



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 1, 2016
MAHS Docket No.: 15-023842
Agency No.: [REDACTED]
[REDACTED]

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 March 28, 2016, from Southfield, Michigan. Petitioner appeared and testified at the hearing. She was represented by three authorized hearing representatives (AHRs): [REDACTED] student attorney at the [REDACTED], who served as lead AHR; [REDACTED], student attorney at the Clinic; [REDACTED], supervising attorney at the Clinic. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist/Hearing Facilitator. [REDACTED], Eligibility Specialist, was present at the hearing but did not participate.

ISSUE

Did the Department properly close the full-coverage Medicaid (MA) cases for Petitioner's two children?

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 has two minor children over age 1 who live with her.
2. Petitioner is a tax filer who claims her two children as her dependents.
3. Petitioner and her two children each receive \$1478 in monthly Retirement, Survivors and Disability Income (RSDI) benefits.

4. Petitioner also has self-employment income.
5. In connection with a redetermination submitted to the Department on November 3, 2015, Petitioner indicated that she was filing taxes on her own behalf and the two children were being claimed as her dependents (Exhibit B).
6. On November 20, 2015, the Department sent Petitioner a Health Care Coverage Determination Notice notifying her that she was ineligible for MA from February 1, 2015 to October 31, 2015 and that her children were eligible for full-coverage MA from December 1, 2015 to December 31, 2015 but their MA cases would close effective January 1, 2016 because they were not under 21, pregnant, the caretaker of a minor child in the home, over 65, blind or disabled. The Notice referenced annual income of \$28,968 for Petitioner and \$17,736 for each child. (Exhibit A, pp. 9-12).
7. On December 14, 2015, the Department received Petitioner's written request for hearing (Exhibit A, p. 1).

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 Community Health Modified Adjusted Gross Income Related Eligibility Manual (MREM), 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.

Petitioner requested a hearing disputing the Department's closure of her and her children's MA cases. The Department testified that it reassessed Petitioner's MA cases after receiving her hearing request. On December 28, 2015, it sent Petitioner two Health Care Coverage Determination Notices, one notifying her that she was approved for full-coverage MA for November 1, 2015 ongoing (Exhibit A, pp. 13-15), the other notifying her that her children were eligible for MA coverage subject to a monthly \$2399 deductible effective January 1, 2016 ongoing (Exhibit A, pp. 17-23). The notice for the children indicated that they were each ineligible for coverage under the Under 19 and MIChild MA categories because their income exceeded the income limit for eligibility (Exhibit A, pp. 18-19). At the hearing, Petitioner's lead AHR indicated that Petitioner

was satisfied with the Department's actions concerning her MA coverage but disputed the children's coverage subject to the monthly deductible. The hearing proceeded to address Petitioner's children's MA cases.

Children over age 1 and under age 19 who are not in foster care are eligible for MA under three programs: (1) the Under Age 19 (U19) program; (2) the MICHild program; and (3) the Group 2 Under 21 (G2U) program. BEM 105 (January 2016), p. 1, 3-4; BEM 130 (January 2016), p. 1; BEM 131 (June 2015), p. 1; BEM 132 (January 2015), p. 1. The U19 program is a Modified Adjusted Gross Income (MAGI)-related Group 1 MA category that provides full-coverage MA without a deductible for children whose household's income, calculated in accordance with MAGI rules, meets the income eligibility limits. BEM 131, p. 1. Income eligibility for MICHild is also determined according to MAGI rules. BEM 130, p. 1. Children whose household income exceeds the income limit for U19 or MICHild eligibility are eligible for MA under the G2U category, with a deductible equal to the amount the child's net income (countable income minus allowable income deductions) exceeds the applicable Group 2 MA protected income level (PIL), which is based on the county in which the child resides and child's fiscal group size. BEM 132, p. 2; BEM 544 (July 2013), p. 1; RFT 240 (December 2013), p. 1. Under federal law, the child is entitled to the most beneficial category, which is the one that results in eligibility, the least amount of excess income, or the lowest cost share. BEM 105, p. 2.

In this case, the Department concluded that Petitioner's children were income-ineligible for MA coverage under either the U19 or MICHild categories. There are three U19 categories for children over age 6: the Low Income Families (LIF) program applies when the household's income does not exceed 54% of the federal poverty level (FPL); the Other Healthy Kids (OHK) program applies when the household's income is between 54% and 143% of the FPL; and the Healthy Kids Expansion (HKE) program applies when the household's income is between 109% and 160% of the FPL. MICHild is a MA Expansion program for children under age 19 who have no other health coverage. BEM 130 (January 2016), p. 1. A child between age 1 through 18 whose household income is between 160% and 212% of the FPL is income eligible for MICHild subject to a monthly \$10 premium per family. BEM 130, pp. 1-2.

In order to determine income eligibility for MAGI-related U19 and MICHild programs, the household's income must be considered. In this case, both minor children lived with Petitioner, Petitioner is a tax-filer, and she claimed both children as her tax dependents. Therefore, the children each had a household size of three. See MREM 5.2(c); BEM 211 (January 2016), p. 2. 160% of the annual FPL in effect at the time of the December 28, 2015 eligibility determination for a household with three members is \$32,144. 212% of the annual FPL for a three-member household is \$42,590.80.

In this case, the Department did not explain what income it used to calculate Petitioner's children's MA eligibility. The Health Care Coverage Determination Notices indicate that \$17,736 in annual income (each child's monthly \$1478 RSDI income multiplied by 12)

was used in determining the health care coverage for each child, but the Department did not explain why the children remained income ineligible for MA under a MAGI-related policy when \$17,736 in annual income results in income eligibility under the U19 program. Therefore, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined the children's MA eligibility.

At the hearing, Petitioner's AHR argued that the Department improperly considered the children's RSDI income in determining their income eligibility for MA. RSDI income can be countable income for MAGI-related MA determinations. MREM, § 7.2. Generally, household income for MAGI-related MA eligibility is the sum of the MAGI-based income of every individual included in the individual's household, minus an amount equivalent to five percentage points of the FPL for the applicable family size. 42 CFR 435.603(d)(1). However, the MAGI-based income of an individual who is included in the household of his or her natural parent and is **not** expected to be required to file a tax return for the taxable year in which eligibility for MA is being determined is not included in the household income whether or not such tax dependent files a tax return. 42 CFR 435.603(d)(2)(i).

The Department argued that the children's RSDI income was countable in determining their eligibility for Michigan-based MAGI-related MA, relying on the training manual that was used to train Department workers. The training manual, however, provides, consistent with the AHR's argument, that RSDI income received by a child is not countable unless the income the child receives exceeds the threshold amount for the child having to file taxes, which happens when the child has both RSDI and another source of income (Exhibit C, p. 7).

In this case, Petitioner did not respond to the questions in the redetermination concerning whether the individuals in her household were expected to file a federal income tax form. However, the Department was aware that the only income that either of Petitioner's children had was the unearned RSDI. Based on each child receiving annual RSDI totaling \$17,736, neither child was required to file federal income taxes. 26 USC § 6012(a)(1)(A)(i); 26 USC § 86(a)(1) and (c)(1)(A). According to the Department's own training material, a child/tax dependent who has only RSDI income will never have to file taxes. As such, neither of the children's RSDI income is used to calculate the household's income for MAGI-related income purposes.

Since Petitioner was found eligible for MA under the Healthy Michigan Program, a MAGI-related policy requiring that income not exceed 133% of the FPL for a three-person household (BEM 137 (January 2016), p. 1), it follows that the children are income eligible for MA under the U19 category, which ties income eligibility to 160% of the FPL for the household size.

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 processed Petitioner's children MA eligibility.

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. Reprocess Petitioner's children MA eligibility effective January 1, 2016;
2. Provide the children with MA coverage they are eligible to receive from January 1, 2016 ongoing; and
3. Notify Petitioner in writing of its decision.

ACE/tlf



Alice C. Elkin

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

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