



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: March 4, 2019
MAHS Docket No.: 19-000754
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, a telephone hearing was held on February 28, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Ryan Clemons, Family Independence Manager, and Mark McBride, Eligibility Specialist.

ISSUE

Did the Department properly consider Petitioner's medical expenses in the Food Assistance Program (FAP)?

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 has been an ongoing FAP recipient and has disputed the consideration of her medical expenses as part of her FAP budget multiple times beyond those discussed in this decision.
2. On December 18, 2017, Petitioner submitted a hearing request disputing the Department's consideration of her medical expenses.
3. On January 4th and 26th, 2018, Petitioner submitted a hearing request disputing the consideration of her medical expense submissions; the hearing requests were consolidated.

4. On January 31, 2018, a hearing was held before Administrative Law Judge Ferris (ALJ) during which Petitioner was represented by Attorney Elizabeth Benton (Attorney) based upon the December 2017 hearing requests in Michigan Administrative Hearing System (MAHS) docket number 17-016365.
5. On the same day, ALJ issued an Order of Dismissal for Lack of Jurisdiction in MAHS docket number 17-016365 because the Department had “fully processed the medical bills and issued a Notice of Case Action to the Petitioner”, and the request had been based upon the Department’s failure to process the reported changes.
6. On February 20, 2018, a hearing was held before ALJ for the consolidated hearing requests from January 2018 in MAHS docket number 18-000462; Petitioner was represented by Attorney, and the Department was represented by Assistant Attorney General Chantal Fennessey (AAG).
7. On March 7, 2018, ALJ issued a decision holding that the Department had not acted in accordance with Department policy, and ordered the Department to process all medical expenses, including medical transportation costs, and determine the Petitioner’s ongoing monthly medical expense.
8. On October 10, 2018, a letter was issued to Petitioner on Department letterhead explaining the process and requirements for submission and consideration of medical expenses.
9. On November 29, 2018, Petitioner submitted a medical bill from [REDACTED] Hospital in the amount of \$[REDACTED] and medical transportation costs to and from her dentist appointment totaling \$[REDACTED]
10. For the January 2019 benefit period, the Department considered the following ongoing medical expenses: Petitioner’s Medicare Part D Premium (\$[REDACTED]) a generalized medical/dental/vision service expense including transportation to obtain services (\$[REDACTED]) and prescriptions and over-the-counter (OTC) medications (\$[REDACTED])
11. For the January 2019 benefit period, the Department also considered the following one-time medical expenses: a medical/dental/vision service from [REDACTED] Hospital (\$[REDACTED]) and a medical/dental/vision transportation to obtain services expense (\$[REDACTED]) at a later date, the Department determined that it had included the \$[REDACTED] expense in error based upon the October 2018 letter.
12. For January 2019, the Department calculated an overall total medical expense of \$[REDACTED] and a medical deduction of \$[REDACTED] after consideration of the \$[REDACTED] offset pursuant to policy.

13. On January 15, 2019, the Department received Petitioner's request for hearing disputing the consideration of her medical expenses.

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 continues to contest the Department's consideration of her medical expenses. The parties do not dispute that Petitioner is eligible for a medical expense deduction based upon her status as a Senior, Disabled, or Disabled Veteran (SDV) group member. Policy provides that groups with one or more SDV member are entitled to a medical expense deduction for medical expenses of the SDV member that exceed \$35.00. BEM 554 (August 2017), p. 1. In order to provide clients with a medical expense deduction, the Department must estimate an SDV person's medical expenses for the benefit period using the following criteria:

- 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 554 (August 2017), pp. 8-9. This language was noted in MAHS docket number 18-000462 on page 5, and the Department was ordered to "process all the remaining and outstanding medical expenses, including costs of transportation and determine the Petitioner's ongoing monthly medical expenses for the benefit period to be applied monthly to her FAP benefit expenses." *In re Melissa Burwell*, unpublished opinion of the Mich Admin Hearing Sys, issued March 7, 2017, (Docket no. 18-000462), pp. 5, 10. In an effort to comply with the decision, the Department determined that Petitioner was eligible for a \$[REDACTED] medical/dental/vision transportation to obtain services expense each month. In addition, in an effort to explain the procedures, the Department issued the letter on October 10, 2018, to explain the procedures for handling Petitioner's medical expenses. The letter advises Petitioner that if she would like additional medical

expenses to be considered, she must provide clear supporting documentation showing that the expense belongs to her, and that it is not included in the already recurring budgeted expenses. The letter then provides as an example, because three medical expense transportation trips have already been budgeted each month for Petitioner, if she would like additional transportation costs to be considered, she must show that she has incurred the costs of the three previously budgeted trips, in addition to any additional medical transportation costs per month. Therefore, if Petitioner incurs the cost of five medical-related transportation expenses, she must show the Department that she has incurred all five transportation expenses and not just the two additional costs. The Department's position as described in the letter is consistent with policy which states that the Department is required to "verify reported changes in the source or amount of medical expenses if the change would result in an increase in benefits." BEM 554, p. 12. Since additional transportation costs beyond what has already been budgeted would increase Petitioner's benefit rate, the Department is correct that it needs to verify all medical transportation expenses.

In reviewing the medical expenses for Petitioner that the Department previously budgeted for January 2019, the Department noted that the \$[REDACTED] medical expense for transportation was not properly included; and Petitioner noted that the Department had failed to consider her \$[REDACTED] expense for prescribed probiotics. The Department conceded that it had erred in failing to consider the \$[REDACTED] medical expense for prescribed probiotics and took steps to correct the error. As of the date of the hearing, the Department was working to certify the changes, but notification to Petitioner and certification had not yet been complete. Petitioner disputed the Department's assertion that the \$[REDACTED] transportation cost should not be considered because she had provided proof of the transportation expenses to her dentist. As discussed above, the Department is required to verify reported changes in the amount of medical expenses if the change results in an increased benefit. If Petitioner had additional medical transportation costs, the Department was required to verify that she incurred the three medical transportation expenses already budgeted, in addition to any additional medical transportation costs in order for Petitioner to be eligible for the additional deduction. Petitioner provided the Department with roundtrip medical-expense transportation costs for a visit to her dentist totaling \$[REDACTED] but she did not provide verification of any other medical expense transportation expenses. Without additional information from Petitioner, the Department is unable to verify that there was any change in her medical expense beyond what was already budgeted. Therefore, the Department is correct that the \$[REDACTED] medical expense transportation cost should not have been budgeted. Based upon the evidence presented, the Department has not properly considered Petitioner's medical expenses in accordance with Department policy and must reconsider them for January 2019.

Finally, prior to the hearing on February 22, 2019, and at the hearing, Petitioner raised concerns about the benefit issuances she received in January 2019 and was unclear as to how or why the issuances were made. On January 3, 2019, Petitioner received a FAP issuance of \$[REDACTED]. This FAP benefit was attributable to Petitioner's regular

monthly benefit. On January 14, 2019, the Department issued a \$[REDACTED] FAP supplement to Petitioner based upon a hearing decision issued by MAHS in December 2018. On January 17, 2019, the Department issued \$[REDACTED] to Petitioner for her February 2019 benefit based upon a directive for from the federal government in effort to prevent the loss of food benefits during the government shutdown. On the same day, the Department also issued a \$[REDACTED] supplement to Petitioner which was based upon a newly submitted and processed medical expense. After hearing about the explanation for each issuance, Petitioner did not dispute any of them and no further discussion is required in this decision.

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 properly requested that Petitioner verify changes in transportation related medical expenses but did not act in accordance with Department policy when it considered Petitioner's medical expenses for January 2019.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED** with respect to the request to verify changes in medical expenses, but **REVERSED** with respect to the Department's consideration of Petitioner's medical expenses in January 2019.

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 January 2019 with attention to her medical expenses;
2. If applicable, issue FAP supplements to Petitioner for FAP benefits not previously received in accordance with Department policy; and,
3. Notify Petitioner in writing of the changes made to her FAP benefits and medical expense deductions.

AMTM/jaf



Amanda M. T. Marler
Administrative Law Judge
for Robert Gordon, 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

Sarina Baber
MDHHS-Washtenaw-Hearings

Petitioner

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[REDACTED] MI [REDACTED]

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