

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-51815
Issue Nos.: 2006, 2013
Case No.: [REDACTED]
Hearing Date: August 12, 2013
County: Oakland (63-03)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on August 12, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED]

ISSUE

1. Did the Department properly close Claimant's and his wife's Medical Assistance (MA) cases under the Group 2 Caretaker (G2C) program due to failure to verify requested information and to satisfy the deductible in any of the three months preceding the closure?
2. Did the Department properly close Claimant's son's MA case under the Other Healthy Kids (OHK) program due to excess income?

FINDINGS OF FACT

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

1. Claimant and his wife were ongoing recipients of MA under the G2C program and their son was an ongoing recipient of MA under the OHK program.
2. In connection with a redetermination, Claimant's wife reported employment income from [REDACTED] and the Department recalculated Claimant's son's OHK eligibility based on the reported income.

3. On May 21, 2013, the Department sent Claimant a Notice of Case Action notifying him that, effective July 1, 2013, his son's MA coverage under the OHK program would close because the household's income exceeded the income limit applicable under the program.
4. The Department sent Claimant a Verification Checklist requesting, among other things, information concerning Claimant's wife's end of employment with [REDACTED] by May 31, 2013.
5. On June 3, 2013, Claimant submitted, among other things, a written statement signed and dated by Claimant's wife indicating that [REDACTED] was out of business and that she no longer worked there.
6. On June 3, 2013, the Department sent Claimant a Notice of Case Action notifying him that, effective July 1, 2013, his and his wife's MA cases would close due to failure to verify requested information and to satisfy the deductible in one of the last three months.
7. On June 14, 2013, Claimant filed a hearing request, protesting the Department's actions.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), the Department of Human Services Bridges Eligibility Manual (BEM), and the Department of Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

On June 14, 2013, Claimant requested a hearing concerning his MA cases. The Department presented Notices of Case Action dated June 3, 2013 and May 21, 2013, showing that on July 1, 2013, it closed the MA cases for Claimant and his wife because they had failed to verify requested information and satisfy their deductible at least one of the last three months and it closed their son's MA case under the OHK program because the group's income exceeded the applicable limit. At the hearing, Claimant also testified that he was concerned about the Department's finding that his MA case was subject to a deductible. However, because Claimant and his wife's MA cases had closed, the deductible issue was moot, and the hearing addressed the Department's closure of the household's MA cases.

Closure of Son's OHK Case

The Department closed Claimant's son's MA coverage under the OHK program after concluding that Claimant's wife's income exceeded the income limit applicable under the program. Income eligibility for OHK exists when the fiscal group's net income does not exceed 150% of the poverty level. BEM 131 (October 2010), p. 2. For OHK, the child's fiscal group consists of the child and the child's parents. BEM 211 (November 1, 2012), p. 5. In this case, their household consisted of Claimant, his wife, and their minor child. Therefore, the child had a fiscal group composed of three individuals, himself and both his parents. The OHK net income limit for a group size of two is \$2,441. BEM 131, p. 2; RFT 246 (April 1, 2013), p. 1.

In calculating Claimant's wife's gross monthly earned income, the Department testified that it considered her income from Nadwa from the paystubs Claimant included with the redetermination which showed that his wife received \$169 on March 29, 2013; \$808 on April 5, 2013; and \$877.75 on April 19, 2013. It appears that, although Claimant did not provide the April 12, 2013, paystub, the Department considered \$688 received on that date based on the year-to-date gross income shown on the prior and later paystubs.

Department policy provides that in prospecting income to be received in a processing or future month for MA purposes, the Department must make a best estimate of the person's income and is to consider the following guidelines:

- For fluctuating earned income, the Department uses the expected hourly wage and hours to be worked, as well as the payday schedule, to estimate earnings.
- Paystubs showing year-to-date earnings and frequency of pay are usually as good as multiple paystubs to verify income.
- A certain number of paystubs is not required to verify income. If even one paystub reflects the hours and wages indicated on the application, that is sufficient information.
- If a person reports a pay rate change and/or an increase or decrease in the number of hours they usually work, the Department uses the new amount even if the change is not reflected on any paystubs.
- If the Department has an opportunity to talk with the client, that may help establish the best estimate of future income.

Furthermore, for OHK, the Department does not verify income and expense but accepts a client statement as an acceptable verification source for income and expenses. BEM 501 (December 2011), p. 7.

However, at the hearing, Claimant credibly testified that his wife's income during the period considered by the Department was substantially higher than her usual income.

In this case, Claimant explained that his wife worked at [REDACTED] and the paystubs he provided were during a period that [REDACTED] had a Groupon coupon in circulation that resulted in greater business activity at [REDACTED] than usual. Claimant included paystubs for subsequent pay periods with his request for hearing that showed substantially less income than that shown on the paystubs provided to the Department with the redetermination and used by the Department in calculating Claimant's son's OHK eligibility. Because the paystubs considered by the Department were not reflexive of Claimant's wife's income from [REDACTED], the Department did not act in accordance with Department policy when it considered these paystubs rather than Claimant's statements in calculating the son's OHK eligibility.

Closure of Claimant's and His Wife's MA Cases

On June 3, 2013, the Department sent Claimant a Notice of Case Action notifying him that his and his wife's MA cases would close effective July 1, 2013, because they had failed to provide requested verifications and because they had failed to meet their deductible in at least one of the last three months.

The Department must verify income when completing an MA redetermination. BEM 501 (December 2011), p. 7. While the Department testified at the hearing that it had not received adequate and timely verification of Claimant's wife's employment at [REDACTED], the Department's hearing packet included a signed and dated note from Claimant's wife indicating that [REDACTED] was no longer in business and that she did not work there. This note, which was provided to the Department on June 3, 2013, prior to the July 1, 2013, case closure and within the negative action period, was sufficient to establish Claimant's end of employment with the [REDACTED], an employer that was no longer in business. See BAM 130 (May 2012), p. 3 (providing that when neither the client nor the Department can obtain verification despite a reasonable effort, the Department should use the best available information, or, if no evidence is available, its best judgment); BEM 501 (December 2011), p. 7 (providing that the Department may not terminate assistance because an employer or other source refuses to verify income).

However, the Department's Notice of Case Action also indicates that Claimant's and his wife's MA cases had also closed because they had not met their deductible in any of the three preceding months (which the Department testified referred to March 2013, April 2013, or May 2013). If a group has not met its deductible in at least one of the three calendar months before that month **and** none of the members are QMB, SLM or ALM eligible, the Department will close the MA case. BEM 545, p. 9. Claimant did not dispute that he and his wife had not met their deductible in the three months at issue. Thus, the Department acted in accordance with Department policy when it closed Claimant's and his wife's MA cases for failure to satisfy the deductible in one of the three preceding months.


DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department did not act in accordance with Department policy when it closed Claimant's son's MA coverage under the OHK program but did act in accordance with Department policy when it closed Claimant's and his wife's MA cases for failure to meet the deductible in any of the three months preceding the Notice.

Accordingly, for the reasons stated above and on the record, the Department's decision is **AFFIRMED IN PART** with respect to the closure of Claimant's and his wife's MA cases and **REVERSED IN PART** with respect to the closure of the son's MA case.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reinstate Claimant's son's MA case under the OHK program effective July 1, 2013;
2. Recalculate Claimant's son's MA eligibility for July 1, 2013, ongoing in accordance with Department policy and consistent with this Hearing Decision;
3. Provide Claimant's son with the MA coverage he is eligible to receive from July 1, 2013, ongoing; and
4. Notify Claimant in writing of its decision in accordance with Department policy.


Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 16, 2013

Date Mailed: August 19, 2013

NOTICE OF APPEAL: Michigan Administrative Hearing System (MAHS) 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. MAHS 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 (60 days for FAP cases).

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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

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 48909-07322

ACE/pf

cc:

