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

RICK SNYDER
GOVERNOR

SHELLY EDGERTON
DIRECTOR

Date Mailed: October 14, 2016
MAHS Docket No.: 16-013016
Agency No.:
Petitioner:

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 , from Detroit, Michigan. The Petitioner was represented by (Petitioner). The Department of Health and Human Services (Department) was represented by , Hearings Facilitator.

ISSUE

Did the Department properly close Petitioner's Healthy Michigan Plan (HMP) coverage effective ?

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 HMP benefits.

2. On , the Department sent Petitioner a New Hire Client Notice (new hire) and it was due back by . Exhibit A, p. 7.

3. On , Petitioner submitted the new hire, along with several check stubs. Exhibit A, pp. 7-13.

4. On , the Department sent Petitioner a Health Care Coverage Determination Notice (determination notice) notifying him that he was not eligible for the

Healthy Michigan Plan (HMP) benefits effective [redacted], because his countable income exceeds the income limits for his group size. Exhibit A, pp. 4-6.

5. On [redacted], Petitioner filed a hearing request disputing the Department's action. See Exhibit A, pp. 2-3.

6. On [redacted], Petitioner also indicated in the hearing request a reduction in employment earnings. Exhibit A, p. 3.

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.

MA is available (i) under Supplemental Security Income (SSI)-related categories to individuals who are aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled or (ii) for children under 19, parents or caretakers of children, pregnant or recently pregnant women, former foster children, MOMS, MIChild and Healthy Michigan Plan based on the Modified Adjusted Gross Income (MAGI) methodology. BEM 105 (July 2016), p. 1. The evidence at the hearing established that Petitioner was [redacted] years old and not the parent or caretaker of a minor child. There was no evidence presented that he was disabled or blind. Accordingly, the only MA category available to Petitioner was HMP.

The Healthy Michigan Plan (HMP) is based on Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (January 2016), p. 1. The Healthy Michigan Plan provides health care coverage for a category of eligibility authorized under the Patient Protection and Affordable Care Act and Michigan Public Act 107 of 2013 effective April 1, 2014. BEM 137, p. 1.

The Healthy Michigan Plan (HMP) provides health care coverage for individuals who:

- Are 19-64 years of age
- Do not qualify for or are not enrolled in Medicare

- Do not qualify for or are not enrolled in other Medicaid programs
- Are not pregnant at the time of application
- Meet Michigan residency requirements
- Meet Medicaid citizenship requirements
- Have income at or below 133 percent Federal Poverty Level (FPL).

BEM 137, p. 1.

In the present case, the Department closed Petitioner's HMP case because his income was at or below 133% of the FPL in order for him to be eligible for HMP coverage. However, before proceeding into the analysis of whether Petitioner was income eligible for HMP coverage, an issue arose to whether the Department properly determined Petitioner's household composition. In this case, both parties thought that Petitioner's household composition was one; however, the evidence and testimony appears to say otherwise. Instead, the evidence appears to indicate that the household composition is five.

The size of the household will be determined by the principles of tax dependency in the majority of cases. MAGI Related Eligibility Manual, *Michigan Department of Community Health* (DCH), May 2014, p. 14. Parents, children and siblings are included in the same household. MAGI Related Eligibility Manual, p. 14. Parents and stepparents are treated the same. MAGI Related Eligibility Manual, p. 14. Individual family members may be eligible under different categories. MAGI Related Eligibility Manual, p. 14.

The Department manual differentiates between tax filers, non-tax filers, and the household for an individual who is a tax dependent of someone else. MAGI Related Eligibility Manual, pp. 14-15. In this case, Petitioner testified that his father claims him as a tax dependent. Thus, Petitioner falls under the category of a household for an individual who is a tax dependent of someone else. For the tax year 2015, Petitioner's testimony indicated the following: (i) Petitioner's father and mother filed a joint tax return; (ii) the father claimed Petitioner as a tax dependent; and (ii) the father claimed Petitioner's brother and sister as tax dependents as well.

The household for an individual who is a tax dependent of someone else, consists of:

- The household of the tax filer claiming the individual as a tax dependent, except that the individual's group must be considered as non-filer/non-dependent if:

- The individual is not the spouse or a biological, adopted, or step child of the taxpayer claiming them; or

- The individual is under the age of 19 (or under 21 if a full time student) and expects to be claimed by one parent as a tax dependent and are living with both parents but the parents do not expect to file a joint tax return; or

- The individual is under the age of 19 (or under 21 if a full time student) and expects to be claimed as a tax dependent by a non-custodial parent,

- The individual's group consists of the parent who has a court order or binding separation, divorce, or custody agreement establishing physical custody controls, or

- If there is no such order or agreement or in the event of a shared custody agreement, the custodial parent is the parent with whom the child spends most nights.

MAGI Related Eligibility Manual, pp. 14-15 and see also 42 CFR 435.603(f)(2).

Based on the above policy manuals and federal regulations, the Department failed to establish its burden of showing that it properly determined Petitioner's household composition. Instead, Petitioner's household composition appears that it should be five based on Petitioner being claimed as a dependent for the tax year of [redacted] (Petitioner's father, mother, brother, sister, and Petitioner). However, the federal regulations also state that the tax composition is determined based on what the individual *expects* to file for their tax return in which an initial determination or renewal of eligibility is being made. See 42 CFR 435.603(f)(1) - (2) (emphasis added). Petitioner's testimony indicated that he was unsure if the tax filings will be the same for [redacted] and the Department did not present any evidence showing what Petitioner expects to file for his tax return (i.e., redetermination showing his tax filing status). Thus, if Petitioner expects to file his own tax return for [redacted] then his household size will be one; but if he believes his father will file the same type of taxes for [redacted] as he did for [redacted] then the tax composition will remain at five. Therefore, the Department must redetermine Petitioner's household composition effective [redacted], in accordance with Department policy. MAGI Related Eligibility Manual, pp. 14-15 and see also 42 CFR 435.603(f)(1)-(2).

The next issue was whether Petitioner's income exceeded the HMP limits. Now, the income limit will all depend on the household composition. The 2016 Poverty Guidelines for the 48 Contiguous States and the District of Columbia indicated that the poverty guidelines for persons in family/household size of one is $[redacted] and $[redacted] for five. 2016 Poverty Guidelines, *U.S. Department of Health & Human Services*, January 25, 2016, p. 1. Available at: https://aspe.hhs.gov/poverty-guidelines. However, the poverty guidelines must be multiplied by 1.33 (133%) to obtain the 133% FPL calculation. The result is that Petitioner's annual income must be at or below $[redacted] ($[redacted] multiplied by 1.33) of the FPL for a household size of one or $[redacted] ($[redacted] multiplied by 1.33). For monthly eligibility, the income must be at or below $[redacted] for a household size of one ($[redacted] divided by 12 months) or $[redacted] for a household size of five ($[redacted] divided by 12 months). As side note, if it is determined that the group size is five, then it is possible that the other group

member's income could be taken into consideration. See MAGI Related Eligibility Manual, pp. 16-17 (countable income sources and non-countable income sources).

For purposes of this analysis, the undersigned will review the income the Department used to make its determination that his income exceeded the limits. On [redacted] Petitioner submitted the new hire, along with several check stubs. Exhibit A, pp. 7-13. The Department used the submitted check stubs and indicated that he had a countable income of $[redacted] that exceeded the income limit of $[redacted] for a group size of one. See Exhibit A, p. 1 (Hearing Summary). However, the Department appeared to conduct subsequent actions and did another income eligibility determination, but again, found that his new countable income of $[redacted] still exceeded the income limits for a group size of one. Exhibit A, p. 1 (Hearing Summary). The undersigned reviewed the pay stubs Petitioner provided for the pay periods of [redacted], and determined the following: (i) he is paid biweekly; (ii) his hours ranged from as low as 29 hours per biweekly pay period to as high as 64 hours per biweekly pay period; and (iii) his gross earnings ranged from as low as $[redacted] to as high as $[redacted] Exhibit A, pp. 9-13. Thus initially, it appeared that his income did exceed the HMP income limits for a group size of one. But when Petitioner submitted his hearing request, he reported a change in his employment earnings. Petitioner reported that the hours he worked were only during the summer and that during the school year, he will only be working one eight-hour shift a week. Exhibit A, p. 3. Petitioner argues that his income is irregular, and the Department must take this into consideration. The Department agreed.

Medicaid eligibility is determined on a calendar month basis. BEM 105, p. 2. Unless policy specifies otherwise, circumstances that existed, or are expected to exist, during the calendar month being tested are used to determine eligibility for that month. BEM 105, p. 2. When determining eligibility for a future month, assume circumstances as of the processing date will continue unchanged unless you have information that indicates otherwise. BEM 105, p. 2.

MAGI for purposes of Medicaid eligibility is a methodology which state agencies and the federally facilitated marketplace (FFM) must use to determine financial eligibility. BEM 500 (January 2016), p. 3. It is based on Internal Revenue Service (IRS) rules and relies on federal tax information to determine adjusted gross income. BEM 500, pp. 3-4. It eliminates asset tests and special deductions or disregards. BEM 500, p. 4. Every individual is evaluated for eligibility based on MAGI rules. BEM 500, p. 4. The MAGI rules are aligned with the income rules that will be applied for determination of eligibility for premium tax credits and cost-sharing reductions through exchanges. BEM 500, p. 4.

Additionally, federal law provides further guidance in the determination of an individual's financial eligibility for MAGI related categories. Specifically, in determining an individual's financial eligibility for a budget period, 42 CFR 435.603(h)(2) states for current beneficiaries:

> For individuals who have been determined financially-eligible for Medicaid using the MAGI-based methods set forth in this section, a State may elect in its State plan to base financial eligibility either on current monthly household income and family size or income based on projected annual household income and family size for the remainder of the current calendar year.

Also, 42 CFR 435.603(h)(3) states:

> In determining current monthly or projected annual household income and family size under paragraphs (h)(1) or (h)(2) of this section, the agency may adopt a reasonable method to include a prorated portion of reasonably predictable future income, to account for a reasonably predictable increase or decrease in future income, or both . . .

Based on the foregoing information and evidence, the undersigned finds that the Department improperly calculated Petitioner income because it failed to take into account Petitioner's irregular income. Petitioner's HMP closure when into effect ; however, Petitioner properly reported on , a change in his income. Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2016), p. 11. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 11. For Medicaid income report requirements, clients must report a change in gross monthly income of more than $ since the last reported change. BAM 105, pp. 11-12. For MA cases, the Department acts on a change reported by means other than a tape match within 15 workdays after becoming aware of the change. BAM 220 (July 2016), p. 7. Based on the Petitioner's reported change in income, the Department should have taken his reported change in income into consideration and determine if he was eligible for benefits effective . Petitioner reported this change prior to the negative action closure of ; and the Department should have acted on this change report to redetermine eligibility effective .

Furthermore, when determining whether Petitioner is income eligible for HMP purposes, the Department can take into consideration his irregular income per Department policy and the federal regulations (i.e., decrease in income for the school year). See BEM 105, p. 2, and 42 CFR 435.603(h)(2)-(3). Because the Department agreed that it should have taken Petitioner's irregular income into consideration when determining his HMP eligibility and the fact the Petitioner properly reported the change in income prior to the negative action closure, the Department did not act in accordance with Department when it determined that Petitioner is not eligible for HMP benefits. BAM 105, pp. 11-12; BAM 220, p. 7; BEM 105, p. 2; and 42 CFR 435.603(h)(2)-(3). Now, this does not mean Petitioner is eligible for HMP coverage. The Department must go back and redetermine eligibility, including his income and household composition effective .

DECISION AND ORDER

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 closed Petitioner's HMP coverage effective [redacted].

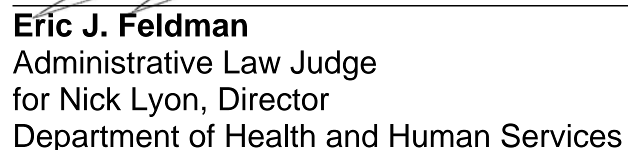
Accordingly, the Department's decision is **REVERSED**.

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. Redetermine Petitioner's MA eligibility for [redacted], (including group composition and income);

2. Issue supplements to Petitioner for any MA benefits he was eligible to receive but did not from [redacted], ongoing; and

3. Notify Petitioner of its decision.



EJF/jaf

Eric J. Feldman
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

Petitioner

Via email