

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-007703
Issue No.: 2003
Case No.: [REDACTED]
Hearing Date: June 24, 2015
County: MACOMB-DISTRICT 36

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 [REDACTED], [REDACTED] from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. The Claimant's spouse [REDACTED] also appeared. Participants on behalf of the Department of Health and Human Services (Department) included [REDACTED] Hearing Facilitator.

ISSUE

Did the Department properly calculate earned income when determining the Group 2 C and Group 2 U medical assistance deductible for Claimant, his spouse and son for June 2015?

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's MA fiscal group consists of the Claimant, his wife and son (who is under 19). The Claimant's MA is ongoing with a monthly deductible for his son of \$2417, and for himself and wife a deductible of \$1834. Exhibit 1
2. The Department issued a Health Care Coverage Determination Notice imposing these deductibles base upon a June 2015 MA budget. Exhibit 1
3. The monthly income used by the Department was based upon Claimant's quarterly earnings for the first quarter of 2015 (January - March) which was used to budget the deductible. The monthly gross income amount was determined to be

\$3687.84. The total income for the quarter was \$11,893.27. The monthly amount was used to determine monthly MA income to be \$3964. ($\$11,893.27 \div 3 = \3964). The income used to calculate the budget was \$3687. Exhibits 3 and 4

4. When determining the monthly countable income the Department used the first quarter of a Consolidated Inquiry for 2015 (Exhibit 3). Two pay stubs which were submitted with the redetermination but were not used, as they show net pay not gross. Claimant is paid weekly.
5. The Claimant requested a hearing on [REDACTED] protesting the deductible amount imposed on all group members because the income used was too high.

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 has requested a review of the department's determination of the gross monthly income used to determine the monthly income and medical deductible for his MA fiscal group. The department advised that it used a consolidated inquiry of total earnings for the first quarter of 2015, which was reported as \$11,893.27 (Exhibit 3). This income was divided by 3 to get a monthly amount (\$3964) then divided by 4.3 to get a weekly amount of \$921 and multiplied by 4 for a monthly income of \$3,687 (Exhibit 3 and Exhibit 5). This method of estimating worked in Claimant's favor and took into account and adjustment for months with five pays during the first quarter. As part of the redetermination the Claimant provided check stubs for March 2015 which showed the net pay only and could not be used by the Department. The Claimant credibly testified that due to supplier problems, the Claimant worked more hours in March 2015. The Claimant had maximum overtime.

The Claimant provided monthly pays stubs, for various months providing one for each month to demonstrate that his pay was lower than the Department calculated. However, the Department cannot use these pays stubs which were randomly selected.

The Claimant advised in his hearing request he would provide all his pay stubs at the hearing. As part of the redetermination, the Claimant provided pay stubs showing the net not the gross amount (Exhibit 3). Generally, the Department looks at the last 30 days income when determining gross income used for determining the deductible amount.

At the hearing, the Claimant also presented pay stubs at the hearing for April 2015 gross income as follows: for [REDACTED] \$967.75; [REDACTED] \$885.43; [REDACTED], [REDACTED] \$966.83 and [REDACTED] \$967.75 (Claimant Exhibit A). The Claimant testified that he normally works Saturdays and receives overtime. These check included overtime.

Pay stubs for March 2015 were also provided at the hearing [REDACTED] (\$767.75); [REDACTED] (\$1163.75); [REDACTED] (\$1163.75) (Claimant Exhibit A). All these check stubs include Saturday overtime and double overtime, except one check. These checks would not be normal as double overtime based upon the evidence did not occur, except in March 2015.

When calculating monthly income for determination of a deductible, the Department is required to use the last 30 days of income and the pays are added together to determine gross income. In this case, the Department determined, at redetermination based upon first quarter results that the Claimant's monthly gross income was \$3687.84. The department did not request verification of income as part of the redetermination. The Claimant credibly testified that he advised the Department that the March 2015 pays were high believing that is the income month used by the Department because his previous deductible was lower. Adding the March pays together results in monthly gross income of \$4482.32 which is significantly more than the \$3687 used by the Department in calculating the deductible. However, the Department did not have or use the March 2015 income to determine the deductible. April 2015 totals \$3787 which is more than the gross income used. Policy found in BEM 503 requires that only countable income is used to determine gross income and in this case that income was non-averaged income, as the quarterly income was used.

Budget non-averaged income for the month in which it was/will be received/available.

Exception: When doing a future month budget, do not budget income from an extra check (example: fifth check for a person who is paid weekly). BEM 530, (January 1, 2014) p 2 In this case the budget was completed for June 2015 and the Department used the first quarter results and did not verify income.

Future Month

Non-averaged income: Use amounts that will be, or are likely to be, received/available in the future month. See “**PROSPECTING INCOME**” below.

Exceptions:

- Do not budget an extra check (example, fifth check for person paid weekly). BEM 530, p.2

If prospecting income based on bi-weekly or twice a month payments, multiply by 2. If prospecting income based on weekly pay, multiply by 4.

- Base estimate of daily income (example: insurance pays \$40 for every day in hospital) on a 30-day month.

When the amount of income from a source changes from month to month, estimate the amount that will be received/available in the future month.

PROSPECTING INCOME

Prospecting income means arriving at a best estimate of the person’s income. Prospect income when you are estimating income to be received in a processing or future month. Your best estimate may not be the exact amount of income received.

Some of the reasons income fluctuates is because:

- The number of hours worked in a month may fluctuate.
- The amount of tips may vary from payday to payday.

Use the following guidelines for prospecting income:

- For fluctuating earned income, use 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, use the new amount even if the change is not reflected on any paystubs.
- If you have an opportunity to talk with the client, that may help establish the best estimate of future income. BEM 530 p. 3, 4.

Verify all non-excluded income:

- At application, including a program add, prior to authorizing benefits.

Note: See Bridges Administrative Manual (BAM) 117, Minimum Verification, for Expedited FAP income verification rules.

- At member add, only the income of the member being added.
- At redetermination. BEM 500 (July 1, 2015), p.12.

In this case the Department used a verification source that is deemed acceptable, which was the consolidated inquiry which references quarterly income. This was acceptable as the Claimant initially gave the department two check stubs showing net income. Given the fact that the Claimant credibly testified that he advised his caseworker that his income fluctuates, a verification of income would have been appropriate to determine income (BEM 500, p. 13). In addition, if income for March had been used it would have been too high, as the income does fluctuate and is higher than the quarterly estimate and the April 2015 income. Based upon the evidence, the Department properly determined income based upon an allowable verification source. And thus, the income was not inordinately high, as would have been the case if March 2015 income had been used. Therefore, it is determined that the Department acted in accordance with Department policy when it determined the Claimant's gross income. The Claimant may report any change in his monthly income that results in an income decrease which

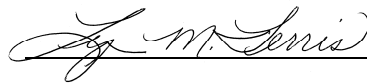
would affect the deductible. However based upon the evidence provided, it is determined that the department properly determined the gross income based upon the information it had available which was also an accepted verification source.

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 acted in accordance with Department policy when it determined the Claimant gross monthly income to be \$3687.

DECISION AND ORDER

Accordingly, the Department's decision is

AFFIRMED.



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

Date Signed: **7/28/2015**

Date Mailed: **7/28/2015**

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:

