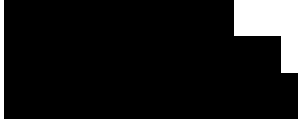




RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: April 9, 2018
MAHS Docket No.: 18-002277
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 April 9, 2018, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Lynda Brown, Hearing Facilitator.

ISSUES

Did the Department properly process Petitioner's Medicare Savings Program (MSP) benefits?

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefit amount?

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 an ongoing FAP recipient and an MSP benefit recipient under the full-coverage Qualified Medicare Beneficiaries (QMB) category.
2. On February 20, 2018, the Department received a document from the Michigan State Housing Development Authority (MSHDA) regarding Petitioner's housing assistance benefits (Exhibit D, p. 2).

3. On February 20, 2018, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefits were being decreased to \$165 per month effective April 1, 2018, ongoing (Exhibit A).
4. On March 1, 2018, Petitioner submitted a request for hearing disputing the Department's actions.
5. On March 7, 2018, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefits were being decreased to \$120 per month effective April 1, 2018, ongoing (Exhibit B).

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.

In this case, Petitioner requested a hearing, in part, to dispute the Department's decision to reduce her FAP benefits. Initially, the Department issued a notice on February 20, 2018, informing Petitioner that her FAP benefits were being reduced to \$165 per month effective April 1, 2018, ongoing. On March 1, 2018, Petitioner submitted a hearing request disputing the Department's actions. On March 7, 2018, the Department issued a second notice informing Petitioner that her FAP benefits were being reduced to \$120 per month effective April 1, 2018, ongoing. Although Petitioner's hearing request was prior to the March 7, 2018 notice, her hearing request was submitted to dispute the Department's decision to reduce her benefits effective April 1, 2018, ongoing. The Department's March 7, 2018 notice was related to the same time period disputed in Petitioner's hearing request. Therefore, the matter addressed will be the Department's determination of Petitioner's FAP eligibility as of April 1, 2018, ongoing.

The Department testified that Petitioner's FAP benefits were reduced as a result of two corrected errors. The Department was previously budgeting a housing expense of \$700. When the Department received an updated verification of Petitioner's housing expense on February 20, 2018, the Department realized Petitioner was receiving assistance with

her rent under the Housing Choice Voucher Program. The Department recalculated Petitioner's benefits based on the rental expense that she actually incurred. As a result, the Department determined Petitioner was entitled to a monthly FAP benefit amount of \$165 and notified Petitioner in the February 20, 2018 notice. After issuing the February 20, 2018 notice, the Department corrected a second error. Petitioner was previously receiving a medical deduction of \$99. The Department determined the expense was outdated and removed the deduction. As a result, the Department determined Petitioner was entitled to \$120 FAP benefit amount and notified Petitioner in the March 7, 2018 notice. The Department presented a FAP budget to establish the calculation of Petitioner's \$120 FAP benefit amount (Exhibit E).

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (July 2017), pp. 1–5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (October 2017), pp. 1-2. The Department determined Petitioner's sole income was unearned income in the amount of \$838 per month. Petitioner confirmed she receives Social Security benefits in the amount of \$838 per month. Therefore, the Department correctly determined Petitioner's unearned income amount.

The deductions to income on the net income budget were also reviewed. There was evidence presented that the Petitioner's group includes a senior/disabled/veteran (SDV). BEM 550. Thus, the group is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- Medical deduction.

BEM 554; BEM 556

Petitioner's FAP benefit group size of one justifies a standard deduction of \$160. RFT 255 (October 2017), p. 1. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support expenses. Therefore, the budget properly excluded any deduction for dependent care or child support expenses.

As Petitioner qualifies as an SDV member, the group is entitled to deductions for verifiable medical expenses that the SDV member incurs in excess of \$35. BEM 554, p. 1. Petitioner was previously receiving a medical deduction of \$99 (Exhibit C). The Department determined that was an outdated expense and removed the deduction. Petitioner testified that she does not have any ongoing medical expenses. Therefore, the Department correctly determined Petitioner was not entitled to a medical expense deduction.

In calculating the excess shelter deduction of \$439, the Department stated that it considered Petitioner's verified housing expense of \$241 (Exhibit D, p. 2) and that she was responsible for a monthly heating expense, entitling her to the heat/utility standard of \$537. BEM 554, pp. 14-15. The Department stated that Petitioner was previously budgeted a housing expense of \$700. The Department failed to realize that Petitioner was receiving subsidized housing. When the Department received an updated housing expense verification on February 20, 2018, the Department corrected the housing expense to the amount that Petitioner actually pays. The Department testified when calculating Petitioner's excess shelter amount they added the total shelter amount and subtracted 50% of the adjusted gross income. Petitioner's excess shelter deduction was properly calculated at \$439 per month.

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. After subtracting the allowable deductions, the Department properly determined Petitioner's adjusted gross income to be \$678. Petitioner's adjusted gross income subtracted by the \$439 excess shelter deduction results in a net income of \$239. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance based on the net income and group size. Based on Petitioner's net income and group size, Petitioner's FAP benefit issuance is \$120. Therefore, the Department properly calculated Petitioner's FAP benefit amount.

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 arguing the Department was not providing her with the MSP benefits she was entitled to receive. Petitioner testified that her January, February and March 2018 Social Security benefits were reduced for the payment of her Medicare Part B premiums. The Department testified Petitioner's MSP benefits were closed in error but were reinstated with no lapse in coverage.

MSP are SSI-related MA categories. There are three MSP categories: Qualified Medicare Beneficiaries (QMB); Specified Low-Income Medicare Beneficiaries (SLMB); and Additional Low-Income Beneficiaries (ALMB). BEM 165 (October 2016), p. 1. QMB is a full coverage MSP that pays: Medicare premiums (Medicare Part B premiums and Part A premiums for those few people who have them); Medicare coinsurances; and Medicare deductibles. SLMB pays Medicare Part B premiums and ALMB pays Medicare Part B premiums provided funding is available. BEM 165, pp. 1-2. Income eligibility for MSP benefits exists when net income is within the limits in RFT 242 or 247. The Department is to determine countable income according to the SSI-related MA policies

in BEM 500 and 530, except as otherwise explained in BEM 165. RFT 242, pp1-2; BEM 165, pp. 7-8.

The Part B Buy-In Program is used to pay Part B premiums. BAM 810 (October 2016 and January 2018), p. 7. For persons included in the Part B Buy-In program, Medicaid: (i) pays the Medicare premiums; and (ii) enrolls persons eligible for, but not enrolled in, Medicare Part B if they are enrolled in Medicare Part A or have refused Medicare Part B enrollment. BAM 810, p. 8. The Part B buy-in effective date is: (i) determined by SSA for SSI recipients; (ii) the month QMB or SLMB coverage begins if the only basis for buy-in is Medicare Savings Program eligibility; (iii) determined by the Department for ALMB; or (iii) the earliest date the client is both MA and Medicare Part B eligible for all other persons covered by the Buy-In Program, except that buy-in under Group 2 MA is not retroactive more than two years. BAM 810, p. 8. For clients under the ALMB category, full payment of Medicare Part B premiums is through the Part B Buy-In program provided funding is available. BAM 810, p. 8. The Department decides whether funding is available. BAM 810, p. 8.

The Department stated that Petitioner was entitled to full-coverage MSP benefits under the QMB category. The Department stated that Petitioner never experienced a lapse in coverage due to the benefits being closed in error. However, the Department did not provide any Health Care Coverage Determination Notices to show when Petitioner's benefits were closed, when they were reinstated or what category she qualified under. The Department also did not present Petitioner's State On-Line Query (SOLQ) report showing Petitioner's Part B Buy-In Program start date. Therefore, the Department failed to establish Petitioner's MSP benefits were properly processed.

DECISION AND ORDER

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 acted in accordance with Department policy when it determined Petitioner's FAP benefit amount. The Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it processed Petitioner's MSP benefit case.

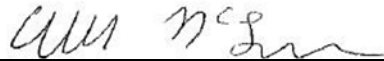
Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to Petitioner's FAP benefit amount and **REVERSED IN PART** with respect to Petitioner's MSP benefit case.

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. Redetermine Petitioner's MSP benefit eligibility effective January 1, 2018, ongoing;

2. Process Petitioner's Medicare Buy-In and enroll her in the Medicare Part B Buy-In program as of the Part B Buy-In effective date in accordance with Department policy; and
3. Issue supplements to SSA for any MSP benefits Petitioner should have received but did not, so that she receives a refund for all Medicare Part B premiums she paid for the Buy-In effective date, ongoing.

EM/cg



Ellen McLemore

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

Via Email:

MDHHS-Washtenaw-20-Hearings
M. Best
EQAD
BSC4- Hearings
MAHS
M. Holden
D. Sweeney

Petitioner – Via First-Class Mail:

