



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: May 31, 2017
MAHS Docket No.: 17-005677
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 on May 25, 2017, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Lynda Brown, Hearing Facilitator.

ISSUE

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

Did the Department properly process Petitioner's Medicare Savings Program (MSP) case?

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, MSP and Medicaid (MA).
2. Petitioner has four individuals in her FAP group: herself, her daughter [REDACTED] (A), and her twin sons, [REDACTED] (K) and [REDACTED] (J) (Exhibit 5).
3. Petitioner and her son K are disabled members of the household.

4. Petitioner receives Retirement, Survivors and Disability Insurance (RSDI) benefits and K receives Supplemental Security Income (SSI) based on their respective disabilities.
5. K and J each receive \$122 in monthly RSDI income due to their mother's receipt of RSDI income (Exhibits 8 and 9).
6. A receives gross monthly earned income of \$737.34 as an adult home help provider (Exhibit 7).
7. On February 4, 2017, the Department sent Petitioner a redetermination to determine her ongoing eligibility for MA and MSP benefits and requested that she submit the completed redetermination to the Department by March 6, 2017.
8. On March 31, 2017, the Department received Petitioner's completed redetermination (Exhibit 2).
9. On April 13, 2017, the Department sent Petitioner a Health Care Coverage Determination Notice notifying her that she, J, and K were approved for ongoing full coverage MA for April 1, 2017 ongoing and that A was approved for ongoing full coverage MA for the month of April 2017. The notice also informed Petitioner that she was approved for full-coverage MSP for April 1, 2017 ongoing. (Exhibit 3.)
10. On April 14, 2017, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits were decreasing to \$18 monthly effective May 1, 2017 (Exhibit 14).
11. On [REDACTED] 2017, the Department received Petitioner's request for hearing disputing the Department's denial of her MA and the amount of her FAP benefits (Exhibit 1).

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 submitted a hearing request to the Department on [REDACTED] 2017 concerning the denial of MA and the amount of her FAP benefits. At the hearing, she clarified that the MA issue for her and her household members had been resolved but she still had an ongoing issue with her MSP case. MSP is part of the MA program. Accordingly, Petitioner's MSP and FAP issues were addressed at the hearing and in this Hearing Decision.

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 requested a hearing to dispute the decrease effective May 1, 2017 in her monthly FAP benefits from \$286 to \$18 following the processing of her MA redetermination. At the hearing, the net income budget showing the recalculated FAP benefits was reviewed on the record (Exhibit 12). The budget showed gross monthly earned income of \$737 and gross monthly unearned income of \$1788. Petitioner agreed that the Department properly budgeted her daughter A's monthly earned income but disputed the calculation of unearned income. The Department testified the unearned income was the total of Petitioner's monthly \$911 RSDI income, K's monthly \$633 SSI income and \$122 RSDI income, and J's monthly \$122 RSDI income.

Petitioner contended the Social Security Administration (SSA) had advised her that K's SSI benefits were decreasing and that K was only receiving \$559.50 in monthly SSI benefits. The SOLQ report for K, which shows Department-accessible SSA information concerning K, showed that K was paid a \$559.50 recurring RSDI payment the first of the month but \$73.50 advance payment or overpayment was recovered. Department policy provides that amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are excluded and not part of gross income unless any portion of the overpayment was excluded income when received or the overpayment is due to an intentional program violation. BEM 500 (January 2016), p. 6. Because there was no evidence that the \$73.50 being withheld by SSA was due to an intentional program violation or was excluded income when received, the Department did not act in accordance with Department policy when it included the \$73.50 in the calculation of K's gross monthly income.

Petitioner also contended that the Department should only have budgeted \$777 for her RSDI income. She explained that because of the Department's actions concerning her MSP case, SSA had been withholding \$134 from her monthly RSDI income to pay her Part B Medicare premium, resulting in her receiving only \$777 in monthly RSDI income. However, Department policy requires that the Department consider *gross* RSDI income in calculating FAP unless, as discussed above, the issuing agency is deducting amounts to recover a previous overpayment or ineligible payment. BEM 500, p. 6. Amounts withheld to pay for health insurance are still considered part of gross income. BEM 500, p. 4. Therefore, the Department properly considered Petitioner's full \$911 in RSDI income in calculating her monthly income.

The deductions applied to reducing Petitioner's gross income in determining her net income were also reviewed. Because Petitioner and her son K receive RSDI based on a disability, they are senior/disabled/veteran (SDV) members of Petitioner's FAP group.

See BEM 550 (January 2017), p. 1. For FAP groups with one or more SDV members and earned income, the Department must reduce the household's gross monthly income by the following deductions: the earned income deduction, the standard deduction (based on group size), child care expenses, child support expenses, the SDV members' verified out-of-pocket medical expenses in excess of \$35, and the excess shelter deduction. BEM 554 (January 2017), p. 1; BEM 556 (July 2013), pp. 4-5.

At the hearing, Petitioner confirmed she had a four-person FAP group. Thus, she was eligible for a \$162 standard deduction. RFT 255 (October 2016), p. 1. A household is eligible for an earned income deduction equal to the 20% of the earned income. BEM 550, p. 1. 20% of \$737 is \$147 (rounded up), as shown on the budget. Petitioner confirmed that she had no child care or child support expenses. Therefore, she was not eligible for a deduction for such expenses.

Although Petitioner indicated that she had not submitted any out-of-pocket medical expenses to the Department, she testified that SSA was withholding \$134 for payment of her Part B Medicare premium. Her testimony is supported by her SOLQ report which shows that the state billing had stopped March 1, 2017. Petitioner's Part B premium is an allowable medical expense for FAP purposes. BEM 554, p. 10. Therefore, Petitioner was eligible for a medical expense deduction of \$99 (the difference between her \$134 expense and the \$35 threshold). Because the budget shows a \$70 deduction, the Department did not act in accordance with policy in calculating the deduction.

The final deduction available in the calculation of Petitioner's net income for FAP purposes is the excess shelter deduction which takes into consideration a client's monthly housing expenses and the applicable utility standard for any utilities the client is responsible to pay. BEM 556, pp. 4-5. In determining the applicable utility standard, the Department found that Petitioner was responsible for heating and cooling expenses and applied the \$526 heat and utility (h/u) standard, which is the most advantageous utility standard available to a client. BEM 554, pp. 14-20; RFT 255, p. 1. In calculating Petitioner's monthly shelter expense, the Department testified that it retrieved information from its system showing that the [REDACTED] paid \$405 towards Petitioner's \$995 monthly rent (Exhibit 11). The Department applied Petitioner's \$590 monthly obligation as her housing expense. The Department properly used Petitioner's rent contribution in determining her housing expense. BEM 554, p. 12.

At the hearing, Petitioner testified that she paid more than \$590 as her contribution. However, the Department explained that Petitioner had not submitted any verification of her monthly housing obligation and it relied on the MSHDA information it was able to retrieve. Petitioner was advised to submit updated rental information, which could be used to adjust future FAP benefits.

Because the Department did not act in accordance with Department policy in determining Petitioner's son K's monthly SSI income and Petitioner's medical expense

deduction, the Department did not properly calculate Petitioner's FAP benefits for May 1, 2017 ongoing.

MSP

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. MSP is part of the MA program.

The Department explained that Petitioner's MSP case had been erroneously closed on the basis that she had failed to timely submit a completed redetermination. MSP is a State-administered program in which the State pays an income-eligible client's Medicare premiums, coinsurances, and deductibles. BEM 165 (October 2016), pp 1-2; BAM 810 (October 2016), p. 1. A completed redetermination/renewal is requested at least every 12 months to determine a client's ongoing eligibility for MSP benefits. BAM 210 (July 2016), p. 2. MSP benefits stop at the end of the benefit period unless a renewal is completed and a new benefit period is certified. BAM 210, p. 3.

At the hearing, the Department conceded that Petitioner had submitted a completed redetermination concerning her ongoing MSP eligibility after the March 6, 2017 due date but before the March 31, 2017 expiration of the MSP certification period. Because Petitioner submitted the completed redetermination prior to expiration of the certification period, the Department improperly closed Petitioner's MSP case.

At the hearing, the Department contended that Petitioner's MSP case had been reinstated and presented Health Care Coverage Determination Notices dated April 13, 2017 and April 26, 2017 notifying Petitioner that she was approved for full coverage MSP benefits for April 1, 2017 ongoing (Exhibits 3 and 4). However, Petitioner's SOLQ report, although showing a buy-in code "State billing-Michigan," also showed a Part B Buy-In stop date of March 1, 2017 (Exhibit 10). Petitioner testified that she had received a letter from SSA advising her that funds would be withheld from her RSDI to pay her Part B Medicare premium and that her RSDI income had decreased accordingly. The SOLQ, consistent with her testimony, showed that she was issued net monthly benefits of \$777, which the difference between the \$911 in RSDI benefits she is eligible to receive and her monthly \$134 Part B premium.

Under the evidence presented, the Department has failed to establish that it resolved Petitioner's MSP case by reinstating her case and activating coverage as of 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 the Department did not act in accordance with Department policy when it calculated Petitioner's FAP benefits for May 1, 2017 ongoing and processed Petitioner's MSP case.

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 May 1, 2017 ongoing;
2. Issue supplements to Petitioner for FAP benefits she was eligible to receive but did not from May 1, 2017 ongoing;
3. Notify Petitioner in writing of its FAP decision;
4. Reinstate Petitioner's MSP case effective April 1, 2017;
5. Enroll Petitioner in the Medicare Part B Buy-In program for an April 1, 2017 buy-in start date.

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:

MDHHS-Macomb-20-Hearings@michigan.gov
BSC4 Hearing Decisions
EQAD
M. Best
M. Holden
D. Sweeney
MAHS

**Petitioner –
Via First-Class Mail:**

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