



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
MI [REDACTED]

Date Mailed: March 2, 2021
MOAHR Docket No.: 20-007382
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 administrative hearing was held on February 23, 2021.

Petitioner appeared and testified unrepresented.

The Department of Health and Human Services (Department) was represented by K. Caldwell, APW.

Department Exhibit A.14 was offered and admitted into the record.

ISSUE

Did the Department properly calculate and ongoing deductible and properly close Petitioner's FAP case?

FINDINGS OF FACT

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

1. On November 20, 2020, Petitioner filed a hearing request regarding his Medicaid (MA) deductible. Petitioner also checked off the "FAP" box without indicating why on his hearing request.
2. Petitioner receives \$ [REDACTED] RSDI income, which was increased to \$ [REDACTED] effective January 21, 2021.

3. Petitioner has had a deductible since December 2019 of \$377.00 per month based on a net income of \$[REDACTED]. The Group 2 MA income limit is \$375.00, resulting in a \$381.00 deductible.
4. In September 2020, Petitioner's FAP case was scheduled for redetermination. On September 9, 2020, the Department issued a Notice of Missed Appointment for Failure to return his FAP varication paperwork at redetermination. The notice further advised Petitioner that his case will close effective October 1, 2020 unless Petitioner complies with the verification requests.

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 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.

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.

Applicable law and policy to the MA case herein is found primarily at BEM 105, BEM 544, RFT 200, 240. Applicable FAP policy regarding redetermination is found primarily at BAM 105, 210. Corresponding federal regulations are found at 7 CFR 273.

The purview of an Administrative Law Judge is to review the Department's action, and, to make a determination if the evidence of record supports that action taken by the Department. After the Department meets its burden of going forward, Petitioner has burden of proof to show that the action is not supported by the evidence and is contrary to law or policy. ALJs do not have any jurisdiction to deviate from law or policy due to individual circumstances.

First, it should be noted that the Department is correct that an ALJ does not have jurisdiction to review an action over 90 days old. However, as Petitioner's deductible is

ongoing. As such, Petitioner does have the right to have his deductible calculation reviewed for the 90 days prior to Petitioner's November 16, 2020 hearing request.

Regarding the MA issues, Petitioner does not dispute the income or deductions used in calculating his MA eligibility and MA deductible. Clearly Petitioner's expenses exceed his income. It is unlikely that Petitioner would meet his monthly deductible unless he has a large medical expense in any one month. However, the Department's evidence supports the calculation of the deductible in this case. As such, the undersigned is required to uphold the Department's MA deduction as Petitioner offered no evidence to rebut the Department's facts.

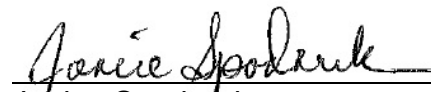
Regarding Petitioner's FAP case, Petitioner argued that he did not receive notice of closure. However, the Department offered credible evidence that the October 9, 2020 Notice of Missed Appointment met legally required notice requirements as the notice states that Petitioner's FAP case will close unless Petitioner complies with the verification requests. Petitioner offered no evidence that the paperwork was delivered. Unfortunately, the undersigned has no authority but to uphold the FAP closure. Petitioner understands that he should reapply or apply and can do so at any time.

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 calculated Petitioner's ongoing deductible and closed Petitioner's FAP case.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

JS/ml



Janice Spodarek
Administrative Law Judge
for Elizabeth Hertel, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

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

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

DHHS

Tara Roland 82-17
Wayne (Dist 17) County DHHS – via
electronic mail

BSC4 – via electronic mail

M. Holden – via electronic mail

D. Sweeney – via electronic mail

Petitioner

██████████ – via first class mail

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