



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: December 4, 2018  
MAHS Docket No.: 18-011364  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** John Markey

**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 December 4, 2018, from Lansing, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearings Facilitator. During the hearing, a 19-page packet of documents was offered and admitted as Exhibit A, pp. 1-19.

**ISSUE**

Did the Department properly close Petitioner's Medicaid (MA) case under the AD-Care program?

Did the Department properly close Petitioner's MA Medicare Savings Program (MSP) benefit case?

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

**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 MA benefits under the AD-Care and MSP programs.
2. Petitioner was an ongoing recipient of FAP benefits.

3. On April 2, 2018, the Social Security Administration (SSA) deposited about \$ [REDACTED] into Petitioner's bank account. The money represented a retroactive payment of RSDI benefits Petitioner should have received from 2006-2008.
4. On [REDACTED] [REDACTED] 2018, Petitioner submitted to the Department a completed Redetermination along with a bank statement showing that he had a balance of \$ [REDACTED] Exhibit A, p. 2.
5. On October 25, 2018, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that Petitioner's AD-Care and MSP cases were closing effective November 1, 2018 for having excessive assets. Exhibit A, pp. 8-11.
6. On October 25, 2018, the Department issued to Petitioner a Notice of Case Action informing Petitioner that his FAP case was closing as a result of having excessive assets. Exhibit A, pp. 12-15.
7. On [REDACTED] [REDACTED] [REDACTED] Petitioner filed with the Department a request for hearing objecting to the closure of his MA and FAP cases.
8. On November 2, 2018, the Department issued to Petitioner a Verification Checklist (VCL) requesting a letter from the SSA describing the April 2, 2018 retroactive RSDI payment. Exhibit A, p. 16.
9. On November 5, 2018, Petitioner returned to the Department a letter from the SSA describing the April 2, 2018 retroactive RSDI payment and the terms thereof.
10. On November 7, 2018, the Department issued to Petitioner another VCL asking for the same information Petitioner provided in the November 5, 2018 submission.

### **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 CLOSURE**

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 was an ongoing recipient of FAP benefits. Petitioner's case was due for redetermination with the benefit period ending October 31, 2018. On October 25, 2018, Petitioner submitted to the Department the completed Redetermination along with a printout showing a bank account balance of \$[REDACTED]. Upon receiving the redetermination and bank account information, the Department issued a Notice of Case Action informing Petitioner that his FAP case would close effective December 1, 2018. The Department found that the value of Petitioner's assets exceeded the limit for FAP eligibility.

When determining asset eligibility, the Department will prospectively use the asset group's assets from the benefit month. BEM 400 (October 2018), p. 3. Asset eligibility exists when the group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400, p. 3. For FAP cases, the asset limit is \$5,000 or less. BEM 400, p. 5. Assets include checking and savings accounts. BEM 400, p. 15. For FAP cases, the Department will use the lowest checking, savings or money market balance in the month when determining asset eligibility. BEM 400, p. 15. Divestment occurs if a FAP group transfers assets for less than the fair market value for any of the following reasons: (i) to qualify for program benefits or (ii) to remain eligible for program benefits. BEM 400, pp. 5-6. When divestment occurs, the FAP case is closed for the relevant disqualification period. BEM 406 (October 2016), p. 2.

Petitioner submitted verification of several of his bank account showing a balance of \$[REDACTED]. During the hearing, Petitioner indicated that at no point during the period from October 2018 through at least December 4, 2018, did the balance become less than the asset limit of \$5,000. While retroactive RSDI payments are excluded assets for a limited period with respect to SSI-related MA (see below), that policy does not apply to FAP eligibility. Accordingly, Petitioner's assets were properly determined to be greater than the asset limit for FAP eligibility. Therefore, the Department acted in accordance with policy when it closed Petitioner's FAP benefit case, effective December 1, 2018.

### **MA CLOSURE (AD-CARE AND MSP)**

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 was an ongoing MA beneficiary through AD-Care and the Qualified Medicare Beneficiaries (QMB) category of MSP. The Department closed Petitioner's MA cases after Petitioner returned to the Department the completed redetermination and bank account information on October 25, 2018. As in the FAP case, the Department closed the two MA cases because it found that the value of Petitioner's assets exceeded the eligibility limits for both programs. Petitioner filed a

timely hearing request and provided a letter from the SSA showing that the assets in his bank account were the leftovers from a large retroactive RSDI disbursement from April 2, 2018.

Ad-Care is an SSI-related full-coverage MA program. BEM 163 (July 2017), p. 1. MSP is also an SSI-related MA program. BEM 165 (January 2018), p. 1. For each program, a client's countable assets must be at or below the asset limits found in BEM 400. BEM 163, p. 2; BEM 165, p. 8. Countable assets are determined based on MA policies in BEM 400, 401, and 402. BEM 163, p. 2; BEM 165, p. 8. The asset limit for a group of one for SSI-related MA is \$2,000. BEM 400, p. 8.

Thus, in order for Petitioner to be eligible for the SSI-related MA programs in question, Petitioner's countable assets must not exceed \$2,000. On October 25, 2018, the Department became aware that Petitioner's bank account had a balance of \$[REDACTED]. The same day, the Department issued the Health Care Coverage Determination Notice to Petitioner informing Petitioner that his MA cases were closing for excess assets. A few days later, Petitioner filed a timely hearing request and further informed the Department that the assets were not countable as they were on account of an April 2, 2018 retroactive RSDI disbursement from the SSA. Petitioner verified the nature of the assets by providing to the Department a letter from the SSA explaining the payment.

For the purposes of determining eligibility for SSI-related MA, Department policy states:

Exclude retroactive RSDI...benefits for nine calendar months beginning the month after payment is received. Do not exclude purchases made with such funds including CDs and other time deposits.

This exclusion applies only to any unspent portion of the retroactive payment from RSDI.... Once the money from the retroactive payment has been spent, this exclusion does not apply to the items purchased with the money, even if the nine-month period has not expired.

BEM 400, p. 23.

Petitioner was awarded over \$[REDACTED] from the SSA on April 2, 2018. That money was deposited in Petitioner's bank account. Per BEM 400, the retroactive RSDI benefits were not a countable asset for nine full months beginning the month after the payment was received. Thus, from May 2018 through January 2019, they were not countable. As the Department counted those assets when making its October 25, 2018 determination that Petitioner was not income eligible for the SSI-related MA programs anymore, the Department failed to follow Department policy. Accordingly, the Department's closure of Petitioner's AD-Care and MSP cases are reversed.

**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 satisfied its burden of showing that it acted in accordance with Department policy when it closed Petitioner's FAP benefits case. Accordingly, the Department's decision in that respect is **AFFIRMED**.

However, 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 closed Petitioner's AD-Care and MSP benefits cases.

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. Reinstate Petitioner's MSP benefit eligibility as of November 1, 2018, ongoing;
2. Reinstate Petitioner's AD-Care benefit eligibility as of November 1, 2018, ongoing;
3. If the Department needs further verification of Petitioner's asset eligibility, provide to Petitioner clear requests for verification and allow Petitioner the opportunity to respond pursuant to Department policy;
4. Notify Petitioner of its actions in writing.

JM/nr

  
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John Markey  
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**

Susan Noel  
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Wayne 19 County DHHS- via electronic  
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**Petitioner**

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