

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 201228864
Issue No: 2000, 2013
Case No: [REDACTED]
Hearing Date: March 28, 2012
Jackson County DHS

ADMINISTRATIVE LAW JUDGE: Christopher S. Saunders

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. After due notice, a telephone hearing was held March 28, 2012. The Claimant appeared and provided testimony as did her husband, [REDACTED]. The claimant was represented by [REDACTED], an attorney. The department was represented by [REDACTED], Assistant Attorney General.

ISSUES

1. Whether the department properly closed the claimant's Medical Assistance (MA) case and added her to her husband's case?
2. Whether the department properly included income allegedly derived from rental income in the claimant's Medical Assistance (MA) budget?

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 was a recipient of MA benefits at all times pertinent to this hearing.
2. On January 9, 2012, the department sent the claimant notice that her MA case would be closing and she would be added to her husband's MA case.
3. The department also informed the claimant that [REDACTED] was being added as income to her budget as income derived from rental properties.
4. The changes made by the department resulted in the claimant having a spend-down for her MA benefits.

5. The claimant filed a hearing request on January 18, 2012, protesting the closure of her case and addition to her husband's as well as the inclusion of the [REDACTED] in her budget.

CONCLUSIONS OF LAW

As a preliminary matter, it was initially stated by Mr. Eicher that the claimant's hearing was regarding both MA benefits and Food Assistance Program (FAP) benefits. However it was requested by [REDACTED] on behalf of the department that the hearing only proceed regarding the issue of MA benefits because the hearing request did not mention FAP benefits. [REDACTED] agreed to proceed solely on the issue of MA benefits. Therefore, the Administrative Law Judge will only address the issues presented as they pertain to the claimant's MA benefits.

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1)

Clients have the right to contest a department decision affective eligibility for benefit levels whenever it is believed that the decision is incorrect. BAM 600. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The Medical Assistance (MA) program was established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The department administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. Medicaid is also known as Medical Assistance (MA).

With respect to the Medicaid program, it is comprised of several sub-programs or categories. One category is FIP recipients. Another category is SSI recipients. There are several other categories for persons not receiving FIP or SSI. However, the eligibility factors for these categories are based on (related to) the eligibility factors in either the FIP or SSI program. Therefore, these categories are referred to as either FIP-related or SSI-related.

To receive Medicaid under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant women, receive Medicaid under FIP-related categories.

Clients may qualify under more than one Medicaid category. Federal law gives them the right to the most beneficial category. The most beneficial category is the one that results in eligibility or the least amount of excess income. BEM 105.

In the case at hand, the claimant is a recipient of RSDI benefits through the Social Security Administration, therefore, she is qualified for SSI-related MA. BEM 166. Based on her eligibility for SSI-related MA benefits, her group composition must be determined under the policy for SSI-related groups found in BEM 211. BEM 166.

BEM 211 states that only individuals living with one another can be in the same group. Living with means sharing a home where family members usually sleep, except for temporary absences. BEM 211.

In the case at hand, the department contends that the claimant is living with her husband and that in turn, they should be in the same group for MA purposes. The department contends that, based on the investigation of [REDACTED] from the Office of Inspector General, the conclusion was reached that the claimant and her husband were residing together. The claimant lives in a duplex, the two units of which are connected only by the basement. The addresses for the respective units at the duplex are [REDACTED]. The claimant's contend that they each live on separate sides of the duplex and that they do not sleep in the same unit of the duplex. [REDACTED] (the claimant's husband) testified that he lives at [REDACTED]. [REDACTED] (the claimant) testified that she lives at [REDACTED].

At the hearing, [REDACTED] testified that she paid a visit to the claimant's residence as part of her investigation. She testified that the investigation began as a result of information provided by a third party not present at the hearing who indicated that the claimant and her husband did in fact reside together. [REDACTED] testified that the claimant's room contained large amounts of men's clothing; suits, ties, shoes, and a closet full of other clothing items. She further testified that the claimant stated that the clothes were her husband's and that they were all in her room as she and her husband were preparing to give them away. [REDACTED] further testified that it appeared that someone else had been sleeping in the claimant's bed as there were two blanket systems, indentations on both pillows on either side of the bed, and an appearance of the bed as though it had been slept upon on both sides.

When asked about the clothes present in her room, [REDACTED] testified that they had been taking clothes out of different rooms and preparing to give them to good will. She did not refute the testimony of [REDACTED]; that she told [REDACTED] upon her visit to the home that the clothes did in fact belong to her husband. She further testified that the bed may have appeared slept in because she sleeps sitting up in bed with her arms stretched out after having broken her arm a few years ago. [REDACTED] further testified that her husband never stays with her on her side of the duplex and that he has never stayed with her during the entire time that they have lived at the duplex.

██████████ testified that he does not live on his wife's side of the duplex but that he has a key and does go over there. He further testified that he rarely sleeps on that side of the house and that he works on both sides of the duplex. His testimony that he has slept on his wife's side of the duplex directly contradicts the testimony offered by ██████████. Additionally, there was testimony elicited from both ██████████ that they both purchased the home together, they are both responsible for making the land contract payments, and they are both signatories to the land contract. ██████████ also testified that she and her husband had been separated before they decided to purchase the home together and that they have no plans to file for divorce. She stated that they live separately because they do not get along well as husband and wife.

There is circumstantial evidence that ██████████ do in fact live together within the definition of BEM 211. Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). This Administrative Law Judge does not find that the testimony and explanations offered by ██████████ are credible or reasonable. In fact, ██████████ offered testimony that directly contradicted the testimony of the other. As such, this Administrative Law Judge does not credit the testimony offered by either ██████████ and does not find the explanations offered by them to be reasonable. Accordingly, there is circumstantial evidence to show that the claimant and her husband are living together within the definition of BEM 211 and that the department did act properly in accordance with policy in closing ██████████ MA case and adding her to ██████████ MA case.

The State of Michigan has set guidelines for income, which determine if a Medicaid group is eligible. Income eligibility exists for the calendar month tested when there is no excess income, or allowable medical expenses equal or exceed the excess income (under the Deductible Guidelines). BEM 545.

However, a Medicaid group may become eligible for assistance under the deductible program. The deductible program is a process, which allows a client with excess income to be eligible for Medicaid, if sufficient allowable medical expenses are incurred. Each calendar month is a separate deductible period. The fiscal group's monthly excess income is called the deductible amount. Meeting a deductible means reporting and verifying allowable medical expenses that equal or exceed the deductible amount for the calendar month. The Medicaid group must report expenses by the last day of the third month following the month it wants medical coverage. BEM 545; 42 CFR 435.831.

BEM 544 applies to all FIP-related and SSI-related Group 2 MA categories. The department must use the appropriate protected income level (PIL) (defined below) for each fiscal group. BEM 544. The department may include other need items only when the fiscal group meets the requirements for them. BEM 544. The department shall then

determine the fiscal group's total needs. BEM 544. The department will then look to BEM 545 to complete the income eligibility determination. BEM 544. The protected income level (PIL) is a set allowance for non-medical need items such as shelter, food and incidental expenses. BEM 544. RFT 240 lists the Group 2 MA PILs based on shelter area and fiscal group size. BEM 544. BEM 504 states that income derived from rental properties is to be used as income for purposes of determining program eligibility.

In this case, the claimant is arguing that the department should not have attributed ██████ in rental income to her MA budget. The claimant asserted that she does not and has not ever received said income and that said amount should have been excluded from her budget. The department added this ██████ to the claimant's budget based on a shelter verification submitted by Mr. Hill which states that he pays rent in the amount of ██████ per month for his residence at ██████, to ██████ (see Department Exhibit 1). This form contains a signature line that has a signature from "██████" on the line. ██████ testified that she did not ever sign that form nor has she ever received rent from ██████. ██████ testified that he could not remember who filled out that form for him and could not offer a credible explanation as to how this signature ended up on this form. Additionally, ██████ also testified that he does not pay monthly rent but that he will give ██████ a few dollars here and there for allowing him to live at ██████. ██████ also testified that he does not receive regular rent from ██████ and that ██████ will pay him a few dollars here and there or that he will help out with bills.

Again, this Administrative Law Judge does not credit the testimony offered by ██████, ██████, or ██████ and further does not find said testimony to be reasonable. It is curious how no one can provide an explanation as to how this mystery form came into being and how or why it is listed that the specific amount of ██████ is listed as being paid to ██████ as rent. However, this assessment is a moot point. The issue is whether the department acted properly based on the information that it had at the time the action was taken. BEM 500 states that a consolidated inquiry may be used as a verification source when showing income. In this case, ██████ shelter verification was used to show that ██████ was receiving rental income. Policy states that this is an acceptable form of verification and there was no testimony offered to show that the claimant provided any verification to refute the department's inclusion of this income. Accordingly, this Administrative Law Judge finds that the department acted properly based on the information provided to it at the time and properly included rental income in the amount of ██████ in the claimant's MA budget. As there were no other challenges to the claimant's budget, the Administrative Law Judge will find that the department properly calculated the claimant's MA deductible amount.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department acted properly in accordance with policy in closing the claimant's MA case, adding her to her husband's MA case, including rental income of [REDACTED] in the claimant's budget, and calculating the claimant's deductible amount.

Accordingly, the department's actions are **AFFIRMED**. It is SO ORDERED.

/s/

Christopher S. Saunders
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 25, 2012

Date Mailed: April 25, 2012

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 60 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.

CSS/cr

cc:

[REDACTED]