

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-013898
Issue No.: 3000, 2001
Agency Case No.: [REDACTED]
Hearing Date: September 23, 2015
County: WAYNE-DISTRICT 15

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Following Petitioner'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 September 23, 2015, from Detroit, Michigan. The Petitioner was represented by the Petitioner, [REDACTED]. The Department was represented by [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly close the Petitioner's Medical Assistance (MA)?

FINDINGS OF FACT

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

1. At the hearing, the Petitioner withdrew her hearing request regarding her FAP benefits dated [REDACTED], as she no longer wished to proceed with her hearing request on that issue.
2. The Petitioner was an ongoing recipient of MA benefits. The Department issued a Health Care Coverage Determination Notice dated [REDACTED], closing her MA due to her immigration status which was in error. The Department also determined the Petitioner ineligible as she was not under 21, pregnant, or a caretaker of a minor child or not over 65 (aged) blind, or disabled. The Department also determined that the Petitioner's income as determined by the Department, in the amount of \$16,344, exceeded the HMP income limit for a group of one.

3. The Petitioner began employment with the U.S. Census Bureau May 2015 through September 2015. The Petitioner earned \$14.72 hourly and was paid biweekly. The Department used two check stubs received by the Petitioner from the Census Bureau, received in May 2015, to determine earned income in the amounts of \$462.49 and \$695.41. Exhibit 2. The total income for May 2015 was \$1158. The total income from the Census Bureau earned by the Petitioner in 2015 was \$3092.94. Exhibit 2
4. The Petitioner completed a redetermination dated [REDACTED], due [REDACTED]. On her redetermination, the Petitioner reported she was receiving SDA in the amount of \$172, and also that she received income from her job at [REDACTED] and the [REDACTED] (which she had just started). The Petitioner advised the Department that she was disabled. The Petitioner also advised the Department not to use her tax returns to renew her Health Care MA coverage. Exhibit 1
5. The May 2015 income from [REDACTED] used by the Department was determined from the Work Number in the amount of \$34.81 [REDACTED] and \$68.55 ([REDACTED] the checks totaled \$102.73.
6. The Petitioner requested a hearing on [REDACTED] protesting the Department's actions.

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 Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

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 Department closed the Petitioner's MA after the completion of a redetermination for June 2015. Petitioner disputed the Department's closure of her MA case. The [REDACTED] Health Care Coverage Determination Notice notified Petitioner that the application was denied because she was not under 21, pregnant, the caretaker of a dependent child, over 65, blind or disabled, and her income of \$16,344 exceeded the income limits for her household size of 1.

MA is available (i) to individuals who are aged (65 or older), blind or disabled under SSI-related categories, (ii) to individuals who are under age 19, parents or caretakers of children, or pregnant or recently pregnant women, and (iii) to individuals who meet the eligibility criteria for HMP coverage. BEM 105 (January 2014), p. 1; Michigan Department of Community Health, Medicaid Provider Manual, Healthy Michigan Plan, § 1.1, *available at* <http://www.mdch.state.mi.us/dch-medicaid/manuals/MedicaidProviderManual.pdf>.

Petitioner had been receiving MA under the HMP plan. HMP provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income at or below 133% of the federal poverty level (FPL) under the Modified Adjusted Gross Income (MAGI) methodology; (iii) do not qualify for or are not enrolled in Medicare; (iv) do not qualify for or are not enrolled in other MA programs; (v) are not pregnant at the time of application; and (vi) are residents of the State of Michigan. Michigan Department of Community Health, Medicaid Provider Manual, Healthy Michigan Plan, § 1.1, *available at* <http://www.mdch.state.mi.us/dch-medicaid/manuals/MedicaidProviderManual.pdf>.

The Department explained that Petitioner's increased earnings due to her census bureau employment made her income ineligible for continued HMP coverage. An individual is eligible for HMP if her household's income does not exceed 133% of the FPL applicable to the individual's group size. A determination of group size under the MAGI methodology requires consideration of the client's tax status and dependents. In this case, the evidence showed that Petitioner was a tax filer and had no spouse or dependents. Therefore, for MAGI purposes, she has a household size of one. Michigan Department of Community Health, Modified Adjusted Gross Income (MAGI) Related Eligibility Manual, § 5.2, *available at* http://www.michigan.gov/documents/mdch/MAGI_Manual_457706_7.pdf. 133% of the annual FPL in 2015 for a household with one member is \$15,654. <http://aspe.hhs.gov/POVERTY/15poverty.cfm>. If an individual is within 5% of the FPL for the applicable group size, a disregard is applied, making the person eligible for MA. MAGI Related Eligibility Manual, § 7.2.

The [REDACTED] Health Care Coverage Determination Notice indicates that the Department used annual income of \$16,344 in determining Petitioner's ineligibility for HMP health care coverage. At the hearing, the Department explained that in calculating Petitioner's annual income at the time the Notice was issued, it relied on the various pay amounts it gathered from the Work Number for Marshalls and two pay stubs for May 2015 that Petitioner received from the Census Bureau employment. The Department

testified at the hearing that it used two pays from Marshalls from May 2015. The May 2015 income from Marshalls was determined from the Work Number, in the amounts of \$34.81 [REDACTED] and \$68.55 [REDACTED], the checks totaled \$102.73. The Department further testified that it used the two pay stubs provided by the Petitioner which she received from the Census Bureau. The Petitioner received biweekly income from the Census Bureau in the amounts of \$462.49 and \$695.41. Exhibit 2. The total income for May 2015 was \$1158. The total income based upon these earnings totals is \$15,129. Based upon this income, it is determined that the Department's determination closing the Petitioner's HMP was incorrect for several reasons. Taking the amounts for both of Petitioner's employments results in annual income of \$1233 for Marshalls and \$13,896 for the Census Bureau, which is less than the \$16,344 annual income as determined by the Department and is less than the \$15,584.10 HMP income limit. Thus, based upon the evidence presented, the Department did not meet its burden to demonstrate that it properly determined the Petitioner's annual income and thus improperly closed the HMP. It did not demonstrate that it acted in accordance with Department policy when it concluded that Petitioner was not income eligible for HMP based on her verified income.

In determining an individual's eligibility for MAGI-related MA (which includes HMP), 42 CFR 435.603(h)(2) provides that "for individuals who have been determined financially-eligible for Medicaid using the MAGI-based methods . . . , a State may elect in its State plan to base financial eligibility either on current monthly household income . . . or income based on projected annual household income . . . for the remainder of the current calendar year." The regulations further provide that, in determining current monthly or projected annual household income, the Department may adopt a reasonable method "to include a prorated portion of reasonably predictable future income, to account for a reasonably predictable increase or decrease in future income, or both, as evidenced by a signed contract for employment, a clear history of predictable fluctuations in income, or other clear indicia of such future changes in income," with future increases or decreases in income verified in accordance with policy. 42 CFR 435.603(h)(3).

Department policy provides that MA eligibility is determined on a calendar month basis. BEM 105 (January 2014), p. 2. Unless policy specifies otherwise, circumstances that existed, or are expected to exist, during the calendar month being tested are used to determine eligibility for that month. BEM 105, p. 2. When determining eligibility for a future month, the Department should assume circumstances as of the processing date will continue unchanged unless it has information that indicates otherwise. BEM 105 (October 2014), p. 2.

It is unclear from the record whether the Department took into account the monthly income fluctuations for Marshalls employment and whether the Petitioner's Census Bureau employment was expected to continue, as required by Department policy referenced above.

In addition, as the Petitioner reported on her redetermination that she was disabled, the Department could not close the Petitioner's MA without an ex parte review as required by Department policy. There was no evidence that an ex parte review was conducted as required by Department policy, and thus the Department's closure of the MA case was improper due to no ex parte review being conducted. The redetermination filed by the Petitioner also noted that she was receiving SDA. Before closing Petitioner's case due to ineligibility for HMP, the Department was required to conduct an ex parte review unless Petitioner was ineligible for any MA coverage. BAM 220 (April 2015), p. 17; BAM 210 (April 2015), p. 1. When the ex parte review shows that an MA recipient is eligible for MA under another category, the Department must change the coverage. BAM 220, p. 17. When the ex parte review shows that a recipient may have continuing eligibility under another category, but there is not enough information in the case record to determine continued eligibility, the Department must send a verification checklist (including disability determination forms, as needed) to proceed with the ex parte review. If the client fails to provide requested verifications, or if a review of the information provided establishes that the recipient is not eligible under any MA category, the Department sends timely notice of MA case closure. BAM 220, p. 17. MA coverage continues until the client no longer meets the eligibility requirements for any other MA category. BAM 220, p. 17.

During the hearing, after several attempts to come up with how the Department came up with the annual income of \$16,344, the Department could not demonstrate or reproduce how it came up with that annual income for determining HMP eligibility. Based upon the evidence presented, the Department did not meet its burden to demonstrate that it properly closed the Petitioner's HMP MA case. It was not established whether the Department included the SDA income of \$172 monthly as reported on the redetermination.

The Petitioner's hearing request also requested a hearing regarding the Department's calculation of her FAP benefits. At the hearing, the Petitioner withdrew her FAP hearing request on the record, as she no longer wished to proceed with her hearing request regarding FAP.

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 failed to conduct an ex parte review prior to the closure of the Petitioner's MA case and that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated the Petitioner's annual income and closed the Petitioner's HMP case.

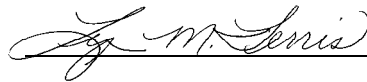
DECISION AND ORDER

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. The Department shall reinstate the Petitioner's HMP case and shall redetermine Petitioner's HMP eligibility in accordance with Department policy.
2. If the Department finds the Petitioner ineligible for HMP, it shall conduct an ex parte review as required by Department policy to determine if Petitioner is eligible for any other program based upon her disability.
3. The Petitioner's Request for Hearing regarding her FAP benefits is hereby ordered WITHDRAWN, and IT IS SO ORDERED.



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

Date Signed: **10/22/2015**

Date Mailed: **10/22/2015**

LMF / hw

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

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc:

A large black rectangular redaction box covers the names and contact information of the recipients listed in the 'cc:' field.