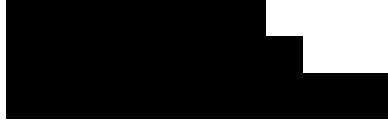




RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR



Date Mailed: September 8, 2017
MAHS Docket No.: 17-006553
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; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, an in-person hearing was held on August 30, 2017, from Hamtramck, Michigan. The Petitioner appeared for the hearing with her Authorized Hearing Representative (AHR) [REDACTED]. The Department of Health and Human Services (Department) was represented by Dionere Craft, Hearing Facilitator and Nicole Dinsler, Eligibility Specialist.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) case on the basis that her income exceeded the income limit?

Did the Department properly determine that Petitioner was eligible for Medical Assistance (MA) benefits with a monthly deductible of \$2257?

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. On February 22, 2017, the Department sent Petitioner a Notice of Case Action advising her that effective March 1, 2017, she was approved for FAP benefits in the amount of \$194. (Exhibit A, pp. 18-21)

3. The Department had been including ongoing medical expenses towards the calculation of the medical deduction on Petitioner's FAP budget. (Exhibit A, p.13)
4. Since 2011, Petitioner has been an ongoing recipient of MA benefits under the Group 2 Aged Blind Disabled (G2S) category with a monthly deductible. (Exhibit B)
5. Petitioner's monthly MA deductible had previously been met based on verified ongoing medical expenses. (Exhibit A, p. 13; Exhibit B)
6. The Department had previously sent Petitioner eligibility notices or Health Care Coverage Determination Notices advising her that she was approved for full coverage MA benefits without a monthly deductible.
7. In connection with a redetermination, Petitioner's eligibility to receive MA benefits was reviewed. Petitioner did not submit verification of applicable medical expenses prior to the hearing date.
8. After processing the MA redetermination, the Department removed the ongoing medical expenses previously budgeted towards Petitioner's FAP and MA cases.
9. On May 9, 2017, the Department sent Petitioner a Notice of Case Action advising her that effective June 1, 2017, her FAP case would be closed on the basis that her net income exceeds the limit. (Exhibit A, pp. 22-25)
10. Petitioner receives gross monthly Retirement Survivors Disability Insurance (RSDI) benefits in the amount of \$2276 and monthly retirement pension income in the amount of \$488.49. (Exhibit A, pp. 14-17)
11. The Department determined that Petitioner was eligible for MA under the G2S category with a monthly deductible of \$2257 effective June 1, 2017; however, the Department did not send Petitioner notice of the deductible or her MA eligibility after the redetermination was processed.
12. On May 11, 2017, Petitioner requested a hearing disputing the Department's actions with respect to her MA and FAP benefits.

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).

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.

In this case, Petitioner requested a hearing disputing the Department's determination that she is only eligible for MA coverage with a monthly deductible. Petitioner asserted that she had previously been approved for full coverage MA without a deductible and further that she was not notified that her coverage was being transferred to the G2S category with a monthly deductible of \$2257 effective June 1, 2017. At the hearing, while the Department conceded that it failed to timely notify Petitioner that her deductible would be \$2257 effective June 1, 2017 after the MA redetermination was processed, the Department testified that since 2011, Petitioner had been approved for MA under the G2S category with a monthly deductible. The Department maintained that due to agency error, it had been improperly applying ongoing medical expenses to Petitioner's MA case and thus Petitioner's monthly deductible had continuously been met, granting her full coverage MA benefits. The Department stated that after processing Petitioner's MA redetermination and removing the incorrect medical expenses, it determined that she was eligible for MA under the G2S with a monthly deductible of \$2257. (Exhibit B).

Petitioner, who has no minor children, is enrolled in Medicare and receives RSDI, is eligible for SSI-related MA, which is MA for individuals who are blind, disabled or over age 65. BEM 105 (October 2016), p. 1. Individuals are eligible for Group 1 coverage, with no deductible, if their income falls below the income limit, and eligible for Group 2 coverage, with a deductible that must be satisfied before MA is activated, when their income exceeds the income limit. BEM 105, p. 1. Ad-Care coverage is a SSI-related Group 1 MA category which must be considered before determining Group 2 MA eligibility. BEM 163 (July 2013), p. 1. Eligibility for Ad-Care is based on the client meeting nonfinancial and financial eligibility criteria. BEM 163, pp. 1-2. The eligibility requirements for Group 2 MA and Group 1 MA Ad-Care are the same, other than income. BEM 166 (July 2013), pp. 1-2.

Income eligibility for the Ad-Care program is dependent on MA fiscal group size and net income which cannot exceed the income limit in RFT 242. BEM 163, p.2. Petitioner has a MA fiscal group of one. BEM 211 (January 2016), p. 5. Effective April 1, 2017, a MA fiscal group with one member is income-eligible for full-coverage MA under the Ad-Care program if the group's net income is at or below \$1005, which is 100 percent of the Federal Poverty Level, plus the \$20 disregard. RFT 242 (April 2017), p. 1.

The Department is to determine countable income according to SSI-related MA policies in BEM 500 and 530 *except* as explained in the countable RSDI section of BEM 163. The Department will also apply the deductions in BEM 540 (for children) or 541 (for adults) to countable income to determine net income. BEM 163, p.2. The Department testified that in calculating Petitioner's countable income, it considered unearned

income in the amount of \$2276 for Petitioner's gross monthly RSDI benefits and \$488.49 consisting of her monthly retirement pension. Petitioner confirmed that the amounts relied upon were correct and the Department presented an SOLQ and Notice of Retirement Plan Benefits in support of its testimony. (Exhibit A, pp. 14-17). After further review of Department policy and based on the evidence presented at the hearing, because Petitioner's countable income exceeds the net income limit for the Ad-Care program, the Department acted in accordance with Department policy when it determined that Petitioner was ineligible for full coverage MA benefits under the Ad Care program without a deductible and determined that she would be eligible for MA under the Group 2 Aged Blind Disabled (G2S) program with a monthly deductible.

Additionally, deductible is a process which allows a client with excess income to become eligible for Group 2 MA if sufficient allowable medical expenses are incurred. BEM 545 (January 2016), p 10. 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, pp. 1-2; BEM 166, pp 1-2; BEM 544 (July 2013), p 1; RFT 240 (December 2013), p 1. The PIL is a set allowance for non-medical need items such as shelter, food and incidental expenses. BEM 544, p. 1. The monthly PIL for an MA group of one living in Wayne County is \$375 per month. RFT 200 (December 2013), pp. 1-2; RFT 240, p 1. Thus, if Petitioner's net monthly income is in excess of the \$375, she may become eligible for assistance under the deductible program, with the deductible being equal to the amount that her monthly income exceeds \$375. BEM 545, p 1.

The Department produced an SSI-Related MA budget showing how the deductible in Petitioner's case was calculated. (Exhibit C). The Department testified that it determined Petitioner had unearned income in the total amount of \$2764 which as referenced above properly consisted of \$2276 in RSDI and \$488.49 in retirement pension. The budget shows that the Department properly subtracted the \$20 unearned income general exclusion to determine that Petitioner had net income for MA purposes of \$2744. The budget shows a deduction of \$112 which the Department stated was based on Petitioner's monthly responsibility for Medicare Part B premiums and which was supported by the SOLQ. Although Petitioner testified that she is also responsible for a prescription insurance premium, there was no evidence presented that Petitioner notified the Department of such premium or provided verification of the premium at the time the redetermination was processed. There was no evidence presented that Petitioner was entitled to any other deductions to income BEM 530, pp 1-4; BEM 541, pp.2-3.

Because Petitioner's countable income of \$2632 for MA purposes exceeds the monthly protected income level of \$375 by \$2257, the Department properly calculated Petitioner's monthly \$2257 MA deductible in accordance with Department policy. Therefore, based on the information relied upon by the Department, the Department properly determined that Petitioner was eligible for MA under the G2S program with a monthly deductible of \$2257.

At the hearing, Petitioner testified that she has ongoing monthly medical expenses and that she is treated by several physicians. Petitioner is informed that should she provide the Department with acceptable verification of her ongoing and one time medical expenses, the Department will process the expenses and apply them to her deductible for the applicable months. See BEM 545.

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.

In this case, Petitioner requested a hearing disputing the closure of her FAP case effective June 1, 2017, due to excess net income. The Department stated that Petitioner had been approved for \$194 which is the maximum amount of FAP benefits for a group size of one because the Department had been improperly including an old medical expense in the calculation of Petitioner's medical deduction and FAP budget. (Exhibit A, pp. 5-6). The Department stated that after updating Petitioner's FAP case and removing the previously budgeted medical expense, it determined that Petitioner was no longer eligible for FAP benefits and initiated the closure of her FAP case, as her income was in excess of the FAP income limit.

At the hearing, the FAP EDG Net Income Results budget was reviewed to determine if the Department properly concluded that Petitioner's net income of \$2536 exceeded the limit of \$990, based on her FAP group size of one. RFT 250 (October 2016), p. 1;(Exhibit A, pp. 9-12).

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (January 2016), pp. 1 – 5. The Department considers the gross amount of money earned from Retirement Survivors Disability Insurance (RSDI), Social Security and retirement pension in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (July 2017), pp. 31-32. The Department concluded that Petitioner had gross unearned income of \$2764, which as discussed above was correct. Thus, the unearned income was properly calculated.

The deductions to income on the net income budget were also reviewed. Petitioner's FAP group includes a senior/disabled/veteran (SDV) member. BEM 550 (January 2017), 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 (January 2017), p. 1; BEM 556 (July 2013), p. 3.

In this case, Petitioner did not have earned income, thus, there was no applicable earned income deduction. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support expenses. Therefore, the budget properly did not include any deduction for dependent care or child support. The Department properly applied a \$151 standard deduction based on Petitioner's confirmed group size of one. The Department applied a medical deduction of \$77 which was based on Petitioner's \$112 monthly responsibility for Medicare Part B premiums. As discussed above, although Petitioner stated that she is also responsible for monthly prescription insurance premiums, this was not properly verified prior to the hearing. Additionally, no applicable medical expenses were presented to the Department at the time the budget was completed. Thus, the Department properly calculated the medical deduction of \$77.

With respect to the excess shelter deduction, the Department properly considered Petitioner's confirmed housing expenses of \$95.05 consisting of annual property taxes of \$1140.64 and the \$526 heat/utility standard which covers all heat and utility costs including cooling expenses. Upon further review, the Department properly calculated Petitioner's net income to be \$2536 and determined that this amount exceeded the income limit of \$990 based on Petitioner's FAP group size of one.

Petitioner raised additional concerns at the hearing regarding the Department's failure to restore or continue her FAP benefits at the prior level of \$194 pending the outcome of the administrative hearing, as she had submitted a timely hearing request. Although it was established that the Department did not continue Petitioner's FAP benefits, this error proved to be harmless, as the closure of Petitioner's FAP case was done in accordance with Department policy. Thus, had the Department restored Petitioner's FAP benefits, the Department would be entitled to recoupment of any overissued FAP benefits. See BAM 600 (April 2017), pp. 24-27.

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 acted in accordance with Department policy when it closed Petitioner's FAP case effective June 1, 2017.

DECISION AND ORDER

Accordingly, the Department's MA and FAP decisions are **AFFIRMED**.



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

Via Email:

MDHHS-Wayne-55-Hearings
EQAD
D. Sweeney
M. Best
M. Holden
MAHS

Petitioner
– Via First-Class Mail:

[REDACTED]

Authorized Hearing Rep.
– Via First-Class Mail:

[REDACTED]