



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 7, 2018
MAHS Docket No.: 18-000462
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 3-way telephone hearing was held on February 20, 2018, from Detroit, Michigan. The Petitioner was represented by Attorney [REDACTED], [REDACTED]. The Petitioner [REDACTED] appeared by phone. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistant Attorney General. [REDACTED] [REDACTED], Family Independence Manager, [REDACTED], Eligibility Specialist and [REDACTED], Overpayment Specialist appeared on behalf of the Department. An Interim Order Extending the Record was issued on February 22, 2018 at the request of the Department's Attorney to respond to the Petitioner's Brief which she received late and to file objections if any to the Petitioner's Exhibits 1-20. The record closed February 26, 2018.

ISSUE

Did the Department properly process the Petitioner's Medical Expenses for inclusion as an expense to be included in the Food Assistance expense calculation?

Did the Department properly issue a supplement in FAP benefits for November 2017 and December 2017?

Did the Department properly recoup the FAP supplements for November 2017 and December 2017 to collect on an outstanding overissuance?

Did the Department properly calculate the Petitioner's medical Expenses for January 2018 and February 2018?

FINDINGS OF FACT

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

1. The Petitioner submitted medical expenses to the Department on November 6, 2017 for processing in connection with determining her Food Assistance benefits for December 2017.
2. The Petitioner submitted Medical expenses to the Department on November 26, 2017 and December 20, 2017. See Petitioner's Exhibit Index and Petitioner's Exhibits 9 through 20.
3. The Department sent a Notice of Overissuance to the Petitioner due to Agency Error on September 19, 2017 due to the Agency (Department) incorrectly budgeting medical expenses. Exhibit A, p. 49.
4. The Department issued a Notice of Case Action on December 27, 2017 increasing the Petitioner's January 2018 FAP benefits to ██████ monthly. The Notice also determined that Petitioner was entitled to a ██████ FAP supplement for November 1, 2017 to December 31, 2017, but that due to an outstanding overissuance of ██████ the Department subtracted ██████ of the supplement to repay the overissuance. Exhibit A, p. 21-25.
5. The Notice of Case Action issued on December 27, 2017 included a ██████ medical expense deduction for the FAP benefit period January 1, 2018 and February 28, 2018 and withheld ██████ from the allotment to repay the overissuance. Exhibit A, p. 23.
6. The FAP budgets for January 2018 and February 2018 submitted by the Department both include only \$2.00 for medical expense. Exhibit A, pps. 27-38.
7. The Department issued a Notice of Case Action on January 17, 2017 which indicated that Petitioner's FAP benefits for November 2017 was ██████ and there was an additional ██████ in FAP benefits owed to Petitioner for the period December 1, 2017 to December 31, 2017. The Notice further advised that due to an outstanding overissuance of ██████ for a previously established overissuance for FAP, the Department subtracted the ██████ from the amount the Department owed Petitioner to repay part of the overissuance. Exhibit A, pps. 31-35.
8. The Notice of Case Action on January 17, 2017 determined the Petitioner's FAP benefits to be ██████ for the month of February 2018 (decrease) and included ██████ in medical expense deductions for the FAP benefit period February 1, 2018 through February 28, 2018. Exhibit A, p. 33.

9. The Petitioner requested a timely hearing on January 4, 2017 and January 26, 2018. The Hearing Requests were consolidated for the February 20, 2018 hearing pursuant to the Stipulated Motion to Consolidate the Hearings by attorneys for the parties as they involved similar or same issues of fact and law. Exhibit A.

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.

In this case, the Petitioner has sought a hearing regarding the Department's processing of a change in her FAP benefits (increase) due to Petitioner's submission of medical expenses she incurred. The Petitioner is disabled and receives Social Security Disability and is entitled to have medical expenses she incurs factored in as an expense to be applied to the calculation of her Food Assistance benefit allotment. BEM 554. Medical bills were submitted by Petitioner in November 2017 and December 2017 which required the Department to review and process the bills to determine the eligible medical expenses. Once the medical bills were determined to be eligible and the medical expense amount associated with the bills is determined, the Department is required to recalculate the FAP benefits to include the monthly medical expense and issue a Notice of Case Action regarding the recalculated FAP benefits. In this case, the amount of the medical expenses as determined by the Department that are covered by the supplements are not considered in this appeal because it is unclear how the supplements were determined for December 2017, January 2018 and February 2018. However, the processing of the medical expenses and the issuance of a supplement to increase the FAP benefits are at issue. The [REDACTED] medical expense amount used for the months of January 2018 and February 2018 will also be reviewed in this appeal.

The amount of the Petitioner's FAP allotment is also affected by the fact that the Petitioner's is required to repay an overissuance of FAP benefits due to an error by the Department (Agency Error). Currently the Department is recouping the FAP benefits out of the monthly allotment for FAP pursuant to Department policy found in BEM 725.

- Administrative Recoupment (AR) is an automated Bridges process that reduces current MDHHS and/or MDE benefits in order to obtain repayment on overissuances for a program. BAM 725 (October 2017), p.1
- All cases that contain an adult member from the original overissuance group and are active for the program in which the overissuance occurred are liable for the overissuance and subject to administrative recoupment. BAM 725, p.3

Overissuances on active programs are repaid by:

- Lump-sum cash payments.
- Monthly cash payments such as when court-ordered or processed by AG.
- Administrative recoupment (benefit reduction).

For FIP, SDA and FAP the client may repay any part of the overissuance with electronic benefit transfer (EBT) benefits. The electronic benefit transfer benefits cannot cross programs. BAM 725, p. 5

Administrative recoupment continues until program closure or all collectible overissuances are repaid. Administrative recoupment automatically resumes when a program with an overissuance balance reopens. BAM 725, p. 6

FAP benefits are reduced for recoupment by a percentage of the **monthly FAP entitlement**. (The entitlement amount is the amount of FAP a group would receive if any intentional program violation-disqualified members were included in the eligible group.)

Administrative recoupment occurs only on current month issuances and automatically changes when the monthly issuance amount changes.

Use the standard administrative recoupment percentage unless a court has ordered a different administrative recoupment percentage or a specific dollar amount. The minimum administrative recoupment amount is \$10, unless the final overissuance payment is less than \$10.

The standard administrative recoupment percentage for FAP is:

- 10 percent (or \$10, whichever is greater) for agency error.

Note: In addition to administrative recoupment, FAP supplements to restore lost benefits are automatically **offset** when entered on Bridges to repay FAP overissuances. The restoration supplement is used in part or in whole to repay overissuances. BEM 725, p.8

A second issue in this case also arose due to offsetting of FAP supplements issued by the Department once medical expenses were calculated. The Petitioner contends the Department should not have offset automatically the FAP supplements she was to receive to repay the Petitioner's outstanding FAP overissuance. The FAP supplements were issued to her due to increases in FAP benefits based upon medical expenses being applied.

Supplemental Program Benefits are defined as benefits authorized to correct underissuances in specific situations prescribed in program policy. BPG Glossary, (October 2017), p. 64

In order to determine medical expenses for inclusion as an expense when calculating the FAP budget the Department is required to comply with BEM 554. The Department is required to determine the medical expenses for Petitioner who because she is disabled is entitled to a deduction of eligible medical expenses which are applied to reduce adjusted gross income. The Department must estimate a disabled person medical expenses at application or redetermination for the benefit period based on all of the following:

- Verified allowable medical expenses.
- Available information about the SDV member's medical condition and health insurance.
- Changes that can reasonably be anticipated to occur during the benefit period. BEM 552 (August 2017), p. 8-9

Based upon case comments made by the Department in September 2017 Case Comments, the Department had only recently discovered that it had incorrectly continued to include medical expenses from 2010 which was a one-time expense of approximately [REDACTED] resulting in an overissuance due to agency error. This was discovered at redetermination. Normally, the Department was required to verify medical expenses at application and redetermination. It was unclear from the record presented whether the Department had yet determined estimated medical expenses for the benefit period. It appears based upon the evidence and the January and February [REDACTED] medical expense that the Department had not determined the monthly estimated medical expense for the benefit period.

After the Department's medical expense error was corrected, the Petitioner had no medical expenses being budgeted by the Department. Even though required to determine these expenses for inclusion in the FAP benefit calculation, the Department inexplicably appears to have not sought to determine ongoing medical expenses. No request by the Department for verification of medical expenses was presented at the hearing after the submissions of medical expenses by Petitioner on November 6, 2017, November 27, 2017 and December 20, 2017. At the end of a FAP case review conducted in this case, the Department recommended follow up by the Department to review the Petitioner's medical expenses to assure accurate FAP issuance and to determine if a supplement is required. See Exhibit A, p. 63-64.

Further a FAP group is not required to, but may voluntarily report changes (in medical expenses) during the benefit period. The Petitioner voluntarily reported and verified during the benefit period the medical expenses. The Department is to 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. BEM 545, p. 9
- Voluntarily reported and verified during the benefit period such as expenses reported and verified for MA deductible.

Based upon the above policy the Department was required to process this change during the benefit period.

The Department must verify allowable medical expenses including the **amount of reimbursement**, at initial application and redetermination. It must verify reported changes in the source or amount of medical expenses if the change would result in an increase in benefits. BEM 554, p. 13. In addition, if a reported change results in a benefit increase the Department is required to act on a change reported within 10 days of becoming aware of the change. BAM 220 requires processing as follows:

Benefit Increases: Changes which result in an increase in the household's benefits must be effective no later than the first allotment issued 10 days after the date the change was reported, provided any necessary verification was returned by the due date. A supplemental issuance may be necessary in some cases. If necessary verification is **not** returned by the due date, take appropriate action based on what type of verification was requested. If verification is returned late, the increase must affect the month after verification is returned. BAM 220 (January 2018), p. 8-9.

Clearly, due to the extended time it took to process the medical bills, the time frames required to effectuate the change was not met resulting in a supplement.

The Department has continued to fail to determine ongoing medical expense promptly and did not present any evidence that it had determined a monthly estimated medical

expense for the benefit period. In a Notice of Case Action issued December 27, 2017, the Department included only [REDACTED] in medical expenses for the month January 2018. In addition, the Department advised that it owed Petitioner [REDACTED] worth of benefits for November 1, 2017 through December 3, 2017. The Department took [REDACTED] of the \$[REDACTED] supplement as part of the recoupment.

On January 17, 2018, the Department issued another Notice of Case Action, advising that the Petitioner was entitled to FAP benefits for November 2017 in the amount of [REDACTED] and for the month of February 2018 benefits were decreased to [REDACTED]. In calculating benefits for February 2018, the Department again included only \$[REDACTED] in Medical Expenses when calculating FAP benefits.

In addition, in the January 17, 2017 Notice, the Department issued a \$56.00 supplement for December 2017 and applied the entire [REDACTED] supplement to the outstanding overissuance.

Given this ongoing pattern, it is clear that the Department has failed to comply with Department policy. The Petitioner is a severely disabled individual who clearly has ongoing monthly medical expenses and the Department included only \$[REDACTED] of monthly medical expense without presenting any evidence as to what the medical expense was based on. Thus, the Department has not met its burden to demonstrate that for January 2018 and February 2018 that it correctly calculated the Petitioner's monthly medical expense. Based on the evidence, it could not be determined if the Department had actually determined that [REDACTED] was the correct medical expense ongoing, or that it had estimated the Petitioner's medical expenses for the benefit period to be [REDACTED].

BAM 405 governs Supplements for Food Assistance Benefits and provides that supplements must be issued when the regular FAP issuance is less than the group is eligible for. The issuance of a supplement is done by the Department's Bridges system, a computerized program. The Bridges System offsets benefits automatically. The policy does authorize offsets of supplements issued when an overissuance exists which allows that the amount of the overissuance to be subtracted from the amount of the supplement and may result in the whole supplement being credited as is the case in this matter. Offsetting occurs when:

- The benefit recovery system shows an overissuance balance, **and**
- A supplement is authorized to correct a previous month(s) underissuance, **and**
- The supplement was ordered by a court or administrative law judge and the order does **not** specifically prohibit offsetting. BAM 406, (July 2013), p. 1.

In this case, the Department on two occasions has applied two supplements issued to the Petitioner for her FAP benefits to the overissuance outstanding amount automatically. In the first case, the supplement issued for November 1, 2017 to

December 31, 2017 in the amount of [REDACTED] was issued late due to Agency time frames. The Department took well beyond the 10-day processing period mandated by Department policy to process the change resulting in the supplement issuance rather than a FAP increase in the monthly benefits for November and December reflecting the change in medical expenses for FAP. The Department bridges system offset [REDACTED] of the [REDACTED] supplement.

Likewise, the next supplement was issued for December 1, 2017 through December 31, 2017 on January 17, 2017 in the amount of [REDACTED]. This supplement also was not apparently issued as a benefit increase within the 10-day processing period mandated to process the change resulting in a FAP increase.

Given the lack of evidence presented by the Department that it acted in conformance with administrative time frames and in a reasonably timely manner, it is determined that the Department is not entitled to apply the supplements to the overissuance and the supplemented benefits issued for November 2017 and December 2017, must be restored to Petitioner in the next monthly FAP allotment without offset. This result is reasonable given the fact that no good explanation was given by the Department for taking so long to process the change which should have resulted in a benefit increase in the next FAP allotment issued 10 days after the change was reported. But for the delay by the Department, the Petitioner would not have received the supplements for those months, but the benefit increase would have been timely processed and included in the monthly benefit for that month.

A further unexplained issue also remains regarding the Department's continuing to credit the Petitioner with medical expenses of [REDACTED] per month and presented no evidence to establish a basis for its determination of this expense. The Petitioner's hearing request for January 26, 2017 clearly stated that she disagreed with the [REDACTED] amount of allowable medical expenses. The Department presented no evidence at the hearing that it has determined a monthly estimated benefit amount for recurring medical expense. There was no evidence to support how the Department calculated the medical expenses and no medical expense summary was provided. It is clear from the record that the Petitioner's submissions have been clear and well organized, and some expense are clearly likely to continue, such as transportation costs, prescriptions, and doctor's appointments, as well as pain clinic appointment for treatment. Exhibit B.

It should be noted that the Department did not process transportation expenses because the Petitioner did not have a receipt. Because the transportation company does not provide receipts, the Petitioner did provide the medical transportation company's standard pricing chart and a list of the dates and addresses of the trips. Petitioner Exhibit 1. The Department did not process the bills or attempt to call the company and make a collateral contact with questions it may have had. See BEM 554, p. 12. In addition, the Department did not apply an alternative basis for determining transportation costs. BEM 554 provides with regard to determining transportation cost:

- Actual costs of transportation and lodging necessary to secure medical treatment or services.
- If actual costs **cannot** be determined for transportation, allow the cents-per-mile amount at the standard mileage rate for a privately-owned vehicle in lieu of an available state vehicle. To find the cents-per-mile amount go to the Michigan Department of Management and Budget at www.michigan.gov/dtmb, select Services & Facilities from the left navigation menu, then select Travel. On the travel page, choose Travel Rates and High Cost Cities using the rate for the current year. BEM 554, p. 11.

Based upon the evidence presented, the Department is required to process the medical transportation costs and determine a monthly estimated medical expense amount with regards to this expense. The transportation expense must also be included in medical expenses for December 2017, January 2018 and February 2018 ongoing and any supplement issued shall not be offset and applied to the outstanding overissuance due to Agency Error. No medical bills were submitted until November 6, 2017 based upon the evidence of record presented, thus no supplement issue is presented for October 2017 or November 2017. In the future, the Department must process ongoing and one-time medical bills that affect the FAP allotment within the administrative time frames for processing of changes that will result in a FAP benefit increase.

In conclusion, it is determined that the Department did not meet its burden of proof to establish the basis for the [REDACTED] medical expenses for January 2018 and February 2018. In addition, it is determined that the Department has not demonstrated compliance with determining the monthly benefit amount for these medical expenses and is likely to continue the process of issuing late supplements which will be offset by the outstanding overissuance. Therefore, based upon the proofs presented, it is determined that any supplement issued by the Department for the periods December 2017, January 2018 and February 2018, and thereafter, will not be applied to offset the outstanding overissuance until the Department determines an estimated monthly medical expense.

The Petitioner's monthly FAP allotment will continue to be subject to normal recoupment of benefits provided in BAM 725 as provided by Department policy.

The Petitioner in its brief has raised issues which the undersigned lacks jurisdiction to address due to the equitable relief requested. The Petitioner requested that a Proposed Decision barring the Department's collection of the established overissuance because she relied on the Department's calculation, and financial hardship to Petitioner created by the overissuance.

To the extent Petitioner's counsel argues that Petitioner relied on the Department's prior interpretation of policy or actions with respect to the Agency Error which resulted in an overissuance and administrative recoupment due to the Department's inclusion of

improper medical expenses, asserting theories of estoppel or that the overissuance should be barred from collection by the Department, counsel is presenting an equitable argument. In the absence of an express legislative conferral of authority, an administrative agency generally lacks the powers of a court of equity. *Delke v Scheuren*, 185 Mich App 326, 332; 460 NW2d 324 (1990). Because the Legislature has not conferred equitable authority to MAHS with respect to hearings relating to Department actions, the undersigned is precluded from addressing Claimant's equitable arguments of reliance, undue delay, or lack of notice.

Where Department policy is not contrary to existing law, the authority of an administrative law judge is limited to determining whether the Department's actions were in accordance with Department policy. BAM 600 (March 2014), p. 39. Administrative law judges presiding over Department hearings "have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or overrule or make exceptions to Department policy." Delegation of Hearing Authority executed by Maura Corrigan, Department Director, July 13, 2011. Accordingly, the matter presented, to the extent it seeks the imposition of equitable remedies cannot be decided by the undersigned.

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 the Petitioner's medical bills and determined eligible medical expenses.

DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED**.

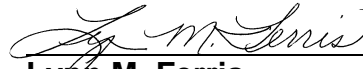
THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall process all the remaining and outstanding medical expenses, including costs of transportation and determine the Petitioner's ongoing monthly medical expense for the benefit period to be applied monthly to her FAP benefit expenses.
2. The Department shall issue as appropriate FAP supplements regarding medical expenses without offset for the outstanding overissuance, for medical bills to be processed in paragraph 1, for the months of December 2017, January 2018 and February 2018.
3. No offset of FAP supplements issued due to increased FAP allotments based upon medical expenses will be made regarding the Petitioner's outstanding

overissuance until the Department determines the Petitioner's monthly medical expense for the benefit period.

4. The Department shall provide Petitioner and her attorney with written notice of its determination.

LF/tm



Lynn M. Ferris

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

Counsel for Respondent

[REDACTED]
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Petitioner

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