



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: April 26, 2017
MAHS Docket No.: 17-004155
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 24, 2017, from Detroit, Michigan. Petitioner was present for the hearing and her son/witness, [REDACTED]. Also, Petitioner's friend, [REDACTED] was present for the hearing, but did not provide any testimony. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator; and [REDACTED], Eligibility Specialist, but Mr. [REDACTED] left during the hearing.

ISSUES

Did the Department properly provide Petitioner with Medical Assistance (MA) coverage she is eligible to receive from April 1, 2017, ongoing?

Did the Department properly calculate Petitioner's MA – Group 2 Spend-Down (G2S) deductible effective April 1, 2017, ongoing?

Did the Department properly decrease Petitioner's Food Assistance Program (FAP) benefits to [REDACTED] effective April 1, 2017, ongoing?

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. Petitioner received full-coverage MA benefits until March 31, 2017, but, she then began receiving MA-G2S coverage, subject to a deductible, effective April 1, 2017. Exhibit A, p. 28 and Exhibit B, pp. 1-2.
3. Petitioner is 65-years-old, her household size is one, and she is disabled.
4. Petitioner's Supplemental Security Income (SSI) income had ended and she began receiving [REDACTED] in monthly Retirement, Survivors, and Disability Insurance (RSDI) income. Exhibit A, pp. 17-19.
5. Petitioner's SSI – MA coverage also ended; thus, she applied for MA coverage on February 14, 2017. Exhibit A, pp. 3-16.
6. As a result Petitioner's SSI ending and now receiving RSDI income, she was now only eligible for G2S coverage, subject to a deductible.
7. On March 15, 2017, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits decreased to [REDACTED] effective April 1, 2017 because her shelter deduction amount and net unearned income amount has changed. Exhibit A, pp. 24-27.
8. On March 15, 2017, the Department sent Petitioner a Health Care Coverage Determination Notice (determination notice) notifying her that she was eligible for MA coverage effective April 1, 2017 (with a [REDACTED] deductible); and that she was eligible for full coverage Medicare Savings Program (MSP) effective April 1, 2017, ongoing. Exhibit A, pp. 30-36.
9. On March 20, 2017, Petitioner submitted a Deductible Report, but did not indicate there were any expenses to budget and she indicated her monthly real estate expenses is [REDACTED]. Exhibit A, pp. 37-38.
10. On March 20, 2017, Petitioner filed a hearing request, protesting the Department's action. Exhibit A, pp. 39-40.

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 matter

Based on Petitioner's hearing request and testimony, she is disputing the following: (i) whether the Department provided Petitioner with MA coverage she is eligible to receive from April 1, 2017; (ii) whether the Department properly calculated Petitioner's MA – G2S deductible effective April 1, 2017; and (iii) whether the Department properly decreased Petitioner's FAP benefits effective April 1, 2017. Exhibit A, pp. 39-40. The undersigned Administrative Law Judge (ALJ) will address each issue separately below:

Most Beneficial Program

In the present case, Petitioner argued that the deductible coverage provided by the Department was inadequate. Petitioner is 65-years-old, her household size is one, she is disabled, and her total gross monthly income is [REDACTED] which consists of her RSDI income.

Persons may qualify under more than one MA category. BEM 105 (October 2016), p. 2. Federal law gives them the right to the most beneficial category. BEM 105, p. 2. The most beneficial category is the one that results in eligibility, the least amount of excess income or the lowest cost share. BEM 105, p. 2.

Based on the foregoing information and evidence, the Department properly determined that the most beneficial MA category Petitioner was eligible to receive was MA-G2S coverage effective April 1, 2017, ongoing. See BEM 105, p. 2.

MA – G2S deductible

Next, Petitioner may still receive MA benefits subject to a monthly deductible through the MA - G2S program. In this case, Petitioner was found eligible for G2S subject to a [REDACTED] deductible for April 1, 2017, ongoing.

In the present case, Petitioner's group size is one and she resides in [REDACTED] County. The Department presented Petitioner's MA - G2S budget for the benefit period of April 2017. Exhibit A, p. 28.

G2S is an SSI-related Group 2 MA category. See BEM 166 (July 2013), p. 1. BEM 166 outlines the proper procedures for determining G2S eligibility. BEM 166, p. 1.

In this case, the Department properly calculated Petitioner's gross total unearned income to be [REDACTED], which consisted of her RSDI income. Exhibit A, p. 28 and see BEM 503 (January 2017), p. 28 (The Department counts the gross benefit amount as unearned income for RSDI income).

The Department then properly subtracted the [REDACTED] disregard to establish Petitioner's total net unearned income of [REDACTED]. Exhibit A, p. 28; and BEM 541 (January 2017), p. 3.

Next, the Department does provide budget credits, which can reduce the total net income and more importantly, the deductible amount. Petitioner indicated that the deductible is excessive and that she is responsible for utilities, such as water, light, etc., and after these expenses, she cannot afford the deductible. However, these utility expenses Petitioner mentioned do not qualify for a deduction. As such, the Department properly calculated Petitioner's total countable income to be [REDACTED]. Exhibit A, p. 28.

Finally, individuals are eligible for Group 2 MA coverage when net income (countable income minus allowable income deductions) does not exceed the applicable Group 2 MA protected income levels (PIL), which is based on shelter area and fiscal group size. BEM 105, p. 1; BEM 166, p. 2; BEM 544 (July 2016), p. 1; and RFT 240 (December 2013), p. 1. The monthly PIL for an MA group of one living in Genesee County is [REDACTED] per month. RFT 200 (December 2013), pp. 1-2 and RFT 240, p. 1. Moreover, an individual whose monthly income is in excess of [REDACTED], may become eligible for assistance under the deductible program, with the deductible being equal to the amount that the group's monthly income exceeds the PIL. BEM 545 (January 2017), p. 1.

Based on the above policy, Petitioner's countable income of [REDACTED] for MA purposes exceeds the monthly protected income level of [REDACTED]. Exhibit A, p. 28. Thus, the Department properly calculated Petitioner's MA - G2S deductible to be [REDACTED] effective April 1, 2017, in accordance with Department policy.

FAP benefits

In the present case, Petitioner's certified group size is one and she is a senior/disabled/disabled veteran (SDV) member. As part of the evidence record, the Department presented the April 2017 budget for review. Exhibit A, pp. 21-22.

First, the Department properly calculated Petitioner's gross unearned income to be [REDACTED] which comprised of her RSDI income. Exhibit A, p. 21.

Then, once the Department adds together the total income Petitioner receives, the Department will minus any deductions that she might qualify for. See Exhibit A, p. 21. The first deduction the Department properly applied was the [REDACTED] standard deduction applicable to Petitioner's group size of one. Exhibit A, p. 21 and RFT 255 (October 2016), p. 1.

Next, because Petitioner is an S/D/V member, she is eligible for any medical expenses that exceed [REDACTED] as a deduction. BEM 554 (January 2017), p. 1. In this case, the Department did not budget any medical expenses for April 2017. Exhibit A, p. 21. The Department indicated that it has not received any verification of medical expenses. In fact, Petitioner submitted a Deductible Report on March 20, 2017, but did not indicate there were any expenses to budget. Exhibit A, pp. 37-38.

In response, Petitioner indicated that she is responsible to pay for medical expenses, such as prescription co-pays. For March 2017 to April 2017, she testified that she was responsible for approximately [REDACTED] in monthly medical expenses. At the hearing, she indicated this was the first time she notified the Department of medical expenses/bills.

Policy states that for groups with one or more SDV member, the Department allows medical expenses that exceed [REDACTED]. BEM 554, p. 1.

During the benefit period, a FAP group is not required to, but may voluntarily report changes during the benefit period. BEM 554, p. 8. Process changes during the benefit period only if they are one of the following:

- Voluntarily reported and verified during the benefit period such as expenses reported and verified for MA deductible.
- Reported by another source and there is sufficient information and verification to determine the allowable amount without contacting the FAP group.

BEM 554, p. 8.

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 properly did not budget any medical deductions effective April 1, 2017. First, Petitioner indicated that her medical expenses was approximately [REDACTED] for April 2017, which is below the [REDACTED] threshold to qualify for a medical deduction; thus, she would not be eligible. Also, Petitioner acknowledged during the hearing that this was the first time she notified the Department of medical expenses. Policy states that 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. At the time Petitioner's FAP budget for April 2017 was calculated, Petitioner never reported any of her medical expenses to the Department. As such, the Department properly did not include any medical expenses in the April 2017 FAP budget because these expenses were never reported to the Department at the time the budget was calculated. BEM 554, p. 11. But, it should be noted that the Department is now of aware Petitioner's reported medical expenses she stated during the hearing.

Once the Department subtracts the [REDACTED] standard deduction, this results in an adjusted gross income of [REDACTED] Exhibit A, pp. 21-22.

Also, the Department provides Petitioner with an excess shelter deduction, which is comprised of her housing expenses and utility expenses. Exhibit A, p. 23. The FAP – Excess Shelter Deduction budget (shelter budget) indicated that Petitioner's monthly housing expense is [REDACTED] which she disputed. Exhibit A, p. 23. Petitioner indicated her housing expenses was [REDACTED]. The Department also indicated that her expenses should be [REDACTED] and it was unclear why the housing expenses were budgeted for [REDACTED]. In fact, in the Deductible Report she submitted on March 20, 2017, she indicated her monthly real estate expenses is [REDACTED]. Exhibit A, pp. 37-38.

For groups with one or more SDV member, the Department uses excess shelter. BEM 554, p. 1.

The Department allows a shelter expense when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554, p. 12. Do not prorate the shelter expense even if the expense is shared. BEM 554, p. 12. Shelter expenses are allowed when billed. BEM 554, p. 12. The expenses do not have to be paid to be allowed. BEM 554, p. 12. Late fees and/or penalties incurred for shelter expenses are not an allowable expense. BEM 554, p. 12.

Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. BEM 554, pp. 12-13.

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. Verify the expense **and** the amount for housing expenses, property taxes, assessments, insurance and home repairs. BEM 554, p. 14.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it properly calculated Petitioner's housing expenses effective April 1, 2017. Both parties agreed that Petitioner's housing expenses was \$ [REDACTED], other than the difference in the cents portion of the calculation [REDACTED]). The evidence was unclear why the Department budgeted Petitioner's income as [REDACTED]. As such, the Department is ordered to initiate verification of Petitioner's shelter expenses, specifically, her housing expenses, effective April 1, 2017, ongoing and budget the correct amount in accordance with Department policy. See BEM 554, pp. 12-14.

Additionally, the Department 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 Petitioner's monthly utility expenses exceed the [REDACTED] amount. See Exhibit A, p. 23; BEM 554, pp. 14-16; and RFT 255, p. 1.

In summary, because the Department did not properly calculate Petitioner's shelter expense deduction, the Department is ordered to recalculate Petitioner's FAP allotment effective April 1, 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 (i) the Department acted in accordance with Department policy when it processed Petitioner's eligibility for the most beneficial MA category for April 1, 2017, ongoing; (ii) the Department acted in accordance with Department policy when it properly calculated Petitioner's MA – G2S deductible for April 1, 2017, ongoing; and (iii) the Department did not act in accordance with Department policy when it improperly calculated Petitioner's FAP benefits effective April 1, 2017, ongoing.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to MA eligibility determination and MA - G2S deductible effective April 1, 2017; and **REVERSED IN PART** with respect to FAP allotment effective April 1, 2017.

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 April 1, 2017;
2. Initiate verification of Petitioner's shelter expenses effective April 1, 2017, in accordance with Department policy;
3. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from April 1, 2017, ongoing; and
4. Notify Petitioner of its decision.

EF/tm



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]

[REDACTED]

[REDACTED]

cc:

[REDACTED]