



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: September 15, 2017  
MAHS Docket No.: 17-010274  
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, a telephone hearing was held on September 7, 2017, from Detroit, Michigan. The Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

**ISSUE**

Did the Department properly calculate the amount of Petitioner's Food Assistance Program (FAP) benefits and determine that he was eligible for Medical Assistance (MA) benefits under the Group 2 Aged Blind Disabled (G2S) category with a monthly 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. In April 2017 Petitioner submitted an application for MA benefits.
2. Petitioner is employed part time at [REDACTED] and receives unearned income from Retirement Survivors Disability Insurance (RSDI) in the amount of \$ [REDACTED] monthly. (Exhibit B)
3. Petitioner is [REDACTED] years old, enrolled in Medicare and is not the parent or caretaker of any minor children.

4. On or around June 26, 2017 Petitioner submitted an application for FAP benefits.
5. On July 14, 2017 the Department sent Petitioner a Notice of Case Action advising him that he was denied FAP benefits for the period of June 26, 2017 to June 30, 2017 but approved for FAP benefits in the amount of \$ [REDACTED] for July 1, 2017 ongoing. (Exhibit E)
6. On July 14, 2017 the Department sent Petitioner a Health Care Coverage Determination Notice advising him that: for the period of April 1, 2017 to May 31, 2017 he was approved for MA with a monthly deductible of \$ [REDACTED] for the period of June 1, 2017 to June 30, 2017 he was approved for MA with a monthly deductible of \$ [REDACTED] for the period of July 1, 2017 to July 31, 2017 he was approved for MA with a monthly deductible of \$ [REDACTED] and for August 1, 2017, ongoing, he was approved for MA with a monthly deductible of \$ [REDACTED] (Exhibit A)
7. On July 27, 2017 Petitioner requested a hearing disputing the Department's actions with respect to his 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).

#### **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 Department's calculation of his FAP benefits in the amount of \$ [REDACTED] effective July 1, 2017. The Department presented a FAP EDG Net Income Results Budget which was reviewed to determine if the Department properly calculated the amount of Petitioner's FAP benefits. (Exhibit F).

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 (July 2017), pp. 1-5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (April 2017), pp. 1-2. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is

expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. Income from the past 60 or 90 days can be used for fluctuating or irregular income if the past 30 days is not a good indicator of future income and if the fluctuations of income during the past 60-90 days appear to accurately reflect the income expected in the benefit month. BEM 505, pp. 5-6. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 7-8. Income received weekly is converted to a standard amount by multiplying the average of the weekly pay amounts by the 4.3 multiplier. BEM 505, pp. 7-9. An employee's wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (July 2016), pp. 6-7.

According to the budget provided, the Department concluded that Petitioner had earned income in the amount of \$ [REDACTED] which it testified consisted of his weekly earnings from [REDACTED]. Specifically, the Department stated it considered a "final" paycheck of \$ [REDACTED] paid to Petitioner on June 28, 2017. It was unclear how the Department prospectively budgeted Petitioner's "final" check, however, or how the paycheck was used to calculate total earned income of \$ [REDACTED]. Additionally, the evidence established that the Department was aware Petitioner was still employed part time at [REDACTED] at the time of the application. Petitioner testified that his weekly income fluctuates based on the number of hours he works. Petitioner stated that he works between 12 and 32 hours weekly. Thus, a 60 to 90 day projection may be a more accurate indicator of Petitioner's income. Upon further review and in consideration of the above referenced prospective budgeting policy, the Department did not establish that Petitioner had earned income in the amount of \$ [REDACTED].

The Department considers the gross amount of money earned from Retirement Survivors Disability Insurance (RSDI) or Social Security Disability 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 \$1507 and presented an SOLQ in support of its calculation. (Exhibit B). 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, because the earned income was not properly calculated, it follows that the \$■■■■ earned income deduction applied by the Department is also incorrect. 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 expenses. The budget shows a medical deduction of \$■■■■ which the Department testified consisted of Petitioner's Medicare Part B premium and an outdated insurance premium that was being applied to Petitioner's case in error. According to the SOLQ, Petitioner is responsible for Medicare Part B premiums in the amount of \$■■■■. There was no evidence presented that Petitioner submitted verification of additional applicable medical expenses. Thus, the medical deduction determined by the Department is incorrect. The Department properly applied a \$■■■■ standard deduction based on Petitioner's confirmed group size of one.

In calculating the excess shelter deduction of \$■■■■ the Department testified that it considered Petitioner's confirmed monthly rent of \$■■■■ the \$■■■■ non-heat electric standard, the \$■■■■ water standard and the \$■■■■ telephone standard. The Department did not apply the \$■■■■ heat/utility (h/u) standard to the excess shelter deduction. At the hearing, Petitioner confirmed that while he is not responsible for heating expenses, he is responsible for in room air conditioning cooling expenses that he pays through his electric bill. Department policy provides that FAP groups who pay for cooling (including room air conditioners) are eligible for the h/u standard if they verify they have the responsibility to pay for non-heat electric. BEM 554, pp. 16-17. Thus, because the Department had verification of Petitioner's responsibility to pay for non-heat electric expenses and because Petitioner is responsible for cooling expenses, the Department should have applied the \$■■■■ h/u standard when calculating Petitioner's excess shelter deduction and FAP eligibility.

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 because of the errors in the calculation of the earned income, medical deduction, and excess shelter deduction, the Department did not act in accordance with Department policy when it calculated the amount of Petitioner's FAP benefits effective July 1, 2017.

### **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 he is only eligible for MA with a monthly deductible. At the hearing, the Department testified that after considering Petitioner's earned and unearned income, it determined that he was eligible for MA under the Group 2 Aged Blind Disabled (G2S) category with

varying monthly deductibles effective April 1, 2017. (Exhibit A; Exhibit D). On July 14, 2017 the Department sent Petitioner a Health Care Coverage Determination Notice advising him that: for the period of April 1, 2017 to May 31, 2017 he was approved for MA with a monthly deductible of \$ [REDACTED] for the period of June 1, 2017 to June 30, 2017 he was approved for MA with a monthly deductible of \$ [REDACTED] for July 1, 2017 to July 31, 2017 he was approved for MA with a monthly deductible of \$ [REDACTED] and for August 1, 2017, ongoing, he was approved for MA with a monthly deductible of \$ [REDACTED] (Exhibit A).

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 (April 2017), 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.

Freedom To Work (FTW) is a Group 1 SSI-related MA program available to a client age 16 through 64 with disabilities and earned income. BEM 174 (January 2017), p. 1. There are no premiums for individuals with MAGI (Modified Adjusted Gross Income) less than 138% of the federal poverty level (FPL). BEM 174, p. 3. A premium of 2.5 percent of income will be charged for an individual with MAGI income between 138 percent of the FPL and \$75,000 annually.

Although the Department presented an SSI-Related MA budget showing how the deductible in Petitioner's case was determined for the month of August 2017, the Department conceded that although Petitioner is employed part time and has been determined disabled, it failed to determine Petitioner's eligibility for the Group 1 FTW category prior to approving Petitioner for MA coverage under the G2S category. Department policy provides that persons may qualify under more than one MA category and federal law gives persons the right to the most beneficial category which is considered the category that results in eligibility, the least amount of excess income, or the lowest cost share. BEM 105, p.2. The Department must consider all of the MA category options in order for the client's right of choice to be meaningful. BEM 105, p.2.

Therefore, because the Department did not determine Petitioner's MA eligibility under the FTW category, the Department did not establish that coverage under the G2S category was the most beneficial for the client.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it processed Petitioner's MA eligibility and determined he was eligible for MA under the G2S category effective April 1, 2017.

**DECISION AND ORDER**

Accordingly, the Department's FAP and MA 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. Recalculate Petitioner's FAP budget for July 1, 2017, ongoing;
2. If Petitioner is eligible for FAP benefits, issue FAP supplements to Petitioner from July 1, 2017, ongoing, for any FAP benefits he was eligible to receive but did not, in accordance with Department policy;
3. Reprocess Petitioner's MA eligibility under the most beneficial category for April 1, 2017, ongoing;
4. Provide Petitioner with MA coverage that he is eligible to receive under the most beneficial category from April 1, 2017, ongoing; and
5. Notify Petitioner of its FAP and MA decisions in writing.



ZB/tlf

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**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:**

[REDACTED]

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

[REDACTED]