

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant
BY:
Judi Conner (Mother).

Reg. No: 2009-14531
Issue No: 2014
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 28, 2009
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's mother's request for a hearing. After due notice, a telephone hearing was held on October 28, 2009.

ISSUE

Did the department properly determine claimant was not Medicaid (MA) eligible at mandatory review in January 2009?

FINDINGS OF FACT

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

- (1) Claimant is eight years old; he resides with his mother in [REDACTED].
- (2) Prior to claimant's 2009 annual, mandatory MA review this child was income eligible for MA; consequently, the department approved [REDACTED] for him.

(3) At review in January 2009, the local office requested verifications necessary to determine this child's financial and non-financial eligibility for benefit continuation (Department Exhibit #1, pg 20).

(4) Claimant's mother promptly verified she received [REDACTED] benefits per month and her son received [REDACTED] per month from the same source at that time (Department Exhibit #1, pgs 8 and 10).

(5) When the local office updated claimant's budget they determined he was no longer income eligible for [REDACTED] or disability-based MA (Department Exhibit #1, pgs 12-19).

(6) On January 13, 2009, the department notified claimant's mother in writing he was no longer eligible for either program due to excess income (Department Exhibit J#1, pg 5).

(7) On January 21, 2009, claimant's mother (and protective payee) filed a hearing request to protest the denial (Department Exhibit #1, pg 5).

(8) Claimant's hearing was held on October 28, 2009, and his mother (the protective payee) appeared on his behalf.

(9) Claimant's mother protested the department's failure to reduce their household's countable income by ongoing monthly expenses like the mortgage payment, utilities/telephone costs, doctor's visits/prescriptions/physical therapy expenses, etc.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative

Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

According to the department's general policy provisions, Healthy Kids MA is available to persons under age 19 only when the household's net income does not exceed 150% of the poverty level, which in this case was \$1,750. PEM Item 131, pg 1. Additionally, the specific income policy states:

INCOME

DEPARTMENT POLICY

All Programs

The group composition and program budgeting items specify whose income to count. The program budgeting items might also contain program-specific income deductions or disregards.

Income means benefits or payments measured in money. It includes money a person owns even if NOT paid directly such as stock dividends automatically reinvested and income paid to a representative.

Earned income means income received from another person or organization or from self-employment for duties that were performed for remuneration or profit. Unearned income means all income that is NOT earned income. The item specifies whether the income is earned or unearned.

The amount of income counted may be more than the amount a person actually receives, because it is the amount before any deductions including deductions for taxes and garnishments. The amount before any deductions is called the **gross** amount. PEM, Item 500, p. 1.

Income remaining after applying the policy in this item is called **countable**.

Count all income that is NOT specifically excluded. PEM, Item 500, p. 1.

**RETIREMENT, SURVIVORS, AND DISABILITY
INSURANCE (RSDI) (AKA SOCIAL SECURITY
BENEFITS)**

All Programs

RSDI is available to retired and disabled persons, their dependents, and survivors of deceased workers.

Count the gross benefit amount as unearned income. PEM, Item 500, p. 29.

For Healthy Kids MA, presumptive full benefit eligibility for children is limited to one period of eligibility during any consecutive 12 month span, after which, a full assessment of all financial and non-financial factors is required. This is the reason financial eligibility was required to be verified and assessed at review in January 2009. PEM Item 131, pgs 1 and 2. Additionally, PEM Item 131, pg 2, directs the department to use the mandatory group composition rules set forth in PEM Item 211 which state:

LIVING WITH

Group 2 FIP-Related MA, Healthy Kids and SSI-Related MA

Living with others means sharing a home where family members usually sleep, **except** for temporary absences. A temporarily absent person is considered in the home. PEM, Item 211, p. 2.
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FIP-Related Child

Group 2 FIP-Related MA and Healthy Kids

A **child's fiscal group** is:

- . the child, **and**
- . the child's parents.

See PEM 536 to determine budgetable income of the fiscal group. There is no asset test for Group 2 Pregnant Women and the Healthy Kids categories. PEM, Item 211, pp. 4-5.

FIP-RELATED FISCAL GROUPS

Group 2 FIP-Related MA and Healthy Kids

Determine the fiscal group for each person who is requesting MA. The fiscal group must be determined separately for each person.

In determining a person's eligibility, the only income that may be considered is the person's own income and the income of the following persons who live with the customer.

- the customer's spouse, and
- the customer's parent(s) if the customer is a child.

This means, for example, that:

- A child's income cannot be used to determine a parent's eligibility.
- A stepparent's income cannot be used to determine a stepchild's eligibility.
- A grandparent's income cannot be used to determine a grandchild's eligibility.

But it also means that:

- A parent's income is considered in determining his/her child's eligibility.
- Each spouse's income is considered in determining the other spouse's eligibility.

Therefore, in addition to establishing a fiscal group for each person requesting MA, you must use policies in PEM 536 to prorate a person's income among the person's dependents and him/herself. PEM, Item 211, p. 4.

The local office properly deemed claimant and his mother mandatory fiscal group members in this case, and also, properly used the prorated divisor and prorated share set forth in PEM Item 536, pgs 3 and 4, to conclude this group's countable net income (██████) exceeded the qualifying limits. As such, the department's action must be upheld. However, the

department's policy expressly states an individual whose income exceeds the limit may be eligible for [REDACTED] benefits through the [REDACTED] and instructs the local office to refer individuals to that department for a determination, which was done in claimant's case.

Claimant's mother stated she filed the appropriate paperwork with [REDACTED], but she has heard nothing from them since; consequently, she was provided with the appropriate contact information at hearing. Claimant's mother also acknowledged she has no specific complaint with the department's budgeting process, but she is frustrated by the low income limits.

Claimant's grievance centers on dissatisfaction with the department's current policy. Claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined claimant was not MA eligible at mandatory review in January 2009.

Accordingly, the department's action is AFFIRMED.

/s/

Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 4, 2009

Date Mailed: November 4, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

MBM/db

cc:

