



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: May 4, 2017
MAHS Docket No.: 17-004103
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; 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 April 27, 2017, from Detroit, Michigan. Petitioner was present for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearings Facilitator.

ISSUES

1. Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits effective March 1, 2017?
2. Did the Department properly calculate Petitioner's FAP allotment effective March 13, 2017?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. In February 2017, Petitioner submitted his Redetermination and also conducted a Redetermination telephone interview. Exhibit A, p. 1.
2. In prior years, Petitioner had reported that he had a [REDACTED] card and a [REDACTED] Bank account, but did not report on his Redetermination or during the Redetermination telephone interview that there had been a change with these accounts.

3. As a result, the Department sent Petitioner a Verification Checklist (VCL) on February 16, 2017, requesting verification of his property taxes, home insurance, medical expenses, checking account, Verification of Assets for the [REDACTED] Bank account, and Verification of Assets for the [REDACTED] card. All the verifications were due back by February 27, 2017, but for the redetermination process, he had until the end of the current benefit period to submit the verifications, which was February 28, 2017. Exhibit A, pp. 26-31.
4. On February 28, 2017, Petitioner submitted a Verification of Assets for his [REDACTED] card, but it appeared to be verification of his [REDACTED] Bank account instead because the verification showed the account number for his [REDACTED] Bank account.
5. On February 28, 2017, Petitioner also submitted verification of a letter from Petitioner, his mortgage statement, his homeowners, and his medical bills.
6. The Department did not receive verification of [REDACTED] card by the end of the current benefit period.
7. On March 1, 2017, the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits would close effective March 1, 2017, ongoing, because he failed to comply with the verification requirements. Exhibit A, pp. 8-10.
8. On March 13, 2017, the Department received the remaining verifications and, therefore, reprocessed his eligibility for FAP benefits. Exhibit A, p. 1.
9. On March 21, 2017, the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits were approved for zero for the period of March 13, 2017, to March 31, 2017, and \$16 effective April 1, 2017, ongoing. Exhibit A, pp. 11-13.
10. On March 28, 2017, Petitioner filed a hearing request, protesting the Department's action. Exhibit A, pp. 2-7.

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.

Preliminary matter

Based on the Petitioner's hearing request and testimony, he is disputing the following: (i) the closure of his FAP benefits effective March 1, 2017; and (ii) the subsequent calculation of his FAP benefits effective March 13, 2017, ongoing. Exhibit A, pp. 2-7. The undersigned Administrative Law Judge (ALJ) will address each issue separately below:

FAP closure

To complete the redetermination process, the Department will generate a verification checklist (VCL) for any missing verifications. BAM 210 (January 2017), pp. 17-18.

For FAP cases, verifications must be provided by the end of the current benefit period or within 10 days after they are requested, whichever allows more time. BAM 210, p. 16. If the tenth day falls on a weekend or holiday, the verification will not be due until the next business day. BAM 210, p. 16. Note: the DHS-3503, Verification Checklist, should be sent after the redetermination interview for any missing verifications allowing 10 days for their return. BAM 210, p. 16.

In February 2017, Petitioner submitted his Redetermination and also conducted a Redetermination telephone interview. Exhibit A, p. 1. In prior years, Petitioner had reported that he had a [REDACTED] card and a [REDACTED] Bank account, but did not report on his Redetermination or during the Redetermination telephone interview that there had been a change with these accounts. As a result, the Department sent Petitioner a VCL on February 16, 2017, requesting verification of these two accounts and other verifications. Exhibit A, pp. 26-31. All the verifications were due back by February 27, 2017, but for the redetermination process, policy states that he had until the end of the current benefit period to submit the verifications, which was February 28, 2017. Exhibit A, pp. 26-31 and BAM 210, p. 16.

On February 28, 2017, Petitioner submitted a Verification of Assets for his [REDACTED] card, but it appeared, though, to be verification of his [REDACTED] Bank account instead because the verification showed the account number for his [REDACTED] Bank account. The Department indicated he also submitted a letter, his mortgage statement, his homeowners, and his medical bills. However, the Department argued that due to his failure to submit his [REDACTED] card verification the end of the benefit period, his FAP benefits closed.

In response, Petitioner testified that he had closed his [REDACTED] card; and he now had his Social Security benefits deposited into his [REDACTED] Bank account. Thus, Petitioner testified that his only asset verification, which was his [REDACTED] Bank account. As noted, this appeared to be the verification that was submitted on February 28 2017.

Based on the foregoing information and evidence, the undersigned finds that the Department improperly closed Petitioner's FAP benefits effective February 1, 2017, in accordance with Department policy. The Department argued that Petitioner failed to submit all of his verification of assets by the due date. However, policy states that the Department sends a negative action notice when: the client indicates refusal to provide a verification, or the time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130 (January 2017), p. 7. In this case, the undersigned finds that Petitioner made a reasonable effort to provide verification of his assets on February 28, 2017, which was before his time period had elapsed. BAM 130, p. 7, and BAM 210, p. 16, (verifications must be provided by the end of the current benefit period). As stated above, Petitioner submitted verification of his assets for his [REDACTED] Bank account on February 28, 2017. Even though the Department did not receive the other requested asset verification, his [REDACTED] card, the undersigned still finds that Petitioner made a reasonable effort to provide verification of his assets before the time period had elapsed. As such, the Department improperly closed his FAP benefits in accordance with Department policy. BAM 130, p. 7 and BAM 210, p. 16. The Department is ordered to reinstate Petitioner's FAP benefits and redetermine his FAP eligibility effective March 1, 2017, ongoing, in accordance with Department policy.

FAP allotment

On March 13, 2017, the Department received the remaining verifications and, therefore, reprocessed his eligibility for FAP benefits. Exhibit A, p. 1. On March 21, 2017, the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits were approved for zero for the period of March 13, 2017, to March 31, 2017, and \$16 effective April 1, 2017, ongoing. Exhibit A, pp. 11-13. As a result of the Notice of Case Action dated March 21, 2017, Petitioner also disputed the calculation of his FAP benefits. The undersigned reviewed the FAP budget provided for the time period of March 13, 2017, ongoing. Exhibit A, pp. 20-21.

In the present case, Petitioner's certified group size is one; and he is a senior/disabled/disabled veteran (SDV) member.

First, the Department calculated Petitioner's gross unearned income to be \$1,548, which comprised of his Retirement, Survivors and Disability Insurance (RSDI) income. Exhibit A, p. 20. Petitioner did not dispute this amount. As such, the undersigned ALJ finds that the Department properly calculated Petitioner's gross unearned income in accordance with Department policy. See BEM 503 (January 2017), p. 28, (the Department counts the gross benefit amount of RSDI benefits as unearned income).

Then, once the Department adds together the total income Petitioner receives, the Department will minus any deductions that he might qualify for. See Exhibit A, p. 20. The first deduction the Department properly applied was the \$151 standard deduction applicable to Petitioner's group size of one. Exhibit A, p. 20, and RFT 255 (October 2016), p. 1.

Next, because Petitioner is an SDV member, he qualifies for any medical expenses that exceed \$35 as a deduction. BEM 554 (January 2017), p. 1. In this case, the Department did not budget any medical expenses for March 13, 2017, ongoing. Exhibit A, p. 20. However, Petitioner argued that he should be eligible for medical expenses. The Department also testified that it erred in the calculation of his medical deduction because it should have budgeted his Medicare Part B premium that he is responsible to pay for. Also, the Department acknowledged that Petitioner submitted medical bills on February 28, 2017.

Policy states that for groups with one or more SDV member, the Department allows medical expenses that exceed \$35. BEM 554, p. 1.

The Department estimates an SDV person's medical expenses for the benefit period. BEM 554, p. 11. The expense does not have to be paid to be allowed. BEM 554, p. 11. The Department allows medical expenses when verification of the portion paid, or to be paid by insurance, Medicare, Medicaid, etc. is provided. BEM 554, p. 11. The Department allows only the non-reimbursable portion of a medical expense. BEM 554, p. 11. The medical bill cannot be overdue. BEM 554, p. 11.

The Department verifies allowable medical expenses including the amount of reimbursement, at initial application and redetermination. BEM 554, p. 11. The Department verifies reported changes in the source or amount of medical expenses if the change would result in an increase in benefits. BEM 554, p. 11. The Department does not verify other factors, unless questionable. BEM 554, p. 11. Other factors include things like the allowability of the service or the eligibility of the person incurring the cost. BEM 554, p. 11.

Based on the foregoing information and evidence, the undersigned finds that the Department failed to properly budget Petitioner's medical expenses. As stated above, the Department acknowledged that it erred in the calculation of his medical expenses because it failed to budget his Medicare Part B premium. Moreover, it was discovered that Petitioner submitted medical expenses to the Department on February 28, 2017. The Department needs to process these reported medical expenses and determine if they can be applied as an allowable medical expense. See BEM 554, p. 11. As such, the Department is ordered to recalculate Petitioner's medical expenses deduction in accordance with Department policy. See BEM 554, pp. 1 and 8-12. It should be noted that Petitioner reported new medical expenses during the hearing. These newly reported medical expenses cannot be applied towards the March 1, 2017, ongoing, budget as they were just reported. However, the Department is now aware of these new medical expense for future benefits periods. See BEM 554, p. 11, (The Department verifies reported changes in the source or amount of medical expenses if the change would result in an increase in benefits).

Finally, the Department provides Petitioner with an excess shelter deduction, which is comprised of his housing costs and utility expenses. The Department presented his

shelter calculations from his Notice of Case Action dated March 21, 2017, which showed that his monthly housing expense is \$657.13. Exhibit A, pp. 11-12. Petitioner did not dispute this amount.

Additionally, the Department provided Petitioner with the \$526 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 \$526 amount. See Exhibit A, p. 12; BEM 554, pp. 14-16; and RFT 255, p. 1.

In summary, because the Department did not properly calculate Petitioner's medical expense deduction, the Department is ordered to recalculate Petitioner's FAP allotment effective March 13, 2017, ongoing. However, for purposes of the *Decision and Order* section below, the Department is already ordered to recalculate Petitioner's FAP benefits from March 1, 2017, ongoing because the undersigned concluded that the closure of his FAP benefits was improper. Thus, the Department is ultimately ordered to recalculate Petitioner's FAP allotment effective March 1, 2017, ongoing, which includes the time period of March 13, 2017, ongoing.

It should also be noted that Petitioner argued that he verbally requested a timely hearing request to dispute his FAP allotment and that he should have continued to receive the same amount of benefits he had receiving pending the hearing decision. Policy does state for FAP only, the client or Authorized Hearing Representative (AHR) may request a hearing disputing the current level of benefits at any time within the benefit period. BAM 600 (October 2016), p. 6. A **timely hearing request** is a request received by the department within 10 days of the date the notice of case action was issued. BAM 600, p. 24. While waiting for the hearing decision, recipients must continue to receive the assistance authorized prior to the notice of negative action when the request was filed timely. BAM 600, p. 24. Upon receipt of a timely hearing request, reinstate program benefits to the former level for a hearing request filed because of a negative action. BAM 600, p. 24. Even if Petitioner established that he verbally requested a timely hearing request, the undersigned would conclude that it was harmless error by the Department. The undersigned is ultimately ruling in favor of the Petitioner and ordering the Department to recalculate his FAP benefits from the date of closure.

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 closed Petitioner's FAP benefits effective March 1, 2017; and (ii) the Department did not act in accordance with Department policy when it improperly calculated Petitioner's FAP allotment effective March 13, 2017, ongoing.

Accordingly, the Department's FAP decisions are **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. Reinstate Petitioner's FAP case as of March 1, 2017;
2. Redetermine Petitioner's FAP eligibility effective March 1, 2017, (redetermination process) in accordance with Department policy;
3. Recalculate Petitioner's FAP benefits from March 1, 2017, ongoing;
4. Recalculate Petitioner's medical expense deduction and process his reported medical expenses submitted on February 28, 2017;
5. Issue supplements to Petitioner for any FAP benefits he was eligible to receive but did not from March 1, 2017, ongoing; and
6. Notify Petitioner of its decision.

EJF/jaf



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

Petitioner

[REDACTED]
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DHHS

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