



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: June 1, 2018
MAHS Docket No.: 18-002529
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 May 30, 2018, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Tamika Parks, Family Independence Manager and Renee Piper, Eligibility Specialist.

ISSUE

Did the Department properly consider Petitioner's medical expenses when calculating her Food Assistance Program (FAP) benefit amount and her Medical Assistance (MA) program deductible amount?

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 FAP recipient and an ongoing MA recipient under the G2S program.
2. On January 23, 2018, the Department sent Petitioner a Notice of Case Action informing her of her FAP benefit amount for January 2018 and that her medical expense deduction was calculated to be \$70 (Exhibit K, pp. 2-5).

3. On January 24, 2018, the Department sent Petitioner a Notice of Case Action informing her of her FAP benefit amount for February 2018 and that her medical expense deduction was calculated to be \$381 (Exhibit K, pp. 6-9).
4. On January 24, 2018, the Department sent Petitioner a Health Care Coverage Determination Notice informing Petitioner that her deductible was \$532 the month of November 2017 and that she met her deductible on November 15, 2017.
5. On January 24, 2018, the Department sent Petitioner a Verification Checklist (VCL) requesting verification of pharmacy insurance (Medicare Part D); her service animal registration; and prescribed over the counter medication (Exhibit C).
6. On January 25, 2018, the Department sent Petitioner a Health Care Coverage Determination Notice informing her that for December 2017 her deductible was \$522 and that she met her deductible on December 29, 2017 (Exhibit B).
7. On January 31, 2018, Petitioner submitted verification that her dog was registered as a service animal; her over the counter medications were prescribed; and her chiropractic massages were prescribed (Exhibit J).
8. On February 12, 2018, the Department sent Petitioner a Notice of Case Action informing her of her FAP benefit amount for March 2018 and that her medical expense deduction was calculated to be \$357 (Exhibit K, pp. 10-13).
9. On March 1, 2018, the Department sent Petitioner a Notice of Case Action informing her of her FAP benefit amount for April 2018 and that her medical expense deduction was calculated to be \$70 (Exhibit A).
10. On March 6, 2018, Petitioner requested a hearing to dispute the Department's actions.

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 to dispute the Department's calculation of her medical expense deduction used when calculating her FAP benefit amount. Specifically, Petitioner argued that the Department was not including all of her medical expenses when calculating her medical expense deduction. Petitioner alleged the Department was not including her expenses for her service dog; her over the counter medications; her chiropractic massages; her copays for doctor bills; and her counseling services.

As Petitioner qualifies as an SDV member, the group is entitled to deductions for verifiable medical expenses that the SDV member incurs in excess of \$35. BEM 554 (August 2017), p. 1. Groups that do not have a 24-month benefit period may choose to budget a one-time-only medical expense for one month or average it over the balance of the benefit period. BEM 554, p. 9. Policy provides an example of a medical expense that is received may be divided and applied over the following 12 months or the entire expense may be applied to the following month's benefit allotment. BEM 554, p. 9. Allowable expenses include but are not limited to: (i) medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner authorized by State law or other qualified health professional; (ii) over-the-counter medication (including insulin) and other health-related supplies (bandages, sterile gauze, incontinence pads, etc.) when recommended by a licensed health professional; and (iii) 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). BEM 554, p. 10.

The Department testified that Petitioner's medical expenses for her service dog, over the counter medications and chiropractic massages were not being budgeted prior to January 2018. The Department stated that the expenses were not included because Petitioner had not submitted an updated verification that her dog was a licensed service animal and that her over the counter medications and chiropractic massages were prescribed by a licensed health professional, as required by policy.

The Department sent Petitioner a VCL on January 24, 2018 requesting verification that her dog was registered as a service animal; verification of her pharmacy insurance, as the Department had recently discovered Petitioner was receiving Medicare Part D; and proof that her over the counter medications and chiropractic massages were prescribed. The Department testified that Petitioner had previously submitted verification of the service animal, but the registration had expired. Additionally, Petitioner had not submitted verification of her Medicare Part D expenses or that her over the counter medications and chiropractic massages were prescribed by a licensed health care provider. As a result, the expenses were not being budgeted.

On January 31, 2018, Petitioner submitted verification that her dog was registered as a service animal and that her over the counter medications and chiropractic massages

were prescribed. (Exhibit J). As a result, the Department testified it began budgeting the expenses as of February 2018, ongoing. The Department also testified that Petitioner's copays and costs incurred for counseling services were also being budgeted.

Petitioner argued that she had submitted verification of the above stated medical expenses prior to January 2018. Petitioner submitted numerous documents subsequent to the hearing (Exhibit 1). As the documents were submitted after the hearing, no testimony as to what the documents are or when they were submitted to the Department was provided during the hearing. Additionally, the documents are not date stamped as received by the Department. Therefore, it cannot be affirmatively established if/when the documents were submitted to the Department. Thus, Petitioner did not provide sufficient evidence to show that the Department improperly failed to budget the expenses prior to January 2018.

The Department presented budgets to establish the calculation of Petitioner's FAP benefit amount for January 2018 through April 2018 (Exhibits G, H, and K, pp. 22-29). For January 2018, Petitioner was only given a \$70 medical expense deduction, which consisted only of her Medicare Part B expense. The Department testified Petitioner was not given additional medical expense deductions, because the service dog, over the counter medications, and chiropractic massages had not yet been verified. The Department presented Petitioner's Medical Expense Summary, which showed the only expenses submitted in December 2017, which would have been included in January 2018's budget, were related to her service dog. As Petitioner had not yet properly verified that her dog was registered as a service animal, the Department correctly excluded the expenses from Petitioner's medical expense deduction and FAP budget as a whole for January 2018.

According to budgets provided for February 2018, Petitioner received a \$381 medical expense deduction (Exhibit K, pp. 28-29). The Department provided a breakdown to show which medical expenses were considered when calculating Petitioner's medical expense deduction for February 2018 (Exhibit K, pp. 30-31). The Department included numerous expenses that were incurred in 2017 and omitted expenses that were incurred in January 2018, as shown on the Medical Expense Summary. It is unclear as to why some but not all of the expenses incurred in January 2018 were included in the February 2018 budget. Additionally, the Department included a memorandum acknowledging some of the expenses that were budgeted in February 2018 should have been omitted (Exhibit K, p.1). Therefore, the Department failed to establish it properly considered Petitioner's medical expenses when calculating her medical expense deduction and FAP benefit amount for February 2018.

According to the budgets provided, Petitioner's medical deduction for March 2018 was calculated to be \$357 and April was \$70. The Department did not provide a breakdown as to the exact medical expenses that were considered when calculating Petitioner's medical expense deduction for those months. When reviewing the Medical Expense Summary, the medical expenses listed are not reflective of the Department's calculation of Petitioner's medical expense deductions for those months. Again, it is unclear as to

what medical expenses were considered when calculating Petitioner's medical expense deduction for March 2018 and April 2018. Therefore, the Department failed to establish it properly considered Petitioner's medical expenses when calculating her medical expense deduction and FAP benefit amount for March and April 2018.

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 alleged that her deductible amount was improperly calculated. Petitioner argued that the above stated expenses (copays, mental health services and expenses related to her service animal, over the counter medications and massages) should be considered when calculating her deductible. Petitioner was an ongoing MA recipient under the G2S program. The Department presented G2S deductible budgets to show what was considered in the calculation of her deductible (Exhibit D).

In determining the monthly deductible, net income is reduced by health insurance premiums paid by the MA group; remedial service allowances for individuals in adult foster care or homes for the aged; and guardianship/conservator expenses BEM 544 (January 2016), pp. 1-3 and BEM 541, p. 3 (January 2018). Clients meet their deductible by reporting and verifying allowable medical expenses that equal or exceed the deductible amount for the calendar month tested. BEM 545 (January 2017), p. 11.

According to the budgets provided, the Department considered Petitioner's medical expenses when determining if she met her deductible, as opposed to the calculation of the deductible itself. Policy does not provide for a deduction of medical expenses in the calculation of a G2S deductible. Therefore, the Department acted in accordance with policy when it only considered Petitioner's medical expenses when determining if she met her monthly deductible.

DECISION AND ORDER

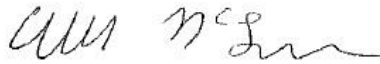
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when considering Petitioner's medical expenses in relation to her MA deductible amount. The Department failed to establish it properly followed policy when considering Petitioner's medical expenses in relation to her FAP benefit amount for February 2018 through April 2018.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to Petitioner's MA benefit case and **REVERSED IN PART** with respect to Petitioner's FAP benefit case for February 2018 through April 2018.

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 FAP eligibility for February 2018 through April 2018;
2. If Petitioner is entitled to additional FAP benefits, issue supplements she is entitled to receive for February 2018 through April 2018; and
3. Notify Petitioner of its decision in writing.

EM/cg



Ellen McLemore
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

Via Email:

MDHHS-Macomb-36-Hearings
M. Holden
D. Sweeney
D. Smith
EQAD
BSC4-Hearing Decisions
MAHS

Petitioner – Via First-Class Mail:

