



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: February 7, 2018
MAHS Docket No.: 17-015851
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, telephone hearing was held on January 31, 2018, from Lansing, Michigan. Petitioner represented herself. The Department was represented by Wanda Kobayashi and Diane Tripp.

ISSUE

Did the Department of Health and Human Services (Department) properly determine Petitioner's eligibility for Medical Assistance (MA)?

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 is an ongoing recipient of Medical Assistance (MA) benefits.
2. The Petitioner and another member of her household receive earned income from employment in the combined gross monthly amount of \$3,224. Exhibit A, pp 9-12.
3. On November 29, 2017, the Department notified Petitioner that she was eligible for Medical Assistance (MA) with a \$496 monthly deductible effective January 1, 2018. Exhibit A, pp 6-8.
4. On December 5, 2017, the Department received Petitioner's request for a hearing protesting her Food Assistance Program (FAP) and Medical Assistance (MA) benefits.

5. On January 31, 2018, Petitioner verbally withdrew her request for a hearing with respect to the Food Assistance Program (FAP) only.

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 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.

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 was an ongoing FAP and MA recipient when on December 5, 2017, the Department received her request for a hearing. On January 31, 2018, Petitioner withdrew her request for a hearing with respect to FAP benefits only.

The income limit to participate in the Healthy Michigan Plan (HMP) is 133% of the federal poverty level. Department of Health and Human Services Reference Table Manual (RFT) 246 (April 1, 2014), p 1.

Petitioner is not disabled, and her income exceed 133% of the federal poverty for a group of four, or \$2,781.92 per month. The Department's representative testified that she had been instructed not to provide the income limits used to determine MA eligibility to Petitioner, but presumably this was the income limit that was being referred to.

As the caretaker of minor children, the Department considered her eligibility for MA as a caretaker relative. The Department's representative provided a copy of a budget showing the Department's determination of Petitioner's eligibility for MA benefits as a caretaker relative and offered to read the budget into the record word for word.

However, the Department failed to provide adequate explanation of how a \$496 monthly deductible was determined. The Department failed to offer evidence showing the MA group size, or the divisor amounts used to arrive at petitioner's prorated monthly income.

The production of evidence to support the department's position is clearly required under BAM 600 as well as general case law (see e.g., *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 [1976]). In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich167; 405 NW2d 88 (1987), the Michigan Supreme Court addressed the issue of burden of proof, stating in part:

The term "burden of proof" encompasses two separate meanings. [citation omitted.] One of these meanings is the burden of persuasion or the risk of no persuasion. The other is the risk of going forward or the risk of nonproduction. The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually on the party who has pleaded the existence of the fact, but..., the burden may shift to the adversary when the pleader has discharged [its] initial duty. The burden of producing evidence is a critical mechanism[.]

The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced.

McKinstry, 428 Mich at 93-94, quoting McCormick, *Evidence* (3d ed), Sec. 336, p. 946.

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect, including a reduction in the amount of program benefits. Department of Human Services Bridges Administrative Manual (BAM) 600 (January 1, 2018), pp 3-4. Therefore, Petitioner is entitled to a hearing protesting the amount of her MA monthly deductible.

Although Petitioner does not appear to be eligible for MA benefits without a monthly deductible, the Department failed to meet its burden of establishing that it properly determined the level of MA benefits Petitioner is eligible because it failed to sufficiently explain how it arrived at the monthly deductible amount.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's eligibility for Medical Assistance (MA) benefits.

DECISION AND ORDER

Petitioner's request for a hearing is **DISMISSED** with respect to the Food Assistance Program (FAP) only.

The Department's decision is **REVERSED** with respect to Medical Assistance (MA) benefits.

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:

Initiate a determination of the Petitioner's eligibility for Medical Assistance (MA) effective January 1, 2017, and provide Petitioner with written notice describing in detail, the Department's determination of her monthly deductible.

KS/ nr



Kevin Scully
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:

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

DHHS

Renee Swiercz
51111 Woodward Ave 5th Floor
Pontiac, MI
48342

Oakland 4 County DHHS- via electronic
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M. Holden- via electronic mail

D. Sweeney- via electronic mail

M. Best- via electronic mail

EQAD- via electronic mail

Petitioner

