

**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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MAHS Reg. No.: 15-021250
Issue No.: 2007; 3008
Agency Case No.: ██████████
Hearing Date: January 25, 2016
County: Macomb-District 36
(Sterling Hts)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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, an in-person hearing was held on January 25, 2016, from Sterling Heights, Michigan. Petitioner appeared with her husband ██████████, her authorized hearing representative (AHR). The Department was represented by ██████████, Hearing Facilitator.

ISSUE

Did the Department properly determine Petitioner's and her husband's Medicaid (MA) eligibility?

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

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

1. Petitioner, her husband (the AHR), their minor child ██████████, and their adult child ██████████ live in the same household.
2. ██████████ is a full-time college student.
3. The AHR receives \$1318.90 in gross monthly Retirement, Survivors and Disability Insurance (RSDI) based on a disability. Petitioner and ██████████ each receive \$329 in gross monthly RSDI income.

4. Petitioner is employed by a school district.
5. On October 1, 2015, Petitioner applied for MA and FAP benefits.
6. On October 30, 2015, the Department sent Petitioner a Notice of Case Action notifying her that she was eligible for \$138 in monthly FAP benefits based on a household size of three.
7. The Department approved Petitioner and the AHR for MA subject to a monthly deductible.
8. On November 9, 2015, the Department received Petitioner's request for hearing disputing the Department's actions concerning her and the AHR's MA eligibility and their FAP calculation.

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), Department of Health and Human Services Medicaid Provider Manual (MPM), Department of Health and Human Services Modified Adjusted Gross Income Related Eligibility Manual (MREM), and Department of Health and Human Services Emergency Relief Manual (ERM).

Petitioner requested a hearing to dispute the Department's MA and FAP decisions.

MA Case

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.

MA is available (i) under SSI-related categories to individuals who are aged (65 or older), blind or disabled, (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 (October 2014), p. 1; MPM, Healthy Michigan Plan, § 1.1.

In this case, the Department determined that Petitioner and the AHR were eligible for MA under the Group 2 Caretaker Relative (G2C) program, with eligibility subject to a monthly deductible. Although the evidence failed to establish that the Department sent

Petitioner a Health Care Coverage Determination Notice identifying the parties' eligibility, the Quick Note sent by the Department on November 24, 2015 showed that, in light of pay stubs submitted for October 23, 2015 and November 6, 2015, the monthly deductible for each of them was \$1081 for December 1, 2015 ongoing (Exhibits G and H). Both Petitioner's and the AHR's MA eligibility was reviewed.

Petitioner's MA Eligibility

At the hearing, the AHR contended that, based on income, Petitioner should be eligible for MA without a deductible. A client who qualifies under more than one MA category is entitled to the most beneficial MA program, which is the one that results in the least amount of excess income. BEM 105, p. 2. HMP is an MA program that 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. MPM, Healthy Michigan Plan, § 1.1.

Petitioner's HMP eligibility was dependent on her household's income not exceeding 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, Petitioner and the AHR testified that their two daughters lived with them and they claimed their daughters as dependents in their tax filings. Therefore, for MAGI purposes, Petitioner and the AHR have a household size of four. MREM, § 5.2. 133% of the annual FPL in 2015 for a household with four members is \$32,252.50. <http://aspe.hhs.gov/POVERTY/15poverty.cfm>. Therefore, to be income eligible for HMP, Petitioner's household's annual income cannot exceed \$32,252.50.

The Department testified that Petitioner's household's income consisted of the AHR's gross monthly RSDI of \$1318.90, Petitioner's gross monthly RSDI of \$329, [REDACTED] gross monthly RSDI of \$329, and Petitioner's gross monthly earned income for MA purposes of \$619.06. The AHR did not dispute the RSDI income but argued that the earned income was inaccurate because it did not take into consideration that Petitioner was paid only for those days that school was in session.

In determining an individual's eligibility for MAGI-related MA (which includes HMP), 42 CFR 435.603(h)(1) provides that financial eligibility for applicants is based on current household income which is based on reasonably predictable future income to account for a reasonably predictable decrease in income 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. § 603(h)(3). The Department testified that Petitioner's employment income was based on her paystubs dated October 23, 2015 for \$306.25 in gross income and November 6, 2015 for \$312.81. The AHR confirmed that Petitioner's employment was new and had just started on September 27, 2015. Because this was new employment and there was no evidence that the Department

was aware of Petitioner's schedule, the Department acted in accordance with Department policy when it added the two biweekly paystub amounts together to arrive at Petitioner's earned income of \$619.06. Although the Department presented evidence showing that it used \$656.25 as Petitioner's earned income for October 2015, the month of application and initial eligibility, the Department failed to explain what information it relied upon to arrive at this figure.

In this case, the Department failed to establish that Petitioner was not income eligible, or otherwise ineligible, for HMP where, when her earned income is added to the household's unearned income, the total income received by the household totals \$2595.96. This figure multiplied by 12 results in annual income of \$31,151.52. Because this total is less than \$32,252.50, Petitioner is income eligible for HMP coverage. Moreover, even if Petitioner's earned income was \$656.25, the household's gross annual income would still be less than the HMP income limit of \$32,252.50. Therefore, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it concluded that the best available MA program for Petitioner was the G2C rather than the HMP program.

The AHR's MA Eligibility

As a Medicare recipient, the AHR was ineligible for HMP coverage. Because he has a minor child in the home, he is eligible for G2C coverage. BEM 135 (October 2015), p. 1. 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 135, p. 2; BEM 544 (July 2013), p. 1; RFT 240 (December 2013), p. 1.

The monthly PIL for a client in the AHR's position, with an MA fiscal group size of two living in Macomb County, is \$541 per month. RFT 200 (December 2013), pp. 1-2; RFT 240, p 1. Thus, if the AHR's and Petitioner's monthly net income (less allowable needs deductions) is in excess of \$541, the AHR may become eligible for MA assistance under the deductible program, with the deductible equal to the amount that the group's monthly net income, less allowable deductions, exceeds \$541. BEM 545 (October 2015), p. 2.

In this case, the Department presented a G2-FIP related MA budget showing the calculation of the \$1081 deductible. Based on Petitioner's gross monthly earned income of \$619.06, her gross monthly RSDI income of \$329, the AHR's gross monthly RSDI income of \$1318.90, and the fact that they have one minor child in the household, the Department properly calculated Petitioner's prorated income at \$175 and the AHR's prorated income at \$268. Using these figures, the AHR's fiscal group's net income is \$1727. See BEM 545, pp. 6-7.

In determining the deductible amount, net income is reduced by allowable needs. Allowable needs include health insurance premiums paid by the group and remedial services expenses for individual in adult foster care or home for the aged. BEM 544, pp. 1-2. The only allowable need identified in this case was the AHR's \$104.90 monthly Medicare premium. \$1727 reduced by the \$104.90 need expense results in the AHR having total net income of \$1622. This total net income reduced by the \$541 PIL results in a monthly deductible of \$1081. Therefore, the Department acted in accordance with Department policy when it calculated the AHR's MA eligibility.

FAP Case

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.

Petitioner disputed the exclusion of her [REDACTED] year-old daughter from her FAP group. The Department explained that [REDACTED] was excluded from the FAP group because she was an ineligible student. A person is an ineligible student for FAP purposes if the person is between age 18 and 49 and enrolled half-time or more in college, unless he or she meets one of the eligibility criteria outlined in policy, which includes participating in a work-study program; being employed for at least 20 hours weekly and paid for such employment; having self-employment for at least 20 hours weekly and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours; being mentally or physically unfit to work; or caring for a minor child. BEM 245 (October 2015), pp. 3-4. In this case, because there was no evidence presented that [REDACTED] met any of the criteria for eligible student status, the Department properly excluded her from Petitioner's FAP group. Therefore, there were three eligible FAP members in Petitioner's group: Petitioner, the AHR and [REDACTED]

The determination of a group's monthly FAP allotment is based on the group's net income, which is the sum of the group's gross monthly earned and unearned income less the deductions to income available to the group. BEM 556 (July 2013), pp. 2-6. Because the AHR received RSDI income based on a disability, he was a senior/disabled/veteran (SDV) member of the household. BEM 550 (October 2015), p. 1. Groups with an SDV member and earned income are eligible for the following deductions to gross income: an earned income deduction equal to 20% of the household's earned income, a dependent care deduction, a child support deduction, a medical expense deduction for expenses in excess of \$35 for the SDV member of the group, and an excess shelter deduction, which is based on monthly housing expenses and the utility standard that applies to the client's case. BEM 554 (October 2015), p. 1; BEM 550, p. 1.

Although the Department did not provide a FAP net income budget showing the calculation of Petitioner's monthly FAP allotment, the information used to calculate the benefits as showing on the October 30, 2015, Notice of Case Action was reviewed with the AHR. The AHR confirmed the \$1976 in gross monthly unearned income, based on the RSDI income received by Petitioner, the AHR, and [REDACTED] and the \$668.41 in monthly housing expenses. He confirmed that the household had no dependent care and no child support expenses. Based on a three-person household, the household was eligible for the \$154 standard deduction as shown on the notice. RFT 255 (October 2015), p. 1. The notice showed that the Department applied the \$539 heat and utility (h/u) standard, which is the most beneficial utility standard available to a client in calculating the excess shelter deduction. RFT 255, p. 1; BEM 554, pp. 14-20. Clients who are eligible for the h/u standard are not eligible for individual utility standards. BEM 554, p. 20. The AHR did not dispute the \$741 medical expense deduction.

The only issue presented concerned the calculation of Petitioner's gross monthly earned income. The budget in the notice showed that in calculating Petitioner's FAP benefits \$752 was being used as her gross monthly earned income. However, the Department did not present any evidence to support that calculation (Exhibit E). There are case notes indicating that at interview there was discussions that Petitioner earned approximately \$752 per month (Exhibit C). However, unless a client is ineligible for FAP benefits based on attested income, the Department is required to verify employment income at application before determining eligibility and benefit amount. BEM 501 (July 2014), p. 9; BEM 505 (July 2015), p. 13. In the absence of any verifications supporting the calculation of \$752 in gross monthly earned income, the Department has failed to establish that it properly calculated Petitioner's gross monthly earned income. As a consequence, the Department has failed to satisfy its burden of showing that it calculated Petitioner's FAP benefits for October 1, 2015 ongoing in accordance with Department policy.

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 concluded that the AHR was eligible for MA subject to a monthly \$1081 deductible but did not act in accordance with Department policy when it concluded that Petitioner was eligible for MA subject to a monthly \$1081 deductible and when it calculated Petitioner's FAP benefits for October 1, 2015 ongoing.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to finding the AHR eligible for G2C MA coverage with a \$1081 monthly deductible and **REVERSED IN PART** with respect to finding that Petitioner was eligible for G2C MA coverage and to calculating Petitioner's FAP budget for October 1, 2015 ongoing.

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. Reassess Petitioner's eligibility for HMP effective October 1, 2015;
2. Provide Petitioner with HMP coverage if she is eligible from October 1, 2015 ongoing;
3. Recalculate Petitioner's FAP benefits for October 1, 2015 ongoing;
4. Issue supplements to Petitioner for FAP benefits she was eligible to receive but did not from October 1, 2015 ongoing; and
5. Notify Petitioner in writing of its decision.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **2/3/2016**

Date Mailed: **2/3/2016**

ACE / tlf

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:

[Redacted]