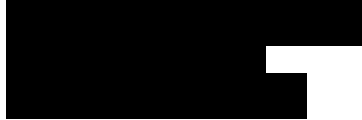




RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: August 4, 2017
MAHS Docket No.: 17-006526
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 July 27, 2017, from Detroit, Michigan. The Petitioner appeared for the hearing. The attorney of record, [REDACTED] was not present. However, attorney [REDACTED] who works in the same office, filed a Substitution of Attorney and was present as attorney representative on behalf of Petitioner. The Department of Health and Human Services (Department) was represented by Jennifer Cole, Eligibility Specialist.

ISSUE

Did the Department properly deny Petitioner's application for Food Assistance Program (FAP) and Cash Assistance (State Disability Assistance [SDA]) benefits?

Did the Department properly process Petitioner's Medical Assistance (MA) benefits and determine that he was eligible for MA subject to a monthly deductible of \$655?

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 incarcerated from on or around April 15, 2015 to on or around April 11, 2017.
2. On November 10, 2016, an administrative hearing was held before Administrative Law Judge (ALJ) Vicki Armstrong regarding an alleged Intentional Program

Violation (IPV) committed by Petitioner. ALJ Armstrong issued a Hearing Decision for Intentional Program Violation concluding that Petitioner committed an IPV of the FAP and further that he received an overissuance of FAP benefits in the amount of \$744. ALJ Armstrong ordered that Petitioner be disqualified from the FAP for a period of 12 months and that the Department initiate recoupment procedures for the \$744 in overissued FAP benefits. (See MAHS Docket No. 16-009148; Hearing Decision for Intentional Program Violation issued November 18, 2016).

3. The Department imposed an IPV sanction against Petitioner beginning December 1, 2016, and ending November 30, 2017. (Exhibit A, pp. 17-18)
4. On December 2, 2016, the Michigan Administrative Hearing System (MAHS) received Petitioner's Request for Reconsideration of the Hearing Decision issued by ALJ Armstrong. In response, on January 13, 2017, Supervising ALJ Lauren Van Steel issued an Order Denying Request for Reconsideration. (See MAHS Docket No. 16-009148-RECON; Order Denying Request for Rehearing/Reconsideration)
5. There was no evidence presented that Petitioner appealed the Hearing Decision issued by ALJ Armstrong to the Circuit Court.
6. On [REDACTED], 2017, Petitioner applied for FAP, Cash Assistance, and MA benefits. (Exhibit C)
7. On the application, Petitioner reported that his household consisted of only himself. Petitioner did not report that he was the parent or caretaker of any minor children. (Exhibit C)
8. On April 12, 2017, the Department sent Petitioner a Health Care Coverage Determination Notice advising him that effective April 1, 2017, ongoing, he was approved for full coverage MA benefits. The Department approved Petitioner for full MA coverage under the Healthy Michigan Plan (HMP) category. (Exhibit A, pp. 7-8)
9. On May 2, 2017, the Department sent Petitioner a Health Care Coverage Determination Notice advising him that effective June 1, 2017, he was eligible for MA with a monthly deductible of \$655. The Department approved Petitioner for MA coverage under the Group 2 Aged Blind Disabled (G2S) category. (Exhibit A, pp.9-12)
10. On May 2, 2017, the Department sent Petitioner a Notice of Case Action advising him that for the period of [REDACTED], 2017, ongoing, his FAP application was denied on the basis that he has an IPV disqualification. The Notice further advised Petitioner that effective May 1, 2017, ongoing, his cash assistance application was denied on the basis that his countable income exceeds the limit for the program. (Exhibit A, pp. 13-14)

11. On May 10, 2017, Petitioner requested a hearing disputing the denial of his FAP and cash assistance applications and the calculation of his monthly MA deductible. (Exhibit A, pp.3-5)

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

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.

Petitioner requested a hearing disputing the denial of his [REDACTED], 2017, FAP application. The Department testified that Petitioner was ineligible for FAP benefits because at the time of his application, he was serving a one year IPV disqualification. A disqualified person is one who is ineligible for FAP benefits due to a failure to meet an eligibility factor. Individuals may be disqualified from receiving FAP benefits based on an intentional program violation. BEM 212 (January 2017), pp. 8-9. Additionally, a court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720 (January 2016), pp. 15-16. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16. Clients who commit an IPV are disqualified for a standard disqualification period of one year for the first IPV. BAM 720, p. 16.

At the hearing, it was established that following a Hearing Decision issued on November 18, 2016, which found that Petitioner had committed an intentional program violation concerning his FAP benefits, the Department was ordered to disqualify Petitioner from the FAP 12 months and to begin recouping \$744 in overissued FAP benefits. The Department presented an IPV Sanctions-Summary showing that Petitioner's one year disqualification began on December 1, 2016, and was to continue through November 30, 2017. (Exhibit A, p. 17). Although Petitioner and his attorney asserted that he was not present for and could not participate in the prior IPV hearing brought against him because he was incarcerated and further sought to dispute the merits of the IPV findings, the evidence showed that Petitioner received a copy of the Hearing Decision which imposed the disqualification and in response, requested a Reconsideration of the Hearing Decision. Petitioner's attorney attempted to re-litigate the issues presented in

the IPV hearing, arguing that Petitioner suffers from mental illness, however, the merits of the previously decided IPV case were not addressed. There was no evidence that the Hearing Decision was appealed to the Circuit Court or that the Hearing Decision was otherwise reversed, thus, the decision stands.

The Department presented sufficient evidence to establish that Petitioner was subject to an intentional program violation disqualification at the time that he submitted his application for FAP benefits. As such, the Department properly denied the application. Petitioner is informed that he is entitled to submit a new application for FAP benefits at the conclusion of the 12 month FAP disqualification.

Cash Assistance

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

The FIP and SDA are cash assistance programs designed to help individuals and families become self-sufficient. When an individual applies for cash assistance, Bridges determines group composition and builds an eligibility determination group (EDG). Cash assistance is available to EDGs who meet all of the non-financial and financial requirements. BEM 209 (October 2015), p. 1.

To be eligible for FIP cash assistance benefits, both of the following must be true: the group must include a dependent child who lives with a legal parent, stepparent or other qualifying caretaker; and the group cannot include an adult who has accumulated more than 60 TANF funded months, beginning October 1, 1996, or any other time limits in the FIP; see BEM 234. BEM 210 (April 2017), p. 1.

At the hearing, the Department testified that Petitioner's [REDACTED] 2017, cash assistance application was processed as an application for SDA benefits, as he did not indicate he had any minor children. Petitioner disputed the Department's testimony and stated that he is the parent of a 16 year old child. Petitioner testified that his child lives with him on a part time basis, about 20 days of the month. Petitioner asserted that he identified the child as household member on his application and further that he was the parent/caretaker of the child. The Department produced Petitioner's [REDACTED], 2017, cash assistance application during the hearing. (Exhibit C). A review of the application shows that Petitioner reported that he was the only member of his household and further that he is disabled. There was no indication that Petitioner reported that he was the parent/caretaker of a minor child on the application that he submitted, therefore, the

Department properly processed the cash assistance application as a request for SDA. (Exhibit C).

SDA is a cash assistance program for individuals who are not eligible for FIP. BEM 214 (April 2014), p. 1. To receive SDA benefits, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (April 2017), p.1. Persons receiving RSDI due to disability or blindness or SSI due to disability or blindness meet the SDA disability criteria. BEM 261, p. 2. There is no time limit on receipt of SDA benefits.

In order to be eligible for SDA benefits, an individual must be in financial need. BEM 515 (October 2015), p 1; BEM 518 (October 2015), p 1. At application, financial need exists when the individual's budgetable income is less than the applicable payment standard. BEM 515, p 1; BEM 518, p 1. The Department subtracts budgetable income from the applicable payment standard for the benefit month. The benefit month is the month an assistance payment covers. BEM 518, p 1. The income month is a calendar month in which countable income is received or anticipated. The income month is the same as the benefit month. The payment standard is the maximum benefit amount that can be received by the certified group. Income is subtracted from the payment standard to determine grant amount; see BEM 518. BEM 515, p. 1. The SDA payment standard is \$200 for an individual living in an independent living arrangement, such as Petitioner. RFT 225 (December 2013), p 1.

The Department testified that Petitioner's SDA application was denied because his income exceeded the limit for program eligibility. The Department stated that Petitioner had previously been approved for RSDI and that effective May 1, 2017, was receiving monthly RSDI benefits in the gross amount of \$1,050, net amount of \$900. An SOLQ was presented in support of the Department's testimony. (Exhibit B). Petitioner's attorney disputed the Department's testimony and stated that Petitioner did not start receiving RSDI payments until June 2017, thus, he did not have excess income for the application month and for May 2017. Petitioner testified that he was incarcerated from April 2015 to April 11, 2017, and that he was not receiving his RSDI benefits during this period. A review of the SOLQ shows that benefits were not paid to Petitioner for the period of April 2015 through May 1, 2017. Additionally, Petitioner presented documentation from the Social Security Administration (SSA) indicating that the SSA will begin paying him his RSDI for May 2017 and that SSA is withholding \$150 of his monthly benefits beginning May 2017 to recover an overpayment. The SSA letter further indicates that Petitioner will receive \$291 for May 2017 on or around June 2, 2017, and that after that, he will receive \$900 on or around the third of each month. The SSA informed Petitioner that it would also be deducting past-due Medicare premiums from his monthly RSDI benefit. (Exhibit 1).

The evidence established that at the time of his application and at least through June 1, 2017, Petitioner did not receive income from RSDI. Thus, the Department did not establish that Petitioner had excess income for the SDA program when it issued the May 2, 2017, Notice of Case Action denying his cash assistance application.

MA

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 requested a hearing disputing the Department's transfer of his MA benefits from a full coverage MA category to a category with a deductible. The Department testified that after processing Petitioner's [REDACTED] 2, 2017, MA application, it sent him a Health Care Coverage Determination Notice advising him that he was approved for full coverage MA benefits effective April 1, 2017, ongoing, under the Healthy Michigan Plan (HMP). The Department stated that it later determined Petitioner was ineligible for HMP coverage due to his enrollment in Medicare and found him eligible for MA under the Group 2 Aged Blind Disabled category with a monthly deductible of \$655. On May 2, 2017, the Department sent Petitioner a Health Care Coverage Determination Notice advising him that effective June 1, 2017, he was eligible for MA with a monthly deductible of \$655.

Individuals who qualify for or are enrolled in Medicare are not eligible for MA coverage under the HMP. Additionally, individuals who qualify for or are enrolled in other Medicaid programs are not eligible for MA coverage under the HMP. BEM 137 (October 2016), p. 1. Because Petitioner qualifies for or is enrolled in Medicare and other Medicaid programs, the Department properly determined that he was ineligible for HMP coverage. Petitioner, who receives RSDI based on a disability and is enrolled in Medicare, is eligible for SSI-Related MA, which is MA for individuals who are blind, disabled, or over age 65. BEM (October 2016), p. 1.

Individuals are eligible for Group 1 coverage, with no deductible, if their income falls below the income limit, and eligible for Group 2 coverage, with a deductible that must be satisfied before MA is activated, when their income exceeds the income limit. BEM 105, p. 1. Ad-Care coverage is a SSI-related Group 1 MA category which must be considered before determining Group 2 MA eligibility. BEM 163 (July 2013), p. 1. Eligibility for Ad-Care is based on the client meeting nonfinancial and financial eligibility criteria. BEM 163, pp. 1-2. The eligibility requirements for Group 2 MA and Group 1 MA Ad-Care are the same, other than income. BEM 166 (July 2013), pp. 1-2.

Income eligibility for the Ad-Care program is dependent on MA fiscal group size and net income which cannot exceed the income limit in RFT 242. BEM 163, p.2. Petitioner has a MA fiscal group of one. BEM 211 (January 2016), p. 5. Effective April 1, 2017, a MA fiscal group with one member is income-eligible for full-coverage MA under the Ad-Care program if the group's net income is at or below \$1,005, which is 100 percent of the Federal Poverty Level, plus the \$20 disregard. RFT 242 (April 2017), p. 1.

The Department is to determine countable income according to SSI-related MA policies in BEM 500 and 530 *except* as explained in the countable RSDI section of BEM 163. The Department will also apply the deductions in BEM 540 (for children) or 541 (for adults) to countable income to determine net income. BEM 163, p.2. The Department testified that in calculating Petitioner's countable income, it considered unearned income in the amount of \$1050 for Petitioner's gross monthly RSDI benefits and determined that he had excess net income for Ad-Care MA coverage. The Department presented an SOLQ in support of its testimony. (Exhibit B).

Petitioner disputed that he receives \$1050 in RSDI and asserted that a portion of his monthly benefit is withheld due to an overpayment. Petitioner's testimony was supported by the SSA letter presented, which as discussed above indicates that beginning May 2017, the SSA is withholding \$150 of his monthly benefit due to an overpayment. Additionally, the SOLQ shows net benefit amount of \$900. (Exhibit B; Exhibit 1). Although the Department is generally to include the gross amount of income earned from RSDI in the calculation of unearned income, the Department is to exclude the amount deducted by an issuing agency to recover a previous overpayment. BEM 503 (April 2017), p. 28-29; BEM 500 (January 2016), pp. 4-5. Thus, based on the evidence presented, the Department should have excluded the \$150 overpayment from Petitioner's monthly RSDI income, and determined that his countable RSDI benefit was \$900. Based on unearned income of \$900, Petitioner does not have excess income for the Ad-Care program. Therefore, the Department's finding that Petitioner had excess income for Group 1 MA and was only eligible for MA under the Group 2 Aged Blind Disabled category with a monthly deductible of \$655 is not correct.

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 found Petitioner ineligible for a full coverage MA category and determined that he was eligible for MA under the G2S category with a monthly deductible of \$655.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to FAP and **REVERSED IN PART** with respect to SDA and MA.

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. Register and process Petitioner's [REDACTED], 2017, cash assistance application to determine his eligibility for cash assistance benefits from the application date, ongoing;

2. Issue supplements to Petitioner for any SDA cash benefits he was eligible to receive but did not from the application date, ongoing, in accordance with Department policy;
3. Reprocess Petitioner's MA benefits for June 1, 2017, ongoing, and provide Petitioner with MA coverage under the most beneficial category (Ad-Care) from June 1, 2017, ongoing, in accordance with Department policy; and
4. Notify Petitioner and his AHR in writing of its decisions.



ZB/tlf

Zainab A. Baydoun
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) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

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

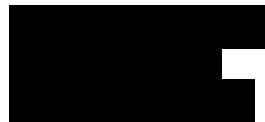
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D. Shaw

Petitioner

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Counsel for Petitioner

(via First-Class Mail)

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