



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR



Date Mailed: March 14, 2016
MAHS Docket No.: 15-024529
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 23, 2016, from Grand Rapids, Michigan. The Petitioner was represented by [REDACTED] husband. [REDACTED], the Petitioner, was also present. The Department of Health and Human Services (Department) was represented by [REDACTED], Family Independence Manager (FIM).

During the hearing proceedings, the Department's Hearing Summary packet was admitted as Department Exhibit A, pp. 1-38.

ISSUE

Did the Department properly determine Petitioner's eligibility for Medicaid (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. On November 4, 2015, Petitioner applied for MA and retroactive MA to August 2015, indicating she was pregnant with a due date of [REDACTED]. (Department Exhibit A, Hearing Summary; Testimony)
2. On November 9 and 25, 2015, the Department obtained income verifications from [REDACTED] for Petitioner and her husband. (Department Exhibit A, pp. 5-6, 9-10, and 12)

3. On November 30, 2015, a Health Care Coverage Determination Notice was issued stating Petitioner was eligible for MA with deductibles as follows: August 2015 with a \$ [REDACTED] deductible; September 2015 with a \$ [REDACTED] deductible; October 2015 with a \$ [REDACTED] deductible; and November 2015 and ongoing with a \$ [REDACTED] deductible. (Department Exhibit A, pp. 18-19)
4. On December 9, 2015, the Department excluded one October 2015 larger check from the prospected income calculation based on a call from Petitioner and/or her husband regarding the deductible determinations during which it was reported that the income amount for this check was not expected to continue. (Department Exhibit A, Hearing Summary; Testimony)
5. On December 16, 2015, Petitioner filed a hearing request contesting the Department's actions. (Department Exhibit A, pp. 21-22)
6. The Department has taken additional actions to update and correct information in Petitioner's case as additional information was provided. (Department Exhibit A, Hearing Summary and pp. 1-4, 7-8, 11, 13-17, 23-38; Testimony)

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.

Shortly after the hearing proceedings commenced there was discussion about what actions the Department has taken since the December 16, 2015, Hearing Request was filed regarding Petitioner's eligibility for MA in order to determine if the contested issue in this case was resolved. Ultimately, Petitioner still disagrees with the MA deductible determinations for the first several months of eligibility. However, there is no jurisdiction to address actions taken after the December 16, 2015, Hearing Request was filed as part of this appeal. Accordingly, the only case action that can be reviewed is the MA eligibility determination on the November 30, 2015, Health Care Coverage Determination Notice.

Deductible is a process which allows a client with excess income to become eligible for Group 2 MA if sufficient allowable medical expenses are incurred. (BEM 545, October 1, 2015, p. 10)

For non-averaged income, i.e. not income received that is intended to cover several months, the Department is to use: the actual income amounts for past months; use the amounts already received and estimate amounts likely to be received during the remainder of the month for the processing month; and the amounts that will be, or are likely to be received, for future months. BEM 530, January 1, 2014, pp. 2-3.

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, pp. 3-4.

For Group 2 MA, the protected income level (PIL) is a set allowance for non-medical need items such as shelter, food and incidental expenses. RFT 240 lists the PILs based on shelter area and group size. RFT 200 lists the counties in each shelter area. BEM 544, July 1, 2013, p. 1

Additionally, the Department is to count as a need item the cost of any health insurance premiums (including vision and dental insurance) and Medicare premiums paid by the medical group regardless of who the coverage is for. BEM 544, p. 1.

On November 9 and 25, 2015, the Department obtained income verifications from [REDACTED] [REDACTED] for Petitioner and her husband. (Department Exhibit A, pp. 5-6, 9-10, and 12) On November 30, 2015, a Health Care Coverage Determination Notice was issued stating Petitioner was eligible for MA with deductibles as follows: August 2015 with a \$ [REDACTED] deductible; September 2015 with a \$ [REDACTED] deductible; October 2015 with a \$ [REDACTED] deductible; and November 2015 and ongoing with a \$ [REDACTED] deductible. (Department Exhibit A, pp. 18-19)

Petitioner's husband questioned why the deductible amounts varied so much from month to month. While the initial MA-G2P income budgets were not provided in the documentary record for this hearing, the testimony of the FIM and the varied deductible amounts determined for each month on the November 30, 2015, Health Care Coverage Determination Notice indicate the Department properly utilized the income amounts from the available verification at that time to make the initial eligibility determinations. As required by the above cited BEM 530 policy, the Department was to utilize the actual income received for past months, actual income received and any expected income for the remainder of the processing month, and the expected income for future months.

On December 9, 2015, the Department excluded one October 2015 larger check from the prospecting income calculation based on a call from Petitioner and/or her husband regarding the deductible determinations during which it was reported that the income amount for this check was not expected to continue. (Department Exhibit A, Hearing Summary; Testimony) This was in accordance with the above cited BEM 530 policy to use only the expected hourly wage and hours to be worked. The case action from this change was taken the day after the December 16, 2015, Hearing Request was filed, and therefore, there is no jurisdiction to review that MA eligibility determination as part of this appeal. It is also noted that the evidence does not establish any failure of the Department to act with reasonable promptness on the updated information reported on or about December 9, 2015.

Petitioner's husband noted that the deductibles were very high in relation to their income. Petitioner's husband was aware that the Department utilized the gross income, but noted that the deductibles do not allow much for living expenses, bills, food, etc. The Department does not utilize the actual amounts of these types of expenses in calculating MA income budgets. Rather, the above cited BEM 544 policy required the

Department to utilize the protected income level (PIL), which is a set allowance for non-medical need items such as shelter, food and incidental expenses.

Petitioner's husband also stated that they pay an insurance premium through his employer, which he thinks should be considered in the MA income budgets. As noted above, the initial MA income budgets were not provided in the documentary record for this hearing. However, the evidence does contain re-calculated MA-G2P budgets from December 17, 2015. It is noted that that no insurance premiums were included on those budgets. (Department Exhibit A, pp. 11 and 13-14) Accordingly, it is unlikely that insurance premiums would have been included in the initial MA income budgets at issue. The above cited BEM 544 policy states that the cost of any health insurance premiums paid by the medical group are to be counted as a need item. Therefore, the Department did not present sufficient evidence to establish that the November 30, 2015, MA eligibility determination was in accordance with the BEM 544 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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's eligibility for MA.

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. Re-determine Petitioner's eligibility for MA retroactive to the August 1, 2015, effective date in accordance with Department policy, which would include requesting any needed verification(s) and issuing written notice of the new determination.

CL/mc



Colleen Lack
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

DHHS

[REDACTED]

Authorized Hearing Representative

[REDACTED]

Petitioner

[REDACTED]