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GOVERNOR

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

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Date Mailed: January 9 ,2019
MAHS Docket No.: 18-010016-RECON
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

ORDER GRANTING REQUEST FOR RECONSIDERATION
AND
DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to the request for rehearing and/or reconsideration dated November 15, 2018, by Michigan Department of Health and Human Services (MDHHS) of the Hearing Decision issued dated October 31, 2018, at the conclusion of the hearing conducted on October 25, 2018, by the undersigned.

The rehearing and reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program that is the basis for the client's benefits application or services at issue and may be granted so long as the reasons for which the request is made comply with the policy and statutory requirements. MCL 24.287 also provides a statutory basis for a rehearing of an administrative hearing.

A rehearing is a full hearing which may be granted if either of the following applies:

- The original hearing record is inadequate for purposes of judicial review; or
- There is newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision. [BAM 600 (August 2018), p. 44.]

A reconsideration is a paper review of the facts, law or legal arguments and any newly discovered evidence that existed at the time of the hearing. It may be granted when the original hearing record is adequate for purposes of judicial review and a rehearing is not necessary, but one of the parties is able to demonstrate that the Administrative Law Judge failed to accurately address all the relevant issues raised in the hearing request. *Id.* Reconsiderations may be granted if requested for one of the following reasons:

- Misapplication of manual policy or law in the hearing decision, which led to the wrong decision;
- Typographical errors, mathematical error, or other obvious errors in the hearing decision that affect the substantial rights of the petitioner; or
- Failure of the Administrative Law Judge to address other relevant issues in the hearing decision. [*Id.*]

In the hearing decision dated October 31, 2018, MDHHS was ordered to issue Michigan-issued State Supplemental Income (SSP) payments to Petitioner for the months of July 2018 and August 2018. The order was based on an interpretation of policy that SSP can be issued in months when a client received regularly federally-issued Supplemental Security Income (SSI) payments. MDHHS contended that such interpretation was a misapplication of policy. A reconsideration of the policy interpretation applied in the hearing decision dated October 31, 2018, is merited. Thus, the MDHHS request for reconsideration is **GRANTED**.

DECISION AND ORDER OF RECONSIDERATION

ISSUE

The issue is whether MDHHS properly did not issue SSP to Petitioner for July 2018 and August 2018.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. In 2018, Petitioner was an ongoing recipient of \$■■■■ month in Retirement, Survivors, and Disability Insurance (RSDI) and \$■■■■ month in federally-issued SSI.
2. On June 1, 2018, Petitioner received her regular \$■■■■ month federally-issued SSI benefit. (Exhibit A, p. 6.) MDHHS issued SSP to Petitioner.
3. On July 11, 2018, Petitioner received her regular \$■■■■ month federally-issued SSI benefit. (Exhibit A, pp. 4-5.) MDHHS did not issue SSP to Petitioner.
4. On August 9, 2018, Petitioner received her regular \$■■■■ month federally-issued SSI benefit. (Exhibit A, pp. 7-8.) MDHHS did not issue SSP to Petitioner.
5. On August 21, 2018, MDHHS cancelled Petitioner's SSP for the quarter because she did not receive a regular SSI payment on the first of the month for three consecutive months.

6. On August 29, 2018, Petitioner requested a hearing to dispute the cancellation of her SSP. (Exhibit A, pp. 2-3.)
7. On an unspecified date, MDHHS issued SSP to Petitioner for September 2018 and October 2018.

CONCLUSIONS OF LAW

The State SSI Payments (SSP) program is established by 20 CFR 416.2001-.2099 and the Social Security Act, 42 USC 1382e. The Department administers the program pursuant to MCL 400.10.

Petitioner requested a hearing to dispute a cancellation of a state-issued SSI payment for the third quarter (July-September) of 2018. A Notice of State SSI Payment Change form (Exhibit A, pp. 2-3) stated that Petitioner's SSI payment was cancelled due to Petitioner not receiving a federally-issued SSI payment on the first of the month for three consecutive months. Petitioner's specialist credibly testified that MDHHS cancelled Petitioner's SSP for September 2018 and October 2018, but that MDHHS reimbursed Petitioner for both payments. The supplement of SSP leaves Petitioner only unpaid in SSP for July 2018 and August 2018.

Payments of SSP are made for only those months the recipient received a regular first of the month federal benefit. BEM 660 (January 2017), p. 1. These are shown on State Online Query (SOLQ) as a recurring payment dated the first of the month. SSPs are not issued for retroactive or supplemental federal benefits. *Id.*

The previous hearing decision interpreted MDHHS policy to allow SSP in months when a client received a "regular" SSI payment, even when not occurring on the 1st of the month. Such an interpretation contradicts the plain language of the above policy by failing to consider when an SSI payment was made and whether it appears on an SOLQ as occurring on the first of the month. Given different interpretations of policy, the preferred interpretation is the one most loyal to the literal meaning. In the present case, the literal interpretation of policy will be adopted, which authorizes SSP only when federally-issued SSI is paid on the 1st of the month.

During the hearing, MDHHS testimony credibly indicated that Petitioner's federally-issued SSI payments for July 2018 and August 2018 occurred after the first of the month. MDHHS' testimony was consistent with Petitioner's bank records which listed direct deposits occurring after the first of the month. Given the evidence, Petitioner's SSI payments for July and August 2018 occurred after the first of the month.


An SOLQ is a report utilized by MDHHS in a data exchange with the Social Security Administration. BAM 801 (October 2018), p. 1. Petitioner's SOLQ was not presented as an exhibit, but an MDHHS specialist credibly testified that Petitioner's SOLQ listed regular payments to Petitioner for July and August 2018; both payments were listed as occurring after the first of the month. Petitioner did not dispute the MDHHS testimony.

Given the evidence, Petitioner's SSI payments for July and August 2018 occurred after the first of the month. Further, Petitioner's SOLQ listed SSI payments after the first of the month. Because Petitioner received SSI after the first of the month in July and August 2018 and an SOLQ reflected such payment dates, MDHHS properly denied Petitioner SSP benefits for July 2018 and August 2018.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied SSP to Petitioner for July 2018 and August 2018. The hearing decision dated October 31, 2018, is **REVERSED**, and the denial of SSP benefits from July and August 2018 is **AFFIRMED**.

CG/jaf



Christian Gardocki
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).

Via Email

DHHS

Lauren Casper
MDHHS-Macomb-20-Hearings

Via First Class USPS

Petitioner

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