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

IN THE MATTER OF:

[redacted]

Reg. No.: 2014-20148
Issue No(s).: 2008
Case No.: [redacted]
Hearing Date: March 11, 2014
County: Wayne-19

ADMINISTRATIVE LAW JUDGE: Darryl T. Johnson

HEARING DECISION

Following Claimant'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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on March 11, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant, [redacted]. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [redacted].

ISSUE

Did the Department properly calculate Claimant's Medicaid (MA) deductible?

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 was an on-going MA recipient with a history of her deductible changing from month-to-month.

2. In 2013 Claimant's monthly budgeted earned income varied from a low of $[redacted] to a high of $[redacted] and in January 2014 it was $[redacted] (Exhibit 1 Page 7.)

3. Claimant's MA budget amount has ranged from $[redacted] to $[redacted] in 2013, and $[redacted] in 2014. (Exhibit 1 Page 7.)

4. Claimant is employed in a position where she is paid a "piece rate" rather than an hourly wage.

5. In a Notice of Case Action (NCA) dated December 11, 2013 (Exhibit 1 Pages 29-31) Claimant's MA deductible was set at $[redacted] per month beginning January 1, 2014.

6. Claimant's MA deductible for November 2013 was $[redacted] and for December 2013 was $[redacted] (Exhibit 1 Page 22.)

7. Claimant requested a hearing on December 18, 2013. (Exhibit 1 Page 2.)

CONCLUSIONS OF LAW

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

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

When the Department calculates eligibility for medical assistance it takes into account, among many other factors, the earned and unearned income the Claimant receives.

It is not within the scope of the Administrative Law Judge's authority to create new guidelines, eligibility criteria, or deductibles that the Department is to use. The issues that can be decided are whether the Department followed policy with respect to each program, based upon the existing rules, laws, policies, etc.

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).

The Medicaid program 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.

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.

Net income (countable income minus allowable income deductions) must be at or below a certain income limit for eligibility to exist. BEM 105. Income eligibility exists when net income does not exceed the Group 2 needs in BEM 544. BEM 166. The protected income level is a set allowance for non-medical need items such as shelter, food and incidental expenses. RFT 240 lists the Group 2 Medicaid protected income levels based on shelter area and fiscal group size. BEM 544. An eligible Medicaid group (Group 2 MA) has income the same as or less than the "protected income level" as set forth in the policy contained in the Reference Table (RFT). An individual or Medicaid group whose income is in excess of the monthly protected income level is ineligible to receive Medicaid.

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 536 describes the calculations for determining eligibility for all Group 2 MA categories. The first step is to calculate the group's total monthly income. Exhibit 1 Page 3-4 provide the budgets used by the Department in calculating Claimant's monthly MA deductible for November 1, 2013 and January 2014. Her earned income is reported on Page 7 of Exhibit 1. A monthly income is based upon four weeks for MA budgeting purposes. Her monthly income is divided by 4.3 and then multiplied by 4, which converts her monthly incomes of $[redacted] and $[redacted] into $[redacted] and $[redacted] for November and January respectively. BEM 536 requires that $[redacted] be deducted from each member with earnings. Thus, the total income for purposes of Group 2 MA eligibility is found to be $[redacted] and $[redacted] for November and January.[1]

Claimant would be entitled to an additional $[redacted] + 1/3 deduction if she received LIF or FIP in the prior four months – however, no evidence was presented to indicate that Claimant is entitled to such a deduction.

The prorate divisor is determined by adding 2.9 to the number of dependents. A spouse and minor children are considered dependents for G2C eligibility. Thus, because Claimant has two minor children, Claimant's prorate divisor is 4.9. Claimant's countable

[1] Because Claimant is questioning the action taken affecting her benefits from January 1, 2014 and onward, further discussion will focus on that time period. November's figures have been included as a point of reference to help the Claimant understand the budget process.

income of $[redacted] for January is then divided by the prorate divisor (4.9) to determine Claimant's prorated share of income; that amount is found to be $[redacted] At page 4 of Exhibit 1, the Department determined Claimant's prorated share is $[redacted] The Department has not provided an explanation by way of testimony or documents that explains how the prorated share was computed. The Department has determined Claimant is in a fiscal group of 1 (see Exhibit 1 Pages 3 -4) and, if no dependents are considered the prorate divisor of 2.9 would mean her prorated income would be $[redacted] ($[redacted]/2.9=$[redacted] If one dependent were considered the divisor would be 3.9, making her prorated income $[redacted]

Claimant's total net income is then determined by multiplying Claimant's prorated share of income by 2.9 ($[redacted] x [redacted] = $[redacted] That total amount is found to be $[redacted]

Claimant lives in Wayne County, which is in Shelter Area IV. RFT 200. Claimant is in a fiscal group of one, and RFT 240 establishes a protected income limit of $[redacted] for a group of one in Shelter area IV. After subtracting the $[redacted] protected amount from her Total Net Income of $[redacted] her deductible should have been $[redacted] yet the Department determined it should be $[redacted]

The issue before this Administrative Law Judge is not whether Claimant can afford her deductible; it is to adjudicate whether the deductible was properly calculated beginning January 1, 2014. It appears that the Department erred in its calculation of Claimant's MA deductible after taking into account her monthly income and expenses. This opinion is not determinative of the actual deductible that Claimant is to pay. The Department did not provide sufficient evidence to conclusively determine her deductible, and the preceding explanation is only included to help Claimant understand the process by which deductibles are determined.

When the Department presents a case for an administrative hearing, policy allows the Department to use the hearing summary as a guide when presenting the evidence, witnesses and exhibits that support the Department's position. See BAM 600, page 28. But BAM 600 also requires the Department to **always** include the following in planning the case presentation: (1) an explanation of the action(s) taken; (2) a summary of the policy or laws used to determine that the action taken was correct; (3) any clarifications by central office staff of the policy or laws used; (4) the facts which led to the conclusion that the policy is relevant to the disputed case action; (5) the DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. See BAM 600 at page 28. This implies that the Department has the initial burden of going forward with evidence during an administrative hearing.

Placing the burden of proof on the Department is a question of policy and fairness, but it is also supported by Michigan law. In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167; 405 NW2d 88 (1987), the Michigan Supreme Court, citing *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 (1979), said:

> The term "burden of proof" encompasses two separate meanings. 9 Wigmore, Evidence (Chadbourn rev), § 2483 et seq., pp 276 ff.; McCormick, Evidence (3d ed), § 336, p 946. One of these meanings is the burden of persuasion or the risk of nonpersuasion.

The Supreme Court then added:

> The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually cast first upon the party who has pleaded the existence of the fact, but as we shall see, the burden may shift to the adversary when the pleader has his initial duty. The burden of producing evidence is a critical mechanism in a jury trial, as it empowers the judge to decide the case without jury consideration when a party fails to sustain the burden.
>
> The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced. See *McKinstry*, 428 Mich at 93-94, quoting McCormick, Evidence (3d ed), § 336, p 947.

In other words, the burden of producing evidence (i.e., going forward with evidence) involves a party's duty to introduce enough evidence to allow the trier of fact to render a reasonable and informed decision. Thus, the Department must provide sufficient evidence to enable the Administrative Law Judge to ascertain whether the Department followed policy in a particular circumstance.

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 did not act in accordance with Department policy when it calculated Claimant's MA deductible.

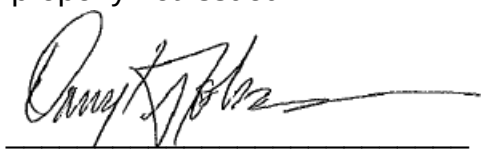
DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Redetermine Claimant's MA deductible, effective January 1, 2014;

2. Issue a supplement to Claimant for any benefits improperly not issued.



Darryl T. Johnson
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 13, 2014

Date Mailed: March 13, 2014

NOTICE OF APPEAL: 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.

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).

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

DTJ/las

cc: [redacted]