \$1497 reduced by the \$151 standard deduction of \$151 and \$344 child support deduction results in adjusted gross income of

\$1002. Based on monthly housing expenses of \$360 and a telephone standard of \$33, Petitioner has monthly shelter expenses of \$393. Because Petitioner's monthly shelter expenses are less than 50% of her household's adjusted gross income (or \$501), Petitioner is not eligible for an excess shelter deduction. See BEM 556, pp. Therefore, Petitioner's adjusted gross income is her net income. Based on net income of \$1002 and a FAP group size of two, Petitioner is eligible for monthly FAP benefits of \$56 (October 2016), p. 13. Therefore, the Department acted in accordance with Department policy in calculating Petitioner's FAP benefits for March 2016 ongoing.

MA

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.

The Department testified that Petitioner's husband had been receiving full-coverage MA as a recipient of Supplemental Security Income (SSI) but he was no longer eligible for this coverage when he began receiving RSDI benefits rather than SSI. Under Department policy, SSI recipients are eligible for full-coverage MA. However, consistent with the Department's finding, once Petitioner's husband no longer received SSI, he was no longer eligible for MA for SSI recipients. BEM 150 (October 2015), p. 1.

Because Petitioner's husband was no longer eligible for MA for SSI recipients, the Department was required to conduct an ex parte review to determine his eligibility for other MA coverage. BAM 210 (January 2017), p. 2. MA is available (i) under SSI-related categories to individuals who are aged (65 or older), blind or disabled, (ii) to individuals who are under age 19, parents or caretakers of children, or pregnant or recently pregnant women, and (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage. BEM 105 (October 2016), p. 1; BEM 137 (October 2016), p. 1. HMP is a Modified Adjusted Gross Income (MAGI)-related MA category that provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income at or below 133% of the federal poverty level (FPL) under the MAGI methodology; (iii) do not qualify for or are not enrolled in Medicare; (iv) do not qualify for or are not enrolled in other MA programs; (v) are not pregnant at the time of application; and (vi) are residents of the State of Michigan. BEM 137, p. 1.

If a person qualifies under more than one MA category, federal law gives the person the right to the most beneficial category, which is the one that results in eligibility, the least amount of excess income or the lowest cost share; the Department must consider **all** MA category options in order for the client's right of choice to be meaningful. BEM 105, p. 2. The Department testified that it determined based on its ex parte review that, because Petitioner's husband was disabled, he was eligible for MA under an SSI-

related program subject to a monthly \$1065 deductible. At the hearing, the Department explained that Petitioner's husband's eligibility for HMP would have been considered during the ex parte review but it did not present any evidence in support of its position that Petitioner's husband was not eligible for coverage under HMP. To the contrary, the January 17, 2017 Health Care Coverage Determination Notice explained that Petitioner's husband was not eligible for HMP because he did not apply for health care coverage (Exhibit A, p. 23), which indicates that the Department did not consider his eligibility for HMP.

At the hearing, Petitioner's husband testified that he was 57 years old and not a recipient of Medicare. Based on Petitioner's husband's testimony that he and Petitioner did not file taxes and claimed no dependents, they would have a group size of two for MAGI purposes. BEM 211 (January 2016), p. 2. The income limit for HMP eligibility for a two person group is \$21,599.20. <https://aspe.hhs.gov/poverty-guidelines>. Based on monthly income of \$1497, Petitioner's household's gross monthly income is \$17,964. Therefore, the household's income is less than the income limit for HMP eligibility for a two-person group. The Department has failed to present any evidence to establish that it properly considered and denied Petitioner's husband's eligibility for MA coverage under HMP. Because Petitioner's husband could justifiably conclude that coverage under HMP was more beneficial than coverage under the SSI-related MA subject to a \$1065 monthly deductible, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy in considering Petitioner's husband's eligibility for MA under all MA categories.

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 (i) acted in accordance with Department policy when it calculated Petitioner's FAP benefits for March 1, 2017 ongoing; (ii) did not act in accordance with Department policy when it calculated Petitioner's FAP benefits for November 7, 2016 through February 28, 2017; and (iii) failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that the best available MA coverage for Petitioner's husband was for SSI-related MA subject to a \$1065 monthly deductible.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the calculation of Petitioner's FAP benefits for March 1, 2017 ongoing and **REVERSED IN PART** with respect to the calculation of Petitioner's FAP benefits for November 7, 2016 to February 28, 2017 and the determination that Petitioner's husband was eligible for MA subject to a \$1065 deductible.

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 benefits for November 7, 2016 to February 28, 2017;
2. Issue supplements to Petitioner for FAP benefit she was eligible to receive but did not for November 7, 2016 to February 28, 2017;
3. Reassess Petitioner's husband's MA eligibility for January 1, 2017 ongoing to provide him with the best available option;
4. Provide Petitioner's husband with the best available MA coverage from January 1, 2017 ongoing; and
5. Notify Petitioner in writing of its FAP and MA decisions.



ACE/tlf

Alice C. Elkin

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

Via Email:

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

Via First-Class Mail:

Petitioner

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

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
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