

**IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

Sharifa A Chinikamwala, : DOCKET NUMBER:
Petitioner, : OSAH-DFCS-FSP-1738578-Malihi
v. :
: Agency No: 111153189
Dept. of Family and Children Services, :
Respondent. :
:


FILED
OSAH
AUG 29 2017
Victoria Hightower
Victoria Hightower, Executive Assistant

INITIAL DECISION

INTRODUCTION

Petitioner requested a hearing to challenge Respondent’s decision to deny her application for the Supplemental Nutrition Assistance Program (“SNAP”). A hearing was held on August 16, 2017.

Petitioner was present and represented by Wingo Smith of Atlanta Legal Aid Society. Respondent was represented by Patrick Dudley, an Economic Support Specialist with the Department of Family and Children Services (“DFCS”).

At the hearing, the Parties stipulated to the facts. Based on the evidence presented, Respondent’s action is **REVERSED**.

FINDINGS OF FACT

1. On January 24, 2017, and May 4, 2017, Respondent denied Petitioner’s renewal and application, respectively, based on its determination that her income exceeded the gross income limits of SNAP.
2. Petitioner receives Social Security Disability Income, but is not currently qualified to receive Medicare. Petitioner has a private health insurance plan.
3. Prior to Petitioner’s receipt of Social Security Disability Income, she was not required to verify medical expenses because she received the maximum allotment of SNAP benefits without the need for deductions.
4. Before the hearing, the Parties resolved the majority of issues in this case. DFCS corrected its initial determination that Petitioner was over-income for SNAP and retroactively applied that determination to March 2017, the first month after her termination in which Petitioner received no SNAP benefits.
5. Likewise, the Petitioner provided additional verification of her unreimbursed medical expenses and shelter costs.

6. The Parties agreed that the sole remaining issue was how DFCS included one particular medical cost. That cost is an unreimbursed drug prescription incurred by Petitioner.
7. In support of the expense, Petitioner provided DFCS with two print-outs from her medical insurance provider that show the prescription is billed at \$1,282.21.
8. The first of these print-outs is dated April 19, 2017, and shows that the Petitioner is responsible for \$1,128.27 of the remaining cost of the medication.
9. The second print-out is dated July 28, 2017, and shows that the Petitioner is responsible for \$1,140.96 of the remaining cost of the medication
10. In addition, Petitioner provided a note from her treating doctor which states that she is required to take her medication, as prescribed, every month.
11. The print-outs from Petitioner's insurance state that each refill is for a 30 days' supply of the medication.
12. DFCS has counted the \$1,140.96 and \$1,128.27 as one-time medical expenses, which are then averaged over the twelve-month certification period. Petitioner's argument is that beginning in August 2017 and going forward, the prescription cost should be counted as a monthly expense.

CONCLUSIONS OF LAW

1. Petitioner bears the burden of proof. OSAH Rule 7.
2. As a recipient of Social Security Disability Insurance, Petitioner is considered a disabled member of her SNAP household as defined by 7 C.F.R. § 271.2.
3. The Federal Food Stamp Act ("the Act") provides that "[a] household containing an elderly or disabled member shall be entitled [...] to an excess medical expense deduction for the portion of actual costs of allowable medical expenses incurred by the elderly or disabled member [...] that exceeds \$35 per month." 7 U.S.C. § 2014(e)(5)(A).
4. The regulations interpreting this section of the Act include prescription drugs as an allowable medical expense. 7 C.F.R. § 273.9(d)(3)(iii). Respondent's policy follows the regulation and includes prescription medications as an expense. ODIS Man. TFS 3614-8.
5. Respondent's policy distinguishes between two categories of medical expenses, those that occur one-time and those that are recurring. ODIS Man. TFS 3614-2.
6. One-time expenses are allowed as a one-time deduction in a single month or averaged over the period of eligibility. Respondent's policy gives as an example the cost of a hospital stay. *Id.*
7. A recurring expense is calculated by either using the actual expenses each month or averaging ongoing expenses. The first example of a recurring expense in Respondent's policy is the monthly cost for prescription drugs. *Id.*
8. Other than a few examples, the policy provides no other guidance on when an expense should be considered a recurring or a one-time expense.

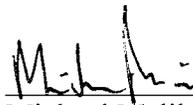
9. The Act requires Respondent to offer eligible households a method of claiming recurring medical costs under the medical expense deduction without having to submit verification of actual expenses each month. 7 U.S.C. § 2014(e)(5)(B)(i).
10. It further requires Respondent's method of verifying recurring medical expenses to "rely on reasonable estimates of the expected medical expenses" which "includ[e] changes that can be reasonably anticipated based on available information about the medical condition of the member, public or private medical insurance coverage, and the current verified medical expenses incurred by the member". 7 U.S.C. § 2014(e)(5)(B)(ii).
11. The Act expressly prohibits "require[ing] further reporting or verification of a change in medical expenses if such a change has been anticipated for certification period." 7 U.S.C. § 2014(e)(5)(B)(iii).
12. Documentary evidence is the primary source of verification for SNAP, but is "not limited to any single type of document." 7 C.F.R. § 273.2(f)(4)(i).
13. Respondent's policy accepts "written statements from attendants or providers" and "Explanation of Benefit (EOB) from third party resources" in addition to pharmacy printouts to verify medical expenses. ODIS Man. TFS3614-3.
14. In agreeing to count the two prescription costs claimed by Petitioner as one-time expenses, Respondent has accepted the verification of the cost using the documentary evidence provided by Petitioner.
15. The questions remaining to be decided are whether Petitioner has sufficiently proved that the cost may be "reasonably anticipated" during the certification period so to be included as a recurring expense and, if so, what the reasonable estimate is of that recurring expense.
16. Respondent's position is that Petitioner did not prove that she had purchased the medication every month from March until the hearing and therefore it cannot be added as a recurring expense.
17. This approach, however, poses two problems. First, it does not include changes which can be reasonably anticipated as required under 7 U.S.C. § 2014(e)(5)(B)(ii). Second, Respondent's policy cannot require Petitioner to submit subsequent verification when there is an anticipated expense in the certification period. *Id.*
18. Treating Petitioner's prescription medications as one-time costs effectively would require Petitioner to continue to submit verification each month in order to receive the correct medical expense deduction.
19. Petitioner has shown two purchases of her prescription medication since Respondent incorrectly terminated her SNAP benefits. Petitioner has also produced evidence from her treating doctor that she needs to take the medication every month. In addition, Petitioner anticipates that she will receive SNAP benefits again, which will increase the income she has available to purchase medications.
20. Based on the information presented by Petitioner, it is reasonable to anticipate that Petitioner will incur monthly costs for her prescription medication.

21. Because the amounts incurred by Petitioner for the two prescriptions are not the same, the Respondent must determine the reasonable estimate for the ongoing cost. ODIS Man. TFS3614-2.
22. The Court finds that a reasonable estimate of the cost ongoing would be the average of the two amounts over a period of two months. The Court calculates this amount as \$1,134.62 per month.

DECISION

Petitioner has met her burden to show that her prescription medications are a reasonably anticipated recurring medical expense that she will incur from August 2017 onward. Given the information provided, this Court finds a reasonable estimate of the expense is the average of her two prior prescriptions. Therefore Respondent is ORDERED to include \$1,134.62 as recurring monthly medical expense for Petitioner's household beginning in August 2017 through the end of her certification period.

SO ORDERED this the 29th day of August, 2017.



Michael Malihi
Administrative Law Judge