

**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.: 15-022455
Issue No.: 2001
Agency Case No.: [REDACTED]
Hearing Date: February 1, 2016
County: Washtenaw (20)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 February 1, 2016, from Ypsilanti, Michigan. Petitioner appeared and was unrepresented. Petitioner's mother, [REDACTED], testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], supervisor, and [REDACTED] specialist.

ISSUE

The issue is whether MDHHS properly denied Petitioner's Medical Assistance (MA) application.

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 [REDACTED], Petitioner applied for MA benefits for the purpose of receiving Medicaid through the Freedom-To-Work (FTW) category.
2. As of the date of application, Petitioner had monthly employment earnings of \$5459.
3. On [REDACTED], MDHHS determined Petitioner to be over-income for Medicaid through FTW.
4. On [REDACTED], Petitioner requested a hearing to dispute the denial of FTW eligibility.

CONCLUSIONS OF LAW

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. MDHHS (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a denial of an application dated September 5, 2015, requesting MA benefits. Petitioner testimony indicated he specifically disputed the denial of FTW benefits. It was not disputed MDHHS denied FTW eligibility to Petitioner due to excess income.

[For FTW,] initial income eligibility exists when the client's countable income does not exceed 250 percent of the Federal Poverty Level (FPL). BEM 174 (October 2015), p. 3. [MDHHS is to] determine countable earned and unearned income according to SSI-related MA policies in BEM 500, 501, 502, 503, 504, 530, 540 (for children) or 541 (for adults). *Id.*

MDHHS presented a FTW budget (Exhibit 1, p. 3). The budget stated Petitioner's monthly income of \$5459 exceeded the monthly income limit of \$2452. Petitioner did not disagree that his income exceeded the FTW income level. Petitioner instead presented two arguments.

Petitioner first contended that MDHHS erred by not transitioning him into FTW several years ago. Petitioner testified had MDHHS done so, he would still be eligible for FTW benefits because ongoing FTW eligibility is not affected by earned income.

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (4/2015), p. 6. The request must be received in the local office within the 90 days. *Id.*

Petitioner's request appears to be very untimely. It is doubtful MDHHS sent Petitioner written notice indicating the type of MA eligibility for which Petitioner was eligible, but it is probable Petitioner received some type of written approval for Medicaid from the time he thinks he should have started receiving FTW benefits. Petitioner's argument seems to fault MDHHS specialists for not anticipating a change in FTW policy. It was not even clear that MDHHS erred by continuing Petitioner's Medicaid under whatever MA

category that Petitioner received Medicaid. For numerous reasons, Petitioner's first argument was not persuasive.

Secondly, Petitioner contended that MDHHS erred by not factoring his cost of chore service expenses. Petitioner presented a list (Exhibit A, p.1) indicating a total cost of \$2,376.44 for his care. The list did not specify over what period those costs were incurred, though Petitioner testified his actual costs are \$1,521.34. Petitioner contended FTW policy requires consideration of expenses cited in BEM 541. It was not disputed MDHHS factored no such expenses.

As noted above, FTW policy states *income*, not expenses is to be determined according to various policy chapters, including BEM 541. When this point was brought to Petitioner's attention, Petitioner responded that BEM 541 only concerns expenses; Petitioner's response is inaccurate. BEM 541 includes policies on earned income deductions (see BEM 541 (January 2015), p. 3) which credit \$65 + ½ remaining income. Petitioner received this deduction in the FTW budget and was still over-income. Petitioner's second argument was also not persuasive.

Based on MDHHS policy in effect as of October 2015, Petitioner appears to be ineligible for Medicaid through the FTW category. A final consideration is whether MDHHS should have used policy from October 2015 in processing Petitioner's application submitted to MDHHS in September 2015.

MDHHS provides no apparent guidance on what date of policy is applicable to a MDHHS determination. General rules of fairness would suggest MDHHS is to process an application based on the policies in effect at the time of the application. Presumably, MDHHS applied the policy in effect at the time Petitioner's application was processed. To allow MDHHS to apply policies in effect at the time of processing could potentially encourage MDHHS to stall processing until a favorable policy becomes effective; such an outcome would not be just. Such allowance would essentially give MDHHS a power to retroactively apply policy, an allowance that is generally not favored by courts (see *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 215 (1988)) when the change in policy has material, adverse, and retroactive consequences.

It is found MDHHS is to process Petitioner's application based on policy in effect at the time of application submission. The FTW policy in effect as of September 2015 dates back to July 2013.

A client with net earned income exceeding 250 percent of the FPL is required to pay a monthly premium based on earned income to keep MA coverage. BEM 174 (July 2013), p. 2. Premiums will be billed and collected by the Department of Community Health (DCH) through FTW. *Id.*

Petitioner's income level appears to justify issuance of FTW subject to payment of a \$460/month premium (see *Id.*, p. 3). Thus, the difference in policy between September and October is pivotal.

It is found MDHHS erred by denying Petitioner's MA application based on policy in effect after the date of Petitioner's application. MDHHS will be reordered to process Petitioner's application based on policy in effect as of Petitioner's application date.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly denied Petitioner's application for MA benefits. It is ordered that MDHHS perform the following actions within 10 days of the date of mailing of this decision:

- (1) reinstate Petitioner's application for MA benefits dated [REDACTED]; and
- (2) process Petitioner's application based on policy in effect as of Petitioner's application submission date.

The actions taken by MDHHS are **REVERSED**.



Christian Gardocki
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **2/5/2016**

Date Mailed: **2/5/2016**

CG / 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 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

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:

