

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

IN THE MATTER OF:

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Reg. No.: 15-005009
Issue No.: 2001
Case No.: ██████████
Hearing Date: May 07, 2015
County: MACOMB-DISTRICT 36
(STERLING HTS)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on May 7, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Hearing Facilitator, and ██████████, Eligibility Specialist.

ISSUE

Did the Department properly impose a deductible spend down of \$3,102?

Did the Claimant file her Request for Hearing timely?

FINDINGS OF FACT

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

1. The Claimant applied for Medical Assistance and was approved on November 1, 2014 and was given a spend down of \$3,102 per month. At the time of the MA application the Claimant indicated that she was pregnant. Exhibit A, p. 4.
2. The Department issued a Health Care Determination Notice on November 17, 2014 which found the Claimant eligible for a spend down of \$3,102 per month. The Notice did not contain the amount of annual income used to calculate the deductible and did not indicate to the Claimant what program she was eligible for. Exhibit A.

3. The Claimant has 3 members in her MA fiscal group which include her husband and a minor child.
4. The Department determined that the MAGI income from self-employment for her husband to be \$4,939 monthly and testified that it used unknown wages of \$1,082.50. (Actual unknown wages were \$1,000). The \$4,939 income amount was taken from the MAGI detail screen. Exhibit B and C.
5. The Claimant has disputed the amount of income and wages received by her husband based upon her tax return. Exhibit D.
6. Pay stubs were submitted with the application and were received from the month of November 2014 at \$425 per week from ██████████, the Claimant's spouse's company. This totals \$1,700 per month. No verification of self-employment records were requested by the Department
7. The Department did not obtain any self-employment records or tax return for ██████████. The tax return for 2013 Schedule E indicates this is an S Corporation. Exhibit D, p.19.
8. The Claimant provided the Department her 2013 tax return which showed gross income of \$26,852. Exhibit D, p.1
9. The Department erroneously concluded that gross income was \$4,939 monthly. Exhibit B.
10. The Department has asserted that the Claimant's hearing request is not timely as the action establishing her spend down was taken by the Department more than 90 days ago.
11. The Claimant filed a hearing request on April 1, 2015 protesting the Department's action regarding the amount of the spend down.

CONCLUSIONS OF LAW

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

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 Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case, the Claimant disputed the amount of the deductible imposed by the Department. The Department has also raised the issue that the Claimant's hearing request is untimely.

Timeliness of Hearing Request

Logically, a spend down can be challenged at any time as a person cannot be stuck so to speak with a spend down amount forever or until a redetermination or other change such as income. In addition, the Claimant attempted to contact her caseworker and spoke to a supervisor whom she advised that she was pregnant. The supervisor advised her that she would give the information to her caseworker. Under these circumstances, it is determined the hearing request was timely.

Medical Assistance Eligibility and spend down determination

The requirement to provide specific eligibility information is satisfied by the eligibility information on the application form. Clients who qualify under more than one MA category have the right to choose the most beneficial category; see BEM 105. BAM 105, (October 1, 2014), p. 12.

Persons may qualify under more than one MA 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, (October 1, 2014), p. 2.

The claimant was approved for Group 2 P as such policy provides the following:

Group 2 for Pregnant Women
The deductible for a pregnant woman is met at the first office visit. They are then HKP for the remainder of the pregnancy and two months post-partum. BEM 545, (July 1, 2013), p. 1. (Emphasis supplied)

It does not appear that the Department ever informed the Claimant that based upon her Group 2 P status **she was eligible with no deductible after the first office visit.** Based upon this provision, the Claimant was eligible and her deductible was met at the first office visit to her doctor after approval of the application ongoing until 2 months post-partum. Unfortunately, it did not appear that the Department provided this information to the Claimant after advising the supervisor that she was pregnant. Nor did the health care determination inform her of this eligibility.

Notwithstanding this pregnancy based eligibility, the Claimant still seeks a determination as to whether the deductible as determined by the Department is correct. This issue concerns the determination of the income used to calculate the deductible.

The Claimant credibly testified that her husband's earnings were between \$1,600 and \$1,700 monthly and that her husband had no other income. The income was also verified to the Department with the application and four check stubs in the amount of \$425 each were provided as part of the verification with the application for [REDACTED]. The application indicates that the rate of pay is \$588 for 30 hours per week. Exhibit F. The Department testified that it used the 4 pay stubs as employment income rather than self-employment income and did not verify the self-employment income and expenses. The Department did not use the pay stubs in its calculation and did not explain why, as this may be the best available information regarding the [REDACTED] income. BAM 130 (October 1, 2014) p.1.

Based upon the 2013 tax return Schedule E provided to the Department as part of the requested verifications, the Claimant's income of \$14,114 was income from [REDACTED], an S corporation. The 2013 tax return submitted notes total gross income of \$26,852, consisting of \$12,738 of employment wages and \$14,114 as [REDACTED] income. The gross income divided by 12 months demonstrates income of \$2,237 monthly. Exhibit D p. 19. Based upon the evidence provided and available to the Department at the time of the application the Department improperly used "MAGI " monthly income of \$4,939 as that income was not substantiated by either the 2013 tax return or the check stubs provided with the application. There is no basis in the record to substantiate monthly gross income from self-employment of \$4,939 and "unknown" other income of \$1,000 used by the Department. (See employment budget summary, Exhibit B and C.)

In regards to verification of self-employment income, if the Claimant's spouse's company Saffo Maintenance is an S corporation, it is not self-employment. BEM 502 provides:

Individuals who run their own businesses are self-employed. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board.

Note: S-Corporations and Limited Liability Companies (LLCs) are not self-employment.

Given this policy provision the Department is cannot require review of an S corporation as self-employment and must either use the pay stubs or a tax return for the business or the best available information. BEM 502 (May 1, 2015) p. 1.

Lastly a review of the MAGI-related eligibility manual provides that a pregnant woman is eligible if the fiscal group annual gross income is 195% of the federal poverty level based upon group size. The Claimant has an MA group of 3 persons; the Federal Poverty Guideline for 2014 for a group of 3 is \$19,790 FPL. 195% of \$19,790 is \$38,590 which may make the Claimant MAGI eligible.

Group 2 eligibility for MA coverage is possible even when net income exceeds the income limit. BEM 105, p. 1. In such cases, the client is eligible for MA coverage with a deductible, with the deductible equal to the amount the net income (countable income minus allowable income deductions) exceeds the applicable Group 2 MA protected income level (PIL). The PIL is based on the client's shelter area (county in which the client resides) and fiscal group size. BEM 132 (July 2013), p. 2; BEM 544 (July 2013), p. 1; RFT 240 (December 2013), p. 1. In this case the budget as presented is determined to be incorrect as the Department did not meet its burden to establish that it used the correct gross income when determining the deductible amount of \$3,102 because the Department failed its burden to show that it correctly determined how the fiscal group income was calculated. Exhibit E. Based on the evidence presented, the Department failed to satisfy its burden of showing that it properly provided Claimant with the most beneficial MA coverage she is eligible to receive from November 1, 2014, ongoing, in accordance with Department policy. See BAM 600, pp. 35-37.

As such, the Department will redetermine Claimant's eligibility for the most beneficial MA coverage she is eligible to receive (i.e., MAGI Program Pregnant Women) effective November 1, 2014. This hearing decision does not conclude that Claimant is eligible for any program or any other MA categories because the Department has to redetermine her eligibility.

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 the Group 2 P deductible.

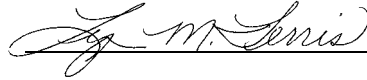
DECISION AND ORDER

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 eligibility (including all MAGI program eligibility) for November 1, 2014, ongoing;
2. Provide Claimant with the most beneficial MA coverage she is eligible to receive for November 1, 2014, ongoing and,

3. Notify Claimant of its decision.



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **6/5/2015**

Date Mailed: **6/5/2015**

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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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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

