



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: May 22, 2018
MAHS Docket No.: 18-003647
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 May 17, 2018, from Sterling Heights, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Haysem Hosny, Eligibility Specialist and Hearings Coordinator.

ISSUE

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

FINDINGS OF FACT

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

1. On January 8, 2018, the Department received Petitioner's Application for FAP benefits.
2. On the same day, Petitioner provided proof of an increased rental expense from \$ [REDACTED] per month to \$ [REDACTED] per month.
3. On January 10, 2018, the Department issued a Verification Checklist (VCL) to Petitioner requesting proof of home rent, medical expenses, non-heat electric expenses, heat expenses, residential address, his trust, and his home help aid by January 22, 2018.
4. On January 18, 2018, Petitioner returned the requested proofs.

5. Petitioner receives a Retirement, Survivors and Disability Insurance (RSDI) gross benefit of \$ [REDACTED] of which \$ [REDACTED] was deducted for his Medicare Part B premium.
6. On March 2, 2018, the Department issued a Notice of Case Action informing Petitioner that his FAP benefit would be \$ [REDACTED] effective January 8, 2018, and \$ [REDACTED] effective February 1, 2018, ongoing.
7. On April 5, 2018, Petitioner submitted his request for hearing disputing the calculation of his FAP benefit rate.
8. On April 16, 2018, the Department issued another VCL requesting proof of Home Rent as there was some confusion about a Shelter Verification form.
9. On April 19, 2018, the Department issued a new Notice of Case Action informing Petitioner that his FAP benefit rate would decrease to \$ [REDACTED] per month effective May 1, 2018; the Notice of Case Action did not address any prior months.

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, Petitioner disputes the calculation of his FAP benefit rate based upon the Department's consideration of his medical expenses including his in-home care aid, Medicare Part B premium, supplemental insurance through Blue Cross Blue Shield and Delta Dental, as well as his rental expense effective January 2018 ongoing.

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 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), p. 1. 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. BEM 505, pp. 5-7. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. Income received twice per month is added together. BEM 505, p. 8. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. 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. Petitioner does not dispute the calculation of his income at \$██████████ per month.

After income is calculated, the Department is required to review expenses and other deductions. The parties agree that Petitioner is a Senior/Disabled/Disabled Veteran (SDV) and, therefore, entitled to consideration of additional expenses. BEM 550. Thus, Petitioner is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- Medical expenses that exceed \$35.00.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (August 2017), p. 1; BEM 556 (July 2013), p. 3.

At the hearing, the Department presented two sets of Net Income Budgets for January and February 2018. The Department asserted in the hearing that the first set of budgets was prior to changes being enacted regarding Petitioner's rent expense and medical expenses. The second set reflected changes to Petitioner's rent and medical expenses. However, the Department did not provide a Notice of Case Action or eligibility summary to show that the changes were actually implemented. The Notice of Case Action from April 19, 2018, addresses changes effective May 1, 2018, but not at any point prior to May 1st. Therefore, for purposes of this decision, the original budgets must be used to determine if the Department properly calculated Petitioner's FAP benefit rate.

No evidence was presented that Petitioner has any dependent care or child support expenses. The Department afforded Petitioner the proper standard deduction of \$██████████ based upon a group size of one. BEM 556, p. 3; RFT 255 (October 2017), p. 1. The earned income deduction does not apply to Petitioner as his only income is his unearned income RSDI benefit.

Looking first to Petitioner's medical expense deduction, the Department asserted that old medical expenses were being budgeted for Petitioner that had not been verified or were for over the counter drugs or supplements without proof of a prescription. In the month of January 2018, the Medical Expense-Summary as provided by the Department shows that Petitioner provided proof of eight different medical expenses while an

additional ten expenses appeared in his Electronic Case File. The medical expense summary does not provide details of each item other than its cost and the general description such as “prescription drugs and over-the-counter medication” or “health/hospitalization insurance premiums”. Despite the information reflected on the Medical Expense-Summary, the Electronic Case File shows that Petitioner submitted 15 items related to medical expenses or health insurance premiums during the month of January 2018. The Department argues that many of the medical expenses submitted by Petitioner are for items without a verified prescription; therefore, those items cannot be considered. Pursuant to policy allowable medical expenses are limited to the following:

- Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner authorized by State law or other qualified health professional.
- Hospitalization or nursing care. Include these expenses for a person who was a group member immediately prior to entering a hospital or nursing home.
- Prescription drugs and the postage for mail-ordered prescriptions.
- Costs of medical supplies, sickroom equipment (including rental) or other prescribed medical equipment (excluding the cost for special diets).
- Over-the-counter medication (including insulin) and other health-related supplies (bandages, sterile gauze, incontinence pads, etc.) when recommended by a licensed health professional.
- Premiums for health and hospitalization policies (excluding the cost of income maintenance type health policies and accident policies, also known as assurances). If the policy covers more than one person, allow a prorated amount for the SDV person(s).
- Medicare premiums.
- Dentures, hearing aids and prosthetics including the cost of securing and maintaining a seeing eye or hearing dog or other assistance animal. (Animal food and veterinary expenses are included.)
- Eyeglasses when prescribed by an ophthalmologist (physician-eye specialist) or optometrist.
- 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.

- The cost of employing an attendant, homemaker, home health aide, housekeeper, home help provider, or child care provider due to age, infirmity or illness. This cost must include an amount equal to the maximum FAP benefits for one person if the FAP group provides the majority of the attendant's meals. If this attendant care cost could qualify as both a medical expense and a dependent care expense, it **must** be treated as a medical expense.
- A Medicaid deductible is allowed if the following are true.
- The medical expenses used to meet the Medicaid deductible are allowable FAP expenses.
- The medical expenses are not overdue.

BEM 554, pp. 10-11. A medical expense does not have to be paid to be allowed. The medical expense can be considered if verified. Acceptable verification sources include, but are not limited to:

- Current bills or written statement from the provider, which show all amounts paid by, or to be paid by, insurance, Medicare or Medicaid.
- Insurance, Medicare or Medicaid statements which show charges incurred and the amount paid, or to be paid, by the insurer.
- DHS-54A, Medical Needs, completed by a licensed health care professional.
- State Online Query for Medicare premiums.
- Written statements from licensed health care professionals.
- Collateral contact with the provider. (Most commonly used to determine cost of dog food, over-the-counter medication and health-related supplies, and ongoing medical transportation).

BEM 554, p. 12. Of the bills presented at the hearing by the Department, two appear to have been included in the Medical Expense-Summary based on their values; and these total \$██████. In reviewing each of the budgets provided by the Department and the Notice of Case Action from March 2, 2018, it is unclear what the Department considered and what the Department excluded from Petitioner's medical expenses. It is noted that many of the medical expenses provided to the Department in 2018 were more than six

months old and for supplements with no proof of a prescription. However, without a clear indication of what expenses were considered and when, the Department has not met its burden of proof to show that it followed policy in considering Petitioner's medical expenses.

Turning to Petitioner's excess shelter deduction, the last deduction from income, this deduction is a compilation of housing and utility costs in relation to adjusted gross income. BEM 556, p. 5. Housing expenses include rent, mortgage, home equity loans, required condo or maintenance fees, and lot rent among other things. BEM 554, p. 13. Shelter expenses must be verified at application and when a change is reported. BEM 554, p. 14. Once housing expenses are considered, the heat and utility (h/u) standard is provided to individuals who are liable for the cost of their heat and utilities. The h/u standard covers all h/u costs including cooling, except actual utility expenses, for example, installation fees. BEM 554, p. 15. FAP groups that qualify for the h/u standard **do not** receive any other individual utility standards. *Id.* Once all utility standards and the housing expense are added together, the total shelter amount is calculated. BEM 556, p. 5. From there, 50% of the adjusted gross income is deducted from the total shelter amount to determine the excess shelter deduction. *Id.* The adjusted gross income is then reduced by the excess shelter deduction to determine the Net Income. After calculation of net income, the Department must review RFT 260 Food Assistance Issuance Tables to determine the FAP group's benefit rate.

On January 8, 2018, Petitioner submitted a letter from his landlord showing that he had an increase in rent of \$ [REDACTED] effective February 1, 2018. On January 18, 2018, he resubmitted the same letter along with a Shelter Verification form filled out by his landlord indicating his rent was \$ [REDACTED]. Given Petitioner's statements that his rent was actually \$ [REDACTED] the Department sought additional clarification from the landlord which it received in April 2018 showing that his rent was in fact \$ [REDACTED]. In the original budgets, the Department listed Petitioner's housing expense as \$ [REDACTED]. Since the Department did not have proof of the actual expense at \$ [REDACTED] the Department acted in accordance with policy in relation to the housing expense. Once the Department had proof of the \$ [REDACTED] rental expense, only then would it be appropriate to budget the rent for \$ [REDACTED]. But since it is unclear what the original rental rate was before the \$ [REDACTED] increase, the documents submitted in January 2018 do not provide the Department sufficient information to budget the \$ [REDACTED] as of February 1, 2018.

Finally, the Department did not properly provide Petitioner with the h/u standard of \$ [REDACTED] as of January 2018, yet the Department provided Petitioner with the h/u standard in February 2018. The electronic case file shows that the Department received proof Petitioner's h/u expense on January 18, 2018; therefore, the Department should have considered the expense as of January 2018.

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 failed to provide the h/u standard in January 2018, and failed

to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's 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. Redetermine Petitioner's January 8, 2018, application for FAP benefits;
2. If otherwise eligible, issue supplements to Petitioner for FAP benefits not previously issued in accordance with Department policy;
3. Notify Petitioner in writing of its decision.



AM/

Amanda M. T. Marler
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) 763-0155; 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

Vivian Worden
MDHHS-Macomb-36-Hearings

Petitioner

[REDACTED]
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BSC4
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