



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: October 3, 2019
MOAHR Docket No.: 19-009296
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 September 23, 2019, from Detroit, Michigan. The Petitioner appeared for the hearing and asked that his wife, [REDACTED], act as his Authorized Hearings Representative. The Department of Health and Human Services (Department) was represented by [REDACTED] Eligibility Specialist and Hearings Facilitator.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefit rate after consideration of submitted medical expenses?

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 23, 2019, the Department received Petitioner's completed Redetermination.
2. On the same day, Petitioner provided the Department with copies of his [REDACTED] tax bill for a total tax obligation of [REDACTED]
3. Petitioner and his wife are Retirement Survivors Disability Insurance (RSDI) recipients; Petitioner receives [REDACTED] per month and is a recipient of the Medicare Savings Program (MSP) effective July 2001 and his wife receives [REDACTED] per month and became a recipient of the MSP effective August 2011.

4. Petitioner is a recipient of a pension from the [REDACTED] in the amount of [REDACTED] per month with deductions made for health insurance, dental insurance, and vision insurance premiums totaling \$[REDACTED] per month.
5. On February 24, 2019, the Department issued a Notice of Case Action to Petitioner informing Petitioner that he was eligible for FAP benefits in the amount of [REDACTED] per month beginning February 1, 2019 for a group size of two based upon [REDACTED] in unearned income, a standard deduction of [REDACTED], medical expenses of [REDACTED], housing costs of [REDACTED], and the heat and utility standard deduction (H/U) of [REDACTED].
6. A note was also included on the Notice of Case Action indicating that the Department can only consider medical expenses which are not overdue.
7. On February 28, 2019, the Department received several medical expenses from Petitioner.
8. On May 1, 2019, the Department issued a new Notice of Case Action to Petitioner after processing the previously submitted medical expenses informing him that he was eligible for [REDACTED] in FAP benefits effective April 1, 2019 for a group size of two based upon [REDACTED] in unearned income, a standard deduction of [REDACTED], medical expenses of [REDACTED], housing costs of [REDACTED], and the heat and utility standard deduction (H/U) of [REDACTED].
9. On May 29, 2019, Petitioner provided proof of a Homeowner's Insurance Premium in the amount of [REDACTED] per month.
10. On the same day, Petitioner provided multiple medical expense verifications.
11. On May 30, 2019, the Department issued a third Notice of Case Action to Petitioner after removal of old medical expenses informing Petitioner that effective July 1, 2019 his FAP benefit would decrease to [REDACTED] for a group size of two based upon [REDACTED] unearned income, a standard deduction of [REDACTED], medical expenses of [REDACTED], housing costs of [REDACTED] and the heat and utility standard deduction (H/U) of [REDACTED].
12. On August 16, 2019, the Department received Petitioner's request for hearing disputing the Department's calculation of his FAP benefit rate and implementation of a Hearing Decision and Order from March 27, 2018; the Department also received several additional medical expense verifications.
13. Upon receipt of the hearing request, the Hearings Facilitator in this case reviewed the most recent actions of the Department and determined that the medical expenses had not been properly budgeted; therefore, he entered the expenses and requested a ticket so that supplements could be issued to Petitioner.

14. On September 3, 2019, the Department issued a Benefit Notice to Petitioner informing him that for June 2019 a supplement was issued in the amount of [REDACTED] for a total benefit of [REDACTED] and for July 2019 a supplement was issued in the amount of [REDACTED] for a total benefit of [REDACTED] and informed him that the supplement was placed on his card effective August 29, 2019.

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 Department's calculation of Petitioner's FAP benefit rate after consideration of his medical expenses as well as the Department's processing of a Hearing Decision and Order issued by Administrative Law Judge Kevin Scully on March 27, 2018 in Michigan Administrative Hearing System (MAHS) docket number 18-001792 (MAHS is now known as Michigan Office of Administrative Hearings and Rules (MOAHR)).

In all cases, a client or Authorized Hearings Representative has 90 calendar days from the date of the written Notice of Case Action to request a hearing. BAM 600 (October 2018), p. 6. The request must be received in the local office within 90 days. *Id.* The only exception to this rule is for situations when the Department has failed to process a specific item. Since Petitioner's hearing request disputes the Department's processing or failure to process submitted medical expenses as well as a Decision and Order from March 2018, this decision reviews Petitioner's FAP effective February 2019, the first month medical expenses were submitted relevant to this case, as well as the Department's processing of MOAHR docket number 18-001792.

To begin, Petitioner disputes the Department's processing of medical expenses in this case as well as the medical expenses discussed by MAHS docket number 18-001792 which required the Department to review Medical expenses beginning November 2017 through the decision date. The Department is required to consider only the medical expenses of a Senior, Disabled, or Disabled Veteran (SDV) group member. BEM 554 (August 2017), p. 8. Only those medical expenses which are in excess of \$35.00 per month can be budgeted. BEM 554, p. 1. The estimate of medical expense is based upon verification of the expense, any coverage by insurance, and changes which are

reasonably anticipated during the benefit period. BEM 554, pp. 8-9. An expense does not have to be paid in order to be allowed. BEM 554, p. 11. However, only the non-reimbursable portion of the expense may be budgeted (the portion not covered by any form of insurance). *Id.* In addition, the medical expense cannot be overdue. *Id.* The expense is not considered overdue if it is currently incurred, currently billed meaning the client is receiving the bill for the first time and is not overdue, or the client has made a payment arrangement before the medical bill became overdue. BEM 554, pp. 11-12. All expenses are to be used from the same calendar month as the month for which a benefit is being determined. BEM 554, p. 3. Policy provides the example that June expenses are used to determine June's benefits. *Id.* Policy further provides that non-converted expenses (those that only occur once per month) are budgeted for the month they are billed or otherwise become due regardless of when the FAP group intends to pay for the expense. *Id.*

At the hearing, Petitioner testified that the Department did not properly implement docket number 18-001792 because Petitioner never received notice of any changes after processing. The Department testified that although the medical expenses were entered into Bridges and the worker attempted to run the FAP budget anew, a known error in Bridges alerted the caseworker that there were no changes in the FAP benefit rate despite changes in expenses. According to the Department, the only way to remedy this error in Bridges is to request a ticket to allow the budget to run and a supplement to be issued. Apparently, the error occurs any time the Department attempts to edit expenses in a previous benefit month outside of the current review period. The caseworker in charge of processing the decision from docket number 18-001792 did not request a ticket. Therefore, since the Department concedes that the decision in docket number 18-001792 was not fully processed, the Department has not complied with policy or the decision in docket number 18-001792.

Turning to the medical expenses submitted beginning February 2018, ongoing, Petitioner has submitted expenses with service dates ranging from April 2017 through May 23, 2019. In addition, after Petitioner's hearing request was submitted, additional medical expenses were submitted and processed by the Department through early August 2019. As discussed above, in order to be budgeted, a medical expense must not be overdue. In addition, if the expense is not overdue, the Department must budget the expense in the month which it was billed not the month in which it was processed by the Department or a future month. Therefore, an expense incurred and billed in February must be budgeted for February and not a later month. Likewise, a bill incurred in February and billed in April must be budgeted for April and not a later month. Therefore, rather than increasing a future month, a change in medical expenses will result in a supplement to a past month rather than an increase in benefits for a future month.

Therefore, the following chart summarizes the medical expenses submitted by Petitioner for consideration in his FAP budget:

<u>Exhibit Page</u>	<u>Provider/ Service</u>	<u>Expense Amount</u>	<u>Date Incurred</u>	<u>Date Billed</u>	<u>Date Reported</u>	<u>Explanation</u>
60	Health/ Dental/ Vision Insurance	██████	monthly	monthly	11/2017	These expenses should be budgeted for each month
76	██████	██████	10/11/18	Not listed	2/28/19	This expense should be budgeted in 10/2018 since it is assumed to be reported timely as of the February billing statement. There is no evidence of an earlier statement.
77; 166	██████ ██████ ██████	██████ ██████	10/16/18	02/03/19; 08/06/19	03/01/19; 08/16/19	Duplicate copies/Rebilled; This expense should be budgeted in 10/2018 since it is assumed to be reported timely as of the February 2019 billing statement with no evidence of an earlier statement.
78	██████	██████	10/28/18	Not listed	02/28/19	This expense should be budgeted in 10/2018 since it is assumed to be reported timely as of the February 2019 billing statement with no evidence of an earlier statement.

80	██████ ██	██████	12/12/18	12/2018	02/28/19	This expense was not timely reported because billed it was in December but reported in February. It should not be budgeted.
81	██████ ██████	██████	12/2018	12/2018	02/28/19	This expense was not timely reported because billed it was in December but reported in February. It should not be budgeted.
82	██████ ██████	██████	11/2018	11/2018	02/28/19	This expense was not timely reported because billed it was in November but reported in February. It should not be budgeted.
82	██████ ██████	██████	12/2018	12/2018	02/28/19	This expense was not timely reported because billed it was in December but reported in February. It should not be budgeted.
84;87	██████ ██████ ██	██████	No Service Date	01/04/19	02/28/19	Duplicates. This expense should not be budgeted because there is no date of

						service listed.
86	[REDACTED]	[REDACTED]	01/02/19	01/2019	02/28/19	This expense should be budgeted in January 2019 because at the time of submission there is no evidence that the bill was past due and was submitted within a reasonable time of the expense being incurred.
88; 92; 130; 132; 134; 146; 148; 168	[REDACTED]	[REDACTED]	04/20/18; 06/14/18; 02/05/19	03/21/19; 04/04/19; 04/18/19; 06/13/19	05/29/19; 08/16/19	The bills incurred in 2018 were not timely reported and are not allowable as the records show that Petitioner received regular billing statements and would have been billed in May 2018 as well as July 2018. The bill incurred in February 2019 for \$106.80 was first issued in February 2019. Petitioner did not report it until May 2019; therefore, this bill was not timely reported and should not

						be budgeted.
90; 111	██████████ ██████████ ████	██████████	No Service Date	04/14/19	05/29/19	Duplicates. This bill should not be budgeted because there is no date of service listed.
94	██████████ ██████████	██████████	2/19/19	02/2019	05/29/19	No expense to be budgeted.
96	██████████ ██████████	██████████	04/17/19; 04/18/19	04/18/19	05/29/19	These expenses should be budgeted for April 2019 as there is no evidence that it was past due at the time it was submitted to the Department and was submitted within a reasonable time frame of the billing statement.
98	██████████ ██████████	██████████	2/20/19; 02/22/19; 02/28/19; 03/01/19; 03/04/19; 03/05/19; 03/08/19; 03/21/19; 04/03/19; 04/12/19; 04/15/19	02/2019; 3/2019; 4/2019	05/29/19	The expenses from February and March 2019 were not timely reported because they were incurred and billed in February and March but not reported until the end of May; they should not be budgeted. There is no evidence that the expenses from April 2019 were overdue at the time they

						were reported and they were reported within a reasonable time frame of the date they were incurred; therefore; they should be budgeted for April 2019.
100	██████ ██████	██████	01/10/19, 01/15/19, 01/28/19, 01/19/19, 01/31/19, 02/01/19, 02/03/19, 02/06/19, 02/07/19	01/2019, 02/2019	05/29/19	These expenses were not timely reported because they were incurred and billed in January and February but not reported until the end of May. They should not be budgeted.
102	██████ ██████ ██████ ██████	██████	02/22/19	05/10/19	05/28/19	This expense was timely submitted as it was submitted to the Department the same month it was issued. It should be budgeted for the month of May 2019.
104, 109, 118	██████ ██████ ██████	██████	02/26/19	05/05/19	05/29/19	Duplicates. This expense was timely reported because it was issued in May 2019 and submitted in May 2019. The expense should be budgeted for

						May 2019.
106, 108	██████████	██████	No service date.	No billing date.	05/29/19	Duplicates; These are receipts for payment which do not show the date the services were provided or the day they were billed. Therefore, these expenses should not be budgeted in any month.
113, 120	██████████ ██████████ ██████████ ██████ ██████████	██████ ██████████	04/02/19; 04/03/19	05/07/19	05/29/19	Duplicates. These expenses were timely reported and should be budgeted for May 2019.
114	██████████ ██████	██████	04/03/19	05/15/19	05/29/19	This expense was timely reported. It should be budgeted for May 2019.
116, 142	██████████ ██████	██████	04/02/19	05/15/19	05/29/19	Duplicates. This expense was timely reported. It should be budgeted for May 2019.
122	██████ ██████████	██████	02/21/19; 03/14/19; 03/20/19; 04/03/19; 04/06/19; 04/13/19; 04/14/19; 04/18/19	02/2019; 03/2019; 04/2019	05/29/19	The expenses from February and March were submitted late because they were incurred in February and March but not reported until the end of May.

						The February and March expenses should not be budgeted. The April expenses were submitted within a reasonable time from the date they were incurred and therefore should be budgeted for April 2019.
124	██████ ████████	██████	01/02/19; 01/03/19; 01/10/19; 01/14/19; 01/15/19; 02/03/19; 02/05/19; 02/06/19; 02/11/19; 02/21/19	01/2019; 02/2019	05/29/19	These expenses were submitted late because they were incurred and billed in January and February but not submitted to the Department until May. They should not be budgeted in any month.
126, 128, 136, 138, 144; 155, 157, 189, 159	████████ ████████ ██████	██████	02/01/18; 06/14/18; 08/13/18; 10/11/18; 12/12/18; 02/19/19; 02/26/19; 04/04/19; 04/24/19	05/05/2019; 06/09/2019	05/29/19; 08/16/19	Duplicates; Despite the fact that the billing statements provided to the Department are from May and June 2019, the records show that Petitioner has previously made sporadic payments on some but not all of the expenses incurred dating

						back to February 2018. The sporadic payment history as well as the numerous visits show that the May and June 2019 billing statements are not the first billing statements attributable to any of these expenses except those from April 2019. Therefore, none of the expenses from February 2018 through February 2019 should be budgeted in any month because they were not timely reported. The expenses from April 2019 may be budgeted in May 2019 when the billing statement was issued.
140	██████████ ████	██████████	04/03/19	04/2019	05/29/19	This expense is not past due and had a recent billing date in relation to the date it was submitted to the Department; therefore, it was timely reported and should be considered in

						the April 2019 FAP budget.
149, 150	██████ ██████	██████	08/06/19; 08/11/19	08/2019	08/16/19	Duplicates; This expense was timely reported and should be budgeted for August 2019.
151, 161	██████ ██████	██████ ██████	07/08/19; 08/05/19	07/2019; 08/2019	08/16/19	Duplicates; There was no evidence that the July expense was past due when it was reported to the Department. Both expenses were timely submitted. Therefore, the \$5.99 should be budgeted for July and \$3.00 for August.
152, 162	██████ ██████	██████	06/29/19	06/2019	08/16/19	There was no evidence that the expense was overdue when it was reported to the Department and it was reported within a reasonable time frame. Therefore, it should be budgeted for June 2019.
153	██████ ██████	\$██████ ██████	07/06/19; 08/03/19	07/2019; 08/2019	08/16/19	There was no evidence that the July expense was past due when it was reported to

						the Department. Both expenses were timely submitted. Therefore, the \$3.00 should be budgeted for July and \$14.50 for August.
154	████████ ████████ ████████	████████	05/23/19	07/23/19	08/16/19	This expense was timely reported to the Department and should be budgeted for July 2019.
160	████████ ████████	████████	08/11/19	08/2019	08/16/19	This expense was timely reported to the Department and should be budgeted for August 2019.
164	████████ ████ ████████ ████ ████████ ████	████████	01/02/19	01/2019	08/16/19	This is a receipt for payment based upon a total bill shown on page 86. This expense should not be budgeted.
165	████████ ████ ████████ ████ ████████ ████	\$████████ ████████	04/13/17; 10/18/17; 04/17/18	07/24/19	08/16/19	All services listed in this bill are outdated but because Petitioner's wife is on a payment plan of \$10.00 per month, \$10.00 should be budgeted for July 2019 provided that Petitioner has not received the

						benefit of the full expense in a previous month.
167, 171	██████████ ██████████ ██████████ ██████████	██████████ ██████████	04/02/19; 04/03/19	6/21/19; 8/5/19	8/16/19	Duplicates; By the time Petitioner reported these expenses, the provider had already issued a second billing statement for a past due bill. Therefore, Petitioner did not timely report the expense and it cannot be budgeted in any month.
169	██████████ ██████████ ██████████ ██████████	██████████	No service date.	06/17/19	08/16/19	This is a receipt for payment which does not list a service date; therefore, the expense cannot be budgeted in any month.
170	██████████ ██████████ ██████████ ██████████	██████████ ██████████	01/02/19; 05/03/19	No billing date listed	08/16/19	Given the dates of service and the numerous other bills seen during the review of submitted medical expenses, this bill was not the first bill provided to Petitioner before she submitted it to the Department in August.

						Therefore, the expenses should not be budgeted in any month based upon these documents.
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Based upon the Notices of Case Action and the Benefit Issuance Notice, the Department did not issue supplements for any months except June and July 2019. Therefore, most if not all medical expenses were improperly budgeted for future months rather than supplementing for previous months. In addition, it is unclear which medical expenses were budgeted for June 2019 by the Department so it is impossible to determine whether the Department issued an appropriate supplement for June 2019. Finally, according to the records provided, the Department budgeted pages 82, 92, 104, and 113 for July 2019. As discussed above, none of these expenses are properly budgeted for July 2019. Therefore, the Department has not met its burden of proof in establishing that it acted in accordance with policy in budgeting Petitioner's verified medical expenses from February 2019 through August 2019.

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 did not act in accordance with Department policy when it processed Petitioner's Decision and Order from MAHS docket number 18-001792 or when it processed Petitioner's verified medical expenses from February 2019 through August 2019.

DECISION AND ORDER

The Department is ordered to reprocess the Decision and Order from MAHS Docket number 18-001792.

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. Process the Decision and Order from MAHS docket number 18-001792 and issue a ticket as necessary to ensure any supplementation of benefits that may be appropriate;
2. Reprocess the medical expenses submitted by Petitioner between February 2019 and August 2019 in accordance with this decision;

3. If otherwise eligible, issue FAP supplements to Petitioner for benefits not previously received for February 2019 through August 2019; and,
4. Notify Petitioner in writing of its decision.

AM/tm



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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CC:

[REDACTED]
[REDACTED]