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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

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Date Mailed: August 25, 2017
MAHS Docket No.: 17-005816-RECON
Agency No.: ██████████
Petitioner: ██████████

SUPERVISING ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Supervising Administrative Law Judge pursuant to Petitioner and her husband's timely Request for Reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge at the conclusion of the hearing conducted on ██████████ 2017, and mailed on ██████████ 2017, in the above-captioned matter.

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, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Reconsideration was mailed on ██████████ 2017.

ISSUE

Did the ALJ misapply Department of Health and Human Services (Department) policy in dismissing Petitioner's hearing requests concerning the Department's failure to process medical expenses in the calculation of her Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

The undersigned Administrative Law Manager, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED] 2017, a hearing was held in the above captioned matter resulting in a Hearing Decision mailed on [REDACTED] 2017.
2. The Findings of Fact numbers 1 through 10 in the Hearing Decision are incorporated by reference.
3. On [REDACTED] 2017, the Michigan Administrative Hearing System (MAHS) received Petitioner's Request for Reconsideration.
4. On [REDACTED] 2017, MAHS granted the Request for Reconsideration.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Reference Tables Manual (RFT), and 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 the Hearing Decision issued [REDACTED] 2017, the ALJ dismissed Petitioner and her husband's hearing requests concerning the Department's failure to process medical expenses they submitted to the Department on [REDACTED] 2015; [REDACTED] 2016; [REDACTED] 2016; and [REDACTED] 2016 in determining their eligibility for FAP benefits. The ALJ concluded that he lacked jurisdiction to consider Petitioner's requests for hearing concerning the unprocessed medical expenses.

In reaching his decision, the ALJ explained that Petitioner had previously had a hearing on [REDACTED] 2016 challenging the calculation of her FAP benefits since [REDACTED] 2015. In a [REDACTED] 2016 decision issued under docket no. 16-016316, it was found that the Department had properly calculated Petitioner's FAP benefits for [REDACTED] 2015 to [REDACTED] 2016 but had failed to satisfy its burden of showing that it had properly calculated Petitioner's FAP benefits for [REDACTED] 2015 to [REDACTED] 2015 and for [REDACTED] 2016 to [REDACTED] 2016. The Department was ordered to recalculate FAP benefits for those limited time periods. Petitioner did not appeal the [REDACTED] 2016 hearing decision issued under docket no. 16-016316.

The ALJ reasoned that, because the [REDACTED] 2016 decision had not been appealed, the only FAP benefits he could consider were those from [REDACTED] 2015 to [REDACTED] 2015 and from [REDACTED] 2016 to [REDACTED] 2016, which the Department had been required to recalculate under the [REDACTED] 2016 decision, and those from January

2017 to ██████ 2017, which were the subject of a Notice of Case Action Petitioner had timely appealed. The ALJ concluded that because the medical expenses at issue were not submitted during those time periods, he lacked the authority to address the issue of the Department's processing of those expenses.

Department policy provides that individuals who are senior/disabled/veteran (SDV) members of a FAP group are eligible for a medical expense deduction in calculating FAP eligibility for verified out-of-pocket medical expenses in excess of \$35 incurred by the SDV member of the group. BEM 554 (January 2017), p. 1; BEM 556 (July 2013), pp. 4-5; BEM 550 (January 2017), p. 1. For a one-time medical expense, a FAP group that does not have a 24-month benefit period may choose to budget the expense for one month or average it over the balance of the benefit period, with the expense allowed in the first benefit month the change can affect. BEM 554, pp. 8-9. A FAP group that has a 24-month benefit period and a medical expense billed or due within the first 12 months of the benefit period must be given the option to budget the expense for one month, average it over the remainder of the first 12 months of the benefit period, or average it over the remainder of the 24-month benefit period. BEM 554, p. 9. The medical bill cannot be overdue when submitted to the Department, which means that the bill is currently incurred (for example, in the same month or ongoing), currently billed (the client received the bill for the first time for a medical expense provided earlier and the bill is not overdue), or payment arrangements were made by the client before the medical bill became overdue. BEM 554, pp. 11-12. The expense is allowed for the first benefit month the change can affect. BEM 554, p. 9.

Petitioner alleges that the medical expenses at issue were one-time medical expenses. Accordingly, Petitioner would have the option to average the balance of the expense, if it was not overdue when submitted, over the group's certification period. Thus, the medical expenses that were submitted to the Department on ██████ 2015; ██████ 2016; ██████ 2016; and ██████ 2016 could possibly affect multiple months after the month the expense became due or was billed. Because Petitioner did not appeal the ██████ 2016 decision, she cannot challenge the group's FAP benefits for the months of ██████ 2015 to ██████ 2016. However, Petitioner is entitled to have the medical bills processed if not overdue when submitted in determining her eligibility for a medical deduction in the calculation of FAP benefits issued to her from ██████ 2015 to ██████ 2015, ██████ 2016 to ██████ 2016 and ██████ 2017 to ██████ 2017. Thus, the ALJ erred when he dismissed the request for hearing disputing the Department's processing of medical expenses to the limited extent that those expenses may have affected Petitioner's FAP benefits for ██████ 2015 to ██████ 2015, ██████ 2016, ██████ 2016, and ██████ 2017 to ██████ 2017.

It is noted that in the Hearing Decision the ALJ found that there was a medical expense deduction in the calculation of Petitioner's FAP eligibility for ██████ 2017 to ██████ 2017 but the Department had failed to satisfy its burden of showing that it properly calculated the deduction and reversed the Department's calculation of FAP for ██████

2017 to [REDACTED] 2017. As such, it is possible that the Department may have properly processed the medical expense deductions at issue for those months.


Based on the above Findings of Fact and Conclusions of Law, the ALJ misapplied manual policy or law in the Hearing Decision.

DECISION AND ORDER

Accordingly, the ALJ's decision is **REVERSED IN PART** with respect to dismissal of Petitioner's hearing request alleging that the Department failed to process medical expense in the calculation of her FAP benefits.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION ON RECONSIDERATION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Determine Petitioner's eligibility for a medical expense deduction to her FAP benefits for [REDACTED] 2015 to [REDACTED] 2015, [REDACTED] 2016 to [REDACTED] 2016, and [REDACTED] 2017 to [REDACTED] 2017 based on the medical expenses submitted to the Department on [REDACTED] 2015; [REDACTED] 2016; [REDACTED] 2016; and [REDACTED] 2016.
2. If Petitioner is eligible for a medical expense deduction to her FAP budget, recalculate her monthly FAP budget for [REDACTED] 2015 to [REDACTED] 2015, [REDACTED] 2016 to [REDACTED] 2016, and [REDACTED] 2017 to [REDACTED] 2017, as applicable, to take into consideration any medical expense deduction Petitioner is eligible to receive;
3. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not, if any, for [REDACTED] 2015 to [REDACTED] 2015, [REDACTED] 2016 to [REDACTED] 2016 and from [REDACTED] 2017 to [REDACTED] 2017; and
4. Notify Petitioner in writing of its decision.



Alice C. Elkin
Supervising 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.

DHHS

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Petitioner

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