



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: June 13, 2016
MAHS Docket No.: 16-003632
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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, a telephone hearing was held on May 3, 2016, from Lansing, Michigan. Petitioner appeared and testified through American Sign Language interpretation provided by [REDACTED]. Eligibility Specialist [REDACTED] and Family Independence Manager [REDACTED] appeared for the Department and testified. Department's Exhibit A, pages 1 - 58 was admitted into evidence.

ISSUE

Did the Department properly determine Petitioner's Medical Assistance (MA) eligibility on February 29, 2016?

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 was an ongoing recipient of Medical Assistance (MA) benefits under the SSI-related Group 1 Freedom to Work category and Medicare Savings Program benefits. Petitioner's eligibility was due for re-determination.
2. On September 17, 2015, Petitioner was sent a letter explaining changes of law regarding the FTW income asset limits and premiums. Department Exhibit A page 20.
3. On January 27, 2016, Petitioner submitted the required Redetermination (DHS-1010) form and verification of her earned income.

4. On February 29, 2016, the Department processed Petitioner's eligibility re-determination. Petitioner was sent a Health Care Coverage Determination Notice (DHS-1606) which stated she was eligible for Medical Assistance (MA) benefits under the SSI-related Group 1 Freedom to Work category with no premium for March 1 - 31, 2016 and eligible for Medical Assistance (MA) benefits under the SSI-related Group 1 Freedom to Work category with a \$ [REDACTED] monthly premium. The notice also stated that Petitioner was not eligible for Medicare Savings Program benefits.
5. On March 9, 2016, Petitioner submitted a hearing request.

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.

Bridges Eligibility Manual (BEM) 174 Freedom To Work (FTW) (10-1-2015) provides guidance for the Department and states in relevant part:

DEPARTMENT POLICY

MA Only

This is an SSI-related Group 1 MA category.

FTW is available to a client with disabilities age 16 through 64 who has earned income.

Eligibility begins the first day of the calendar month in which all eligibility criteria are met. All eligibility factors must be met in the calendar month being tested.

FINANCIAL ELIGIBILITY FACTORS

Groups

A client eligible under the FTW category is a fiscal and asset group of one.

Income Eligibility

Initial and Ongoing Eligibility

Initial income eligibility exists when the client's countable income does not exceed 250 percent of the Federal Poverty Level (FPL). Ongoing eligibility exists when the client's unearned income does not exceed 250 percent of the FPL.

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). Unemployment compensation benefits are not countable income for FTW.

PREMIUM PAYMENT

There are no premiums for individuals with MAGI (Modified Adjusted Gross Income) less than 138 percent of the federal poverty level (FPL).

A premium of 2.5 percent of income will be charged for an individual with MAGI income between 138 percent of the FPL and \$75,000 annually.

A premium of 100 percent of the average FTW participant cost will be assessed for an enrolled individual with MAGI income over \$75,000.

Bridges will automatically notify the premium coordinator when premiums for a FTW participant start/change/end. The premium coordinator has final determination over actual premium begin or amount change dates, as well as premium exclusions.

Nonpayment of premium is automatically sent to Bridges and mass update will close the Freedom to Work category.

Note: An ex parte review (see glossary) is required before Medicaid closures when there is an actual or anticipated change, unless the change would result in closure due to ineligibility for all Medicaid. When possible, an ex parte review should begin at least 90 days before the anticipated change is expected to result in case closure. The review includes consideration of all MA categories; see BAM 115 and 220.

MEDICARE SAVINGS PROGRAM (MSP)

MSP and FTW have different group composition, income and asset limits. A separate determination must be done when there is a spouse.

Reminder: A client eligible for MA under FTW is not eligible for ALMB.

In her request for hearing Petitioner disputes the income calculation the Department used to determine her eligibility. The policy cited above states "There are no premiums for individuals with MAGI (Modified Adjusted Gross Income) less than 138 percent of

the federal poverty level (FPL).” The Department determined that Petitioner was required to pay a \$49.83 monthly premium.

The Department submitted an FTW – Income Budget Details print out from BRIDGES for the benefit period beginning April 1, 2016. The print out shows an unearned income of \$937 which is Petitioner’s Social Security Administration benefits and an earned income of \$959. After the requirements of Bridges Eligibility Manual (BEM) 541 MA Income Deductions – SSI-Related Adults are applied Petitioner had a net earned income of \$447. Petitioner’s countable unearned income of \$937 combined with her countable earned income of \$447 give her a total countable income of \$1,384. As a reminder, BEM 174, cited above states “Initial income eligibility exists when the client’s countable income does not exceed 250 percent of the Federal Poverty Level (FPL)”.

The September 17, 2015, letter Petitioner was sent (Department Exhibit A page 20) states:

Your monthly premium amount will also change:

You will not pay a premium if your income is less than 138% of the FPL. That means your monthly income has to be at least \$1,353 before you will pay a premium in 2015.

Your premium will be 2.5% of your monthly income if you earn more than \$1,353 but less than \$6,250 each month. Multiply your monthly income by 0.025 to figure out how much your premium will be each month.

The information in the September 17, 2015, letter indicates that Petitioner should be required to pay a premium because her countable income of [REDACTED] that she will not pay a premium if her income is less than 138% of the federal poverty limit and goes on to identify that limit as a monthly income of \$ [REDACTED]. It appears that the monthly countable income of \$ [REDACTED] exceeds 138% of the FPL which is \$ [REDACTED].

However, BEM 174, cited above, specifies it is the individuals MAGI income that is compared to 138% of the FPL:

There are no premiums for individuals with MAGI (Modified Adjusted Gross Income) less than 138 percent of the federal poverty level (FPL).

A premium of 2.5 percent of income will be charged for an individual with MAGI income between 138 percent of the FPL and \$75,000 annually.

The countable income calculated as \$ [REDACTED] is not the same as MAGI. MAGI is an annual income calculated using federal tax rules. One glaring difference is obvious from Petitioner’s 2015 1040 which is Department Exhibit A page 5. Under federal tax rules, the amount of Social Security Administration benefits which are taxable depend on the total amount of income for the tax group. Petitioner’s 2015 1040 shows that none of her Social Security Administration benefits in 2015 were included in her adjusted gross income.

The Delegation of Hearing Authority issued to Michigan Administrative Hearing System by the Director of the Department of Health and Human Services specifically states “Administrative hearing officers have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or overrule or make exceptions to Department policy.” Even if the section of BEM 174 that specifies using MAGI for determining FTW premiums is a clerical error by the Department, there is no authority for this Administrative Law Judge to ignore the plain language in the 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 did not act in accordance with Department policy when it determined Petitioner’s Medical Assistance (MA) eligibility on February 29, 2016.

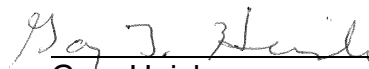
DECISION AND ORDER

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 Medical Assistance (MA) eligibility from March 1, 2016 ongoing to include issuing current notice of the re-determined eligibility.

GH/nr



Gary Heisler
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]

Petitioner

[REDACTED]