

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

IN THE MATTER OF:

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Reg. No.: 14-017997
Issue No.: 2001; 3001
Case No.: ██████████
Hearing Date: January 14, 2015
County: WAYNE-DISTRICT 41
(FORT WAYNE)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 January 14, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant's spouse, ██████████; and Claimant's son/interpreter/witness, ██████ ██████. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████, Eligibility Specialist; and ██████████, Assistant Payment Supervisor.

ISSUES

Did the Department properly deny Claimant's Food Assistance Program (FAP) application effective August 15, 2014?

Did the Department properly deny Claimant and her spouse's Medical Assistance (MA) application dated August 15, 2014?

FINDINGS OF FACT

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

1. On August 15, 2014, Claimant applied for FAP and MA benefits, MA retroactive to July 2014. See Exhibit 1, pp. 2-24.
2. On August 23, 2014, the Department sent Claimant a Verification Checklist (VCL), which requested verification of the following: (i) personal and business checking statements for July 2014 to current; (ii) home insurance policy; (iii) mortgage statement; (iv) properly taxes and deeds; (v) life insurance policy; (vi) itemized

receipts and statements reflecting withdrawals; and (vii) other self-employment. See Exhibit 1, pp. 34-35. The verifications were due back by September 2, 2014. See Exhibit 1, pp. 34-35.

3. On September 2, 2014, Claimant submitted verifications; however, the Department alleged that Claimant failed to submit itemized receipts and statements. See Exhibit 1, p. 1.
4. On September 17, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP application was denied effective August 15, 2014, ongoing, due to excess assets. See Exhibit 1, pp. 36-38.
5. On September 17, 2014, the Department sent Claimant a Health Care Coverage Determination Notice (determination notice) notifying her that her and her spouse's MA application was denied effective October 1, 2014, ongoing. See Exhibit 1, pp. 40-42.
6. On December 8, 2014, Claimant/Authorized Hearing Representative (AHR) filed a hearing request, protesting the FAP and MA denial. See Exhibit 1, p. 43.

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 Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Preliminary matter

On December 8, 2014, the AHR, Claimant's daughter, filed the hearing request. See Exhibit 1, p. 43. However, Claimant's daughter was not present for the hearing.

Instead, Claimant's spouse and son were present for the hearing. Claimant's spouse testified that the hearing could proceed without the daughter/AHR present. As such, the hearing proceeded to address Claimant's FAP and MA denial. See BAM 600 (October 2014), pp. 1-6.

FAP application

Assets must be considered in determining eligibility for FAP benefits. BEM 400 (July 2014), p. 1. The FAP asset limit is \$5,000 or less. BEM 400, p. 5. Assets mean cash, any other personal property and real property. BEM 400, p. 1. Assets can include the following: money/currency; checking and draft accounts; savings and share accounts; money market accounts, etc... See BEM 400, pp. 13-14. For FAP benefits, the Department uses the lowest checking, savings or money market balance in the month when determining asset eligibility. BEM 400, p. 14.

At the hearing, the Department presented Claimant's FAP Assets budget, which showed that her total countable asset amount of \$5,130.51 exceeded the \$5,000 asset limit. See Exhibit 1, p. 39. The Department obtained this amount based on Claimant's submitted personal/business checking account statements. The Department testified that Claimant's spouse submitted his personal and business checking account statements on the VCL due date (September 2, 2014); however, the Department failed to provide the submitted bank statements as part of the evidence packet. The Department testified that Claimant's countable assets of \$5,130.51 consisted of the following: (i) personal checking ending balance of \$1,906.70 as of August 15, 2014; and (ii) business checking account ending balance of \$3,223.81 as of July 31, 2014. Moreover, the Department testified that Claimant's lowest balance in the month was as follows: (i) personal checking balance of \$1,906.70 on August 15, 2014; and (ii) business checking balance of \$1,129.04 on July 16, 2014.

Based on the foregoing information and evidence, the Department improperly denied Claimant's FAP application effective August 15, 2014.

First, for FAP benefits, the Department uses the lowest checking, savings or money market balance in the month when determining asset eligibility. BEM 400, p. 14. The Department failed to use the lowest balance in the month when determining Claimant's asset eligibility. The Department used Claimant's ending balance, which in this case was not the lowest balance in the month. Instead, Claimant's countable asset amount is \$3,035.74 (\$1,906.70 lowest personal checking balance plus \$1,129.04 lowest business checking balance). This amount is based on the Department's testimony as the Department failed to provide the submitted personal/business checking statements as evidence. As such, Claimant's countable assets were below the \$5,000 asset limit. BEM 400, p. 14.

Second, BEM 400 also discusses cash exclusions, which includes excluded income under the BEM 500 series. BEM 400, p. 19. The Department uses this exclusion only if

the funds are not commingled with countable assets and are not in time deposits. BEM 400, p. 19. BEM 500, 501, 502, 503 and 504 identify certain sources of funds that are excluded as both income and assets. BEM 400, p. 19. Time limits and other conditions applicable to the income exclusion also apply to the asset exclusion. BEM 400, p. 19. Also, the Department uses the business account exclusion only if the funds are **not** commingled with countable assets and **not** in time deposits. BEM 400, p. 20. The Department excludes a savings, share, checking or draft account used solely for the expenses of a business. BEM 400, p. 20. The Department continues the exclusion while the business is not operating, provided the person intends to return to the business. BEM 400, p. 20.

Additionally, income manual items identify certain income types that are excluded as assets as well as income. BEM 500 (July 2014), p. 5. The conditions in BEM 400, Excluded Income Under BEM 500 must be met for the asset exclusion to apply. BEM 500, p. 5. Funds cannot be counted as both income and as assets in the same month. BEM 500, p. 5. The Department does not include funds entered as income in asset amounts entered in its system. BEM 500, p. 5.

During the hearing, the Department testified that the spouse reported he was a self-employed businessman who operates a smoke shop business. See Exhibit 1, p. 1. Moreover, it was discovered during the hearing that the business was a S-Corporation because the Department had records of the Claimant's U.S. Income Tax Return for an S Corporation (2013 year - Form 1120S). It was unclear if Claimant's business account was not commingled with the countable assets. See BEM 400, p. 20. If the business account was not commingled with countable assets and not in time deposits, then the Department should have not considered Claimant's business account as an asset per the business exclusion rule. See BEM 400, p. 20. Nevertheless, the evidence established that Claimant's countable assets were below the \$5,000 asset limit; therefore, the Department improperly denied Claimant's FAP application in accordance with Department policy. BEM 400, p. 14.

MA application

On September 17, 2014, the Department sent Claimant a determination notice notifying her that her and her spouse's MA application was denied effective October 1, 2014, ongoing. See Exhibit 1, pp. 40-42. The Department testified that Claimant and her spouse were denied based on excess income. The determination notice indicated that Claimant had no annual income and Claimant's spouse had an annual income of \$43,764 (most likely based on the spouse's business ownership). See Exhibit 1, p. 41. However, a review of the determination notice found that Claimant and spouse were denied based on not being over 65 (aged), blind, disabled, under 21, pregnant, or a caretaker of minor child in their home. See Exhibit 1, p. 40. Nowhere in the determination notice did it indicate denial based on excess income.

Additionally, the Department testified that the annual income was based on the business checking account statements for April 2014 and May 2014. See Exhibit 1, pp. 25-33. The Department received the business statements on June 5, 2014, which was in Claimant's case file before the application. See Exhibit 1, pp. 25-33. The Department's testimony appeared to indicate that it used the total deposits of both bank statements minus any itemized receipts/invoices it already had to calculate the income. The Department testified that it requested Claimant to submit additional itemized receipts; however, the spouse failed to submit the verifications. See Exhibit 1, p. 1 and 34. Therefore, the Department testified it processed the application and Claimant's annual income of \$43,765 (\$43,764 indicated in determination notice) exceeded the income limit of \$20,920.90 (household size two).

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Claimant and her spouse's MA application dated August 15, 2014.

First, the local office and client or AHR will each present their position to the Administrative Law Judge (ALJ), who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600 (July 2014), p. 34. The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600, p. 37. This ALJ was unable to determine how the Department calculated a total annual income of \$43,764 based on the submitted bank statements. See Exhibit 1, pp. 25-33. Moreover, the Department testified it reduced total business income by the itemized receipts. However, the Department failed to present any of the itemized receipts as evidence.

Second, individuals who run their own businesses are self-employed. BEM 502 (August 2014), p. 1. However, S-Corporations and Limited Liability Companies (LLCs) are not self-employment. BEM 502, p. 1. The Department counts the income a client receives from an S-Corp or LLC as wages, even if the client is the owner. BEM 501 (July 2014), p. 4. Wages are the pay an employee receives from another individual organization or S-Corp/LLC. BEM 501, p. 6. Wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. BEM 501, p. 6. It appears that the Department improperly used the business accounts statements in determining Claimant's annual income. As stated above, the spouse has an S-Corporation. Policy states that the Department counts the income a client receives from an S-Corp or LLC as wages, even if the client is the owner. BEM 501, p. 4. A review of Claimant's application indicated the spouse's rate of pay was \$550. See Exhibit 1, p. 16. This would appear to be the spouse's wages for the Department to calculate. Verification sources for wages includes: check stubs or earning statements; DHS verification of employment forms, etc... See BEM 501, p. 11. As such, the Department improperly relied on the business account statements in determining the annual income. Instead, the Department should count the income a client receives from an S-Corp or LLC as wages, even if the client is the owner. See BEM 501, pp. 6 and 11.

Third, the Department improperly stated that Claimant's excess income exceeded the limits for a group size of two pertaining to the Modified Adjusted Gross Income (MAGI) methodology. MAGI related groups include children (U19), pregnant women (PW), parents and caretakers (PCR), Healthy Michigan Plan (HMP), former foster children (FCTM), MOMS, and MICHild. Michigan Department of Community Health, MAGI Related Eligibility Manual, (May 2014), pp. 4-5 (hereinafter referred to as "MAGI Manual").

The size of the household will be determined by the principles of tax dependency in the majority of cases. MAGI Manual, p. 14. Parents, children and siblings are included in the same household. MAGI Manual, p. 14. Parents and stepparents are treated the same. MAGI Manual, p. 14. Individual family members may be eligible under different categories. MAGI Manual, p. 14. The household for a tax filer, who is not claimed as a tax dependent, consists of the individual, individual's spouse, and tax dependents. MAGI Manual, p. 14. The household for a non- tax filer who is not claimed as a tax dependent, consists of the individual, individual's spouse, the individual's natural, adopted and step children under the age of 19 or under the age of 21 if a full time student. MAGI Manual, p. 14.

MAGI is a methodology for how income is counted and how household composition and family size are determined. MAGI Manual, p. 16. It is based on federal tax rules for determining adjusted gross income. MAGI Manual, p. 16. It eliminates asset tests and special deductions or disregards. MAGI Manual, p. 16.

Every individual is evaluated for eligibility based on MAGI rules. MAGI Manual, p. 16. The MAGI rules are aligned with the income rules that will be applied for determination of eligibility for premium tax credits and cost-sharing reductions through exchanges. MAGI Manual, p. 16. Sources of income include wages/salary. MAGI Manual, p. 16.

For purposes of MAGI related MA categories, Claimant's and the spouse's household size is five (based on the submitted application). See Exhibit 1, pp. 2-24 and MAGI Manual, pp. 14-16. Thus, Claimant's and the spouse's income would have to exceed the limits for a household size of five, rather than two as indicated by the Department for MAGI related MA categories.

Fourth, 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. BEM 105 (January 2014), p. 1. In general, the terms Group 1 and Group 2 relate to financial eligibility factors. BEM 105, p. 1. For Group 1, net income (countable income minus allowable income deductions) must be at or below a certain income limit for eligibility to exist. BEM 105, p. 1. The income limit, which varies by category, is for nonmedical needs such as food and shelter. BEM 105, p. 1. Medical expenses are not used when determining eligibility for MAGI-related and SSI-related Group 1 categories. BEM 105, p. 1. For Group 2, eligibility is possible even when net income exceeds the income limit.

BEM 105, p. 1. This is because incurred medical expenses are used when determining eligibility for Group 2 categories. BEM 105, p. 1.

Persons may qualify under more than one MA category. BEM 105, p. 2. Federal law gives them the right to the most beneficial category. BEM 105, p. 2. The most beneficial category is the one that results in eligibility or the least amount of excess income. BEM 105, p. 2. BEM 105 lists the MAGI-related MA priority categories. See BEM 105, pp. 3-4. The list also includes consideration for Group 2 Caretaker Relative (G2C) eligibility, which is not a MAGI-related category. Instead, if the net income exceeds Group 2 needs, MA eligibility is still possible (deductible included). BEM 135 (July 2013), p. 3 and BEM 545 (July 2013), pp. 1-31. For non-MAGI related categories, the group size would most likely be two in this instance (husband and wife). The determination notice stated that both Claimant and spouse were not caretakers of a minor child in the home. See Exhibit 1, p. 40. However, Claimant and the spouse are parents of a dependent child. See Exhibit 1, pp. 2-24. Thus, the evidence failed to establish if the Department considered Claimant's and the spouse's eligibility for G2C. This decision is not stating the Claimant and/or spouse are eligible for MA benefits, but the Department failed its burden of showing that it considered Claimant and spouse's eligibility for the most beneficial MA category (i.e., G2C). See BEM 105, pp. 1-7.

For the above stated reasons, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Claimant and her spouse's MA application dated August 15, 2014, retroactive to July 2014.

DECISION AND ORDER


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 (i) did not act in accordance with Department policy when it denied Claimant's FAP application effective August 15, 2014; and (ii) the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Claimant's and her spouse's MA application dated August 15, 2014, retroactive to July 2014.

Accordingly, the Department's FAP and MA decisions are **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. Initiate registration and processing of Claimant/spouse's FAP and MA application dated August 15, 2014 (MA retroactive to July 2014);

2. Issue supplements to Claimant/spouse for any FAP and MA benefits they were eligible to receive but did not in accordance with Department policy; and
3. Notify Claimant in writing of its FAP and MA decision in accordance with Department policy.



Eric Feldman
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/22/2015**

Date Mailed: **1/22/2015**

EJF / cl

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion.

MAHS **MAY** grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

