



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: March 8, 2019
MAHS Docket No.: 18-011836
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: John Markey

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, an in-person hearing was held on February 27, 2019, in Port Huron, Michigan. Petitioner appeared and represented herself. Also appearing on behalf of Petitioner was ██████████. The Department of Health and Human Services (Department) was represented by Andrea Edwards, Hearings Facilitator. During the hearing, a 26-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-26.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefits for the month of October 2018?

Did the Department properly determine Petitioner's eligibility for Medicaid (MA) benefits, effective November 1, 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. Petitioner was an ongoing recipient of FAP and MA benefits from the Department.
2. In early September 2018, Petitioner submitted to the Department medical expenses and account statements from financial institutions. Petitioner had followed this process every month for a number of months. Each time Petitioner would submit the forms similar to the submission in September 2018, the

Department would factor into Petitioner's FAP budget for the following month the medical expenses as reflected in the submission. Exhibit A, pp. 4-22.

3. The Department issued to Petitioner \$[REDACTED] in FAP benefits for the month of October 2018. The Department did not factor into the budget all of the medical expenses Petitioner submitted in September 2018.
4. On October 15, 2018, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her FAP benefits would be \$[REDACTED] for the month of November 2018. The budget included in the Notice of Case Action included a line item for medical expenses totaling \$990. Exhibit A, pp. 23-24.
5. On October 15, 2018, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that her MA benefits case was closing, effective November 1, 2018, as a result of the Department's finding that the value of Petitioner's countable assets exceeded the asset limit for program eligibility. Exhibit A, pp. 25-26.
6. On [REDACTED] 2018, Petitioner submitted to the Department a request for hearing objecting to the Department's failure to consider her submitted medical expenses for the October 2018 FAP budget and closure of her MA benefits case.

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).

In this case, Petitioner objects to the Department's calculation of her October 2018 FAP allotment and the Department's closure of her MA benefits case, effective November 1, 2018. Petitioner's position is that the Department failed to properly take into consideration her submitted medical expenses for the FAP budget and that the Department improperly calculated the value of her assets in her bank accounts.

OCTOBER 2018 FAP ALLOTMENT

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 has sought a hearing regarding the Department's processing of reported medical expenses that could result in an increase in her FAP benefits. Petitioner is

disabled and is entitled to have medical expenses she incurs factored in as an expense to be applied to the calculation of her Food Assistance benefit allotment. BEM 554 (August 2017), pp. 8-12. Petitioner objects to the Department's failure to consider her reported and documented medical expenses, including \$1,023.30 in medical expenses incurred from September 5, 2018, through September 12, 2018, and reported to the Department on September 12, 2018.

The Department must verify reported changes in the source or amount of medical expenses if the change would result in an increase in benefits. BEM 554, p. 12. In addition, if a reported change results in a benefit increase, the Department is required to act on a change reported within 10 days of becoming aware of the change. BAM 220 requires processing as follows:

Benefit Increases: Changes which result in an increase in the household's benefits must be effective no later than the first allotment issued 10 days after the date the change was reported, provided any necessary verification was returned by the due date. A supplemental issuance may be necessary in some cases. If necessary, verification is **not** returned by the due date, take appropriate action based on what type of verification was requested. If verification is returned late, the increase must affect the month after verification is returned. BAM 220 (January 2018), pp. 8-9.

At the hearing, the Department explained that the expenses were not factored into Petitioner's October 2018 FAP budget because they were not properly verified. The Department conceded, however, that it never sought to verify the expenses after they were validly reported in a timely manner. Additionally, Petitioner's witness, [REDACTED], credibly testified that each month prior to the September 2018 submission, [REDACTED] submitted similar paperwork that always resulted in medical expenses being included in Petitioner's FAP budget for the following month.

Petitioner's submission obligated the Department to either issue a verification checklist seeking more information regarding the reported medical expenses or apply the expenses to Petitioner's budget and redetermine Petitioner's FAP allotment for October 2018. Instead, the Department seemingly ignored the submission and never gave Petitioner the opportunity to verify the expenses for inclusion into the FAP budget. The Department must apply the medical expenses properly to the October FAP allotment and issue Petitioner a supplement upon timely verification of the expenses.

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 processed the Petitioner's reported medical expenses.

NOVEMBER 2018 MA CLOSURE

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.

Petitioner had been an ongoing recipient of MA benefits under the Group 2 Medicaid (G2S) program. Petitioner sought a hearing to challenge the Department's closure of her MA benefits case, effective November 1, 2018, upon the Department's finding that the value of Petitioner's countable assets exceeded the asset limit for program eligibility.

As a disabled and/or aged individual, Petitioner is potentially eligible to receive MA benefits through AD-Care or G2S programs, both of which are SSI-related MA programs. BEM 163 (July 2017), p. 1; BEM 166 (April 2017), p.1. To be eligible for SSI-related MA, the value of an individual's countable assets must be less than or equal to the asset limit at least one day during the month tested, which is \$2,000 for the programs relevant to this matter. BEM 400, pp. 7-8. An asset is countable if it meets the availability tests and is not excluded. BEM 400, p. 2. In general, an asset is considered available to an individual if that individual has the legal right to use or dispose of the asset. BEM 400, p. 10.

Thus, in order for Petitioner to be eligible for the SSI-related programs in question, Petitioner's countable assets must be at or below \$2,000 on any day during the month being tested. The information relied upon by the Department included three months' worth of statements from three different accounts at two financial institutions. Those accounts consisted of a savings account at [REDACTED], a checking account at [REDACTED], and an account at [REDACTED]. Those assets were available to Petitioner at all times relevant to this matter.

In August 2018, the lowest balance on Petitioner's savings account at [REDACTED] was \$505.38. Exhibit A, p. 14. Her lowest balance in the [REDACTED] checking account was \$737.54. Exhibit A, pp. 14-15. At [REDACTED], her lowest balance was \$805.54. Exhibit A, p. 16. Thus, in August 2018, the sum of the value of the assets in the three accounts when measured using the lowest intra-month total for each totaled \$2,048.66. In September 2018, the lowest balances in Petitioner's [REDACTED] savings, [REDACTED] checking, and [REDACTED] accounts were \$505.57, \$1,080.89, and \$899.06, respectively. Exhibit A, pp. 17-19. Thus, for September 2018, the sum of the lowest intra-month balance in each account totaled \$2,485.52. In October 2018, the lowest balances in Petitioner's [REDACTED] savings, [REDACTED] checking, and [REDACTED] accounts were \$505.57, \$1,057.25, and \$992.79, respectively. Exhibit A, pp. 20-22. For October 2018, the sum of the lowest intra-month balance in each account totaled \$2,555.61.

The Department closed Petitioner's MA benefits case, effective November 1, 2018, because the value of her countable assets in those three accounts alone exceeded the asset limit for the relevant SSI-related MA programs. The Department's decision was correct and made in accordance with Department policy and law. At no time from

August 1, 2018 through October 31, 2018, was the value of Petitioner's countable assets at or below the threshold for program eligibility. As Petitioner did not satisfy the asset test, the Department properly provided timely notice of the closure of Petitioner's MA benefits case, effective November 1, 2018.

DECISION AND ORDER

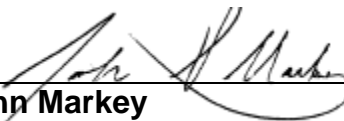
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department satisfied its burden of proving that it acted in accordance with Department policy when it closed Petitioner's MA benefits case, effective November 1, 2018. Accordingly, the Department's decision with respect to Petitioner's MA benefits case is **AFFIRMED**.

However, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy regarding the processing of Petitioner's reported medical expenses submitted in September 2018. Accordingly, the Department's decision with respect to Petitioner's October 2018 FAP allotment is **REVERSED**.

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. The Department shall process all Petitioner's reported medical expenses pursuant to Department policy and law;
2. The Department shall recalculate Petitioner's FAP benefits for the month of October 2018 taking into consideration Petitioner's medical expenses reported on September 12, 2018;
3. The Department shall allow Petitioner the opportunity to verify any reported medical expenses that the Department receives and deems insufficiently verified; and
4. If Petitioner is eligible for additional FAP benefits, the Department shall issue Petitioner a supplement.

JM/cg



John Markey
Administrative Law Judge
for Robert Gordon, 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) 763-0155; 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-St. Clair-Hearings
M. Holden
D. Sweeney
D. Smith
EQAD
BSC2-Hearing Decisions
MAHS

Petitioner – Via First-Class Mail:

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