



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: November 9, 2016
MAHS Docket No.: 16-013613
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 October 19, 2016 from Lansing, Michigan. [REDACTED] (Petitioner) appeared at the hearing and represented herself. [REDACTED] (Petitioner's mother) testified as a witness for Petitioner. [REDACTED] Assistance Payments Worker (APW), represented the Department of Health and Human Services (Department). [REDACTED] Assistance Payments Supervisor (APS) also participated in the hearing as a witness for the Department.

The Department offered the following exhibits which were admitted into evidence: [Department's Exhibit 1: Health Care Coverage Determination Notice (pages 1-2), Health Care Coverage Supplemental Questionnaire (pages 3-5), Unemployment Compensation-Search (page 6), Petitioner's statement of Self-Employment Expenses (page 7), Bridges Self-Employment Net MAGI Details (page 8), Documentation Record (page 9), MAGI Eligibility Determination (pages 10-11), and Bridges Self-Employment Budget-Summary (page 12).] Petitioner did not properly offer any exhibits into evidence. The record closed at the conclusion of the hearing.

ISSUE

Did the Department properly determine Petitioner's eligibility for Medical Assistance ("MA") benefits under the Healthy Michigan Plan (HMP)?

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 a household size of 1.
2. Petitioner was self-employed as a graphic designer during the relevant time period. [Department's Exhibit 1, p. 7].
3. Petitioner applied for health care coverage on August 1, 2016.
4. Petitioner completed and returned to the Department a Health Care Coverage Supplemental Questionnaire (DHS-1004), which, among other things, indicated that: (1) she lived alone; (2) was disabled from work; and (3) received \$ [REDACTED] in unemployment income from March to July 2016, \$ [REDACTED] from Service Systems Assoc (on call) beginning June 2016, and \$ [REDACTED] in income from self-employment (variable and ongoing). Attached to the questionnaire was a list of Petitioner's self-employment expenses in the amount of \$ [REDACTED] [Dept. Exh. 1, pp. 4, 7].
5. The Department discovered that Petitioner was receiving unemployment compensation benefits (UCB) in July 2016. For UCB, Petitioner received \$ [REDACTED] on July 16, 2016, and \$ [REDACTED] on July 30, 2016. [Dept. Exh. 1, p. 6].
6. The Department determined that Petitioner's self-employment MAGI monthly net amount was \$ [REDACTED] and monthly income from UCB was \$ [REDACTED] [Exh. 1, p. 8, 10].
7. The Department determined that Petitioner's total self-employment expenses for the months of June, July, and August 2016 were a total of \$ [REDACTED] [Exh. 1, pp. 7, 12].
8. On August 29, 2016, Petitioner mailed a Health Care Coverage Determination Notice (DHS-1606), which indicated that, effective August 1, 2016, Petitioner was not eligible for MA coverage because her UCB and self-employment income exceeded the income limit for HMP eligibility. [Exh. 1, pp.1-2].
9. On September 14, 2016, the Department received Petitioner's request for hearing concerning the denial of her MA coverage.

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.

The Healthy Michigan Plan (HMP) 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 (1-1-2016), p. 1. HMP is based on Modified Adjusted Gross Income (MAGI) methodology. BEM 137, p. 1.

Modified Adjusted Gross Income (MAGI) is a methodology used to determine financial eligibility for Medicaid. It is based on Internal Revenue Service rules and relies on federal tax information. Bridges Program Glossary (BPG) (10-1-2015), page 40. MAGI methodology eliminates asset tests and special deductions or disregards. BEM 500 (1-1-2016), pp. 3-4.

Every individual is evaluated for eligibility based on MAGI rules. 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.

For HMP, the income limit for adults age 19-64 is 133 percent of the federal poverty limit. Michigan Department of Community Health, Modified Adjusted Gross Income Related Eligibility Manual, May 28, 2014, p. 2. The Health Care Coverage Determination Notice provides a chart of the annual income limits for HMP. For a group size of one individual age 19-64, the annual income limit is [REDACTED]. [Dept. Exh. 1, p. 2].

The Department determined that Petitioner was not eligible for HMP because her income exceeded the limit for this program. As a result, the Department denied Petitioner's application for health care coverage. According to the Department representatives who attended the hearing, the decision to deny Petitioner's application was based on verification of Petitioner's unearned income from UCB or unemployment benefits as well as her self-employment income. The Department contends that it properly denied Petitioner's application because she exceeded the income limits. Petitioner disagrees with the determination and contends that the Department did not properly calculate her self-employment expenses.

Self-Employment Income and Expenses

BEM 502 (7-1-2016) provides guidelines for determining self-employment income for all types of assistance. In order to determine countable self-employment income, policy requires the Department determine the individual's total proceeds, which is the amount of self-employment income before any deductions. Countable income from self-employment equals the total proceeds **minus** allowable expenses of producing the income. If allowable expenses exceed the total proceeds, the amount of the loss cannot offset any other income **except** for farm loss amounts. BEM 502, p. 3.

Pursuant to BEM 502, p. 4, the following are included as allowable self-employment expenses:

- Identifiable expenses of labor, stock, raw material, seed, fertilizer, etc.
- Interest and principal on loans for equipment, real estate or income-producing property.
- Insurance premiums on loans for equipment, real estate and other income-producing property.
- Taxes paid on income-producing property.
- Transportation costs while on the job (example: fuel).
- Purchase of capital equipment.
- A child care provider's cost of meals for children. Do **not** allow costs for the provider's own children.
- Any other identifiable expense of producing self-employment income except those listed below.

The following self-employment expenses are not allowed:

- A net loss from a previous period.
- Federal, state and local income taxes.
- Personal entertainment or other individual business expenses.
- Money set aside for retirement.

- Depreciation on equipment, real estate or other capital investments.

See BEM 502, p. 4.

BEM 502 requires the Department verify all self-employment countable income using a primary source (income tax returns) or a secondary source (DHS-431, Self-Employment Statement). For Medicaid, the Department must obtain a Schedule C, Profit or Loss From Business as the primary verification source. See BEM 502, pp. 6-7.

Unearned Income

Unearned income is all income that is not earned. BEM 500 (1-1-2016), p. 4. Unemployment benefits is unearned income and is governed by BEM 503 (7-1-2016).

For MA income budgeting, the Department uses only available income. BEM 530 (1-1-2014), p. 2. Available means income which is received or can reasonably be anticipated. BEM 530, p. 2.

For SSI-related MA budgets, average only self-employment income. Convert self-employment income which is received less often than monthly to a monthly amount based on past and/or estimated future proceeds and allowable expenses. BEM 530, p. 2.

Prospecting income means arriving at a best estimate of the person's income. Prospect income when the Department is estimating income to be received in a processing or future month. BEM 530, p. 3.

During the hearing in this matter, the Department representatives testified that it determined that Petitioner's annual income under MAGI was \$ [REDACTED] for monthly self-employment income plus \$ [REDACTED] for her monthly UCB unearned income which equals \$ [REDACTED]. Thus, according to the Department representatives, Petitioner's monthly self-employment income ($\$ [REDACTED] \times 12$ months) equals a total annual countable income of \$ [REDACTED]. However, Petitioner's admitted monthly allowable expenses for June, July, and August was \$ [REDACTED] [Dept. Exh. 1, p. 7]. This figure was based on the figures Petitioner provided the Department. [Dept. Exh. 1, p. 7]. Thus, according to the Department, Petitioner's total allowable expenses for June, July and August ($\$ [REDACTED] \div 3$ months) equals the monthly allowable expense of \$ [REDACTED]. Petitioner's monthly countable income of \$ [REDACTED] less her admitted monthly self-employment expenses of \$ [REDACTED] equals a monthly net income of \$ [REDACTED]. This amount projected annually ($\$ [REDACTED] \times 12$) equals \$ [REDACTED]. The Department's calculations; however, do not line up with the documentation provided by the Department in the record. The Department representatives failed to provide any documentation that showed how it determined Petitioner's annual income using the MAGI methodology. Although the Department provided Bridges documents that indicated Petitioner's purported self-employment and UCB income, Petitioner was never informed what the Department considered to be her total annual income for purposes of

MA or HMP eligibility. Nor did the Department offer any document into evidence that showed the precise figure that it used to determine that Petitioner's annual income exceeded the \$ [REDACTED] limit for her household size. [See Dept. Exh. 1, p. 2].

According to BAM 600 (10-1-2015), pp. 37-38, the administrative law judge (ALJ) determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHHS [sic] policy was appropriately applied. With regard to MA, BAM 600, p. 1, provides that a client and the client's community spouse are each entitled to an explanation of specific factors in the determination. Once the client requests a hearing, he or she has the right to review the case record and obtain copies of needed documents and materials relevant to the hearing. BAM 600, p. 30. This implies that the Department, who generates and controls all relevant documentations, carries the initial burden of proof to provide the ALJ with sufficient information to make an informed decision.

Placing the burden of proof on the Department is merely a question of policy and fairness, but it is also supported by Michigan law. In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167; 405 NW2d 88 (1987), the Michigan Supreme Court, citing *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 (1979), said:

The term "burden of proof" encompasses two separate meanings. 9 Wigmore, *Evidence* (Chadbourn rev), § 2483 et seq., pp 276 ff.; McCormick, *Evidence* (3d ed), § 336, p 946. One of these meanings is the burden of persuasion or the risk of nonpersuasion.

The Supreme Court then added:

The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually cast first upon the party who has pleaded the existence of the fact, but as we shall see, the burden may shift to the adversary when the pleader has his initial duty. The burden of producing evidence is a critical mechanism in a jury trial, as it empowers the judge to decide the case without jury consideration when a party fails to sustain the burden.

The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced. See *McKinstry*, 428 Mich at 93-94, quoting McCormick, *Evidence* (3d ed), § 336, p 947.

In other words, the burden of producing evidence (i.e., going forward with evidence) involves a party's duty to introduce enough evidence to allow the trier of fact to render a reasonable and informed decision. Thus, the Department must provide sufficient evidence to enable the Administrative Law Judge to ascertain whether the Department followed policy in a particular circumstance.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. In the instant matter, the Department failed to include a proper MA budget in evidence and failed to provide any documentation to show the actual amount that it used to find that Petitioner was excess income. Although the Department representative testified at the hearing that Petitioner's MAGI income was \$ [REDACTED] policy (specifically BEM 502, cited above), requires the Department obtain certain verification documentation when verifying a client's self-employment income and expenses. These items are income tax returns or a DHS-431, Self-Employment Statement, or a Schedule C, Profit or Loss From Business. Here, the Department did not include any of these required verification sources to show Petitioner's self-employment income in the record. In addition, the MAGI Eligibility Determination in the record indicated that Petitioner's total MAGI annual income amount was \$ [REDACTED] [Dept. Exh. 1, p. 11]. Petitioner cannot be excess income for MA with a \$ [REDACTED] annual income. Again, the salient question is what was Petitioner's annual income under the MAGI methodology that exceeded the \$ [REDACTED] income limit? And where are the documents in the record to show that Petitioner exceeded that income limit? Unfortunately, the Department failed to include all relevant and necessary documents in this record. Without these items, the Administrative Law Judge is unable to evaluate whether the Department accurately determined Petitioner's eligibility for MA or HMP benefits based on her self-employment income and allowable expenses. Accordingly, this Administrative Law Judge finds that the Department has failed to carry its burden of proof and did not provide information necessary to enable this ALJ to determine whether the Department followed policy as required under BAM 600.

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 denied Petitioner's application for MA or HMP benefits.

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. The Department shall take steps to re-register and reprocess Petitioner's August 1, 2016 application for health care coverage.
2. The Department shall initiate a redetermination of Petitioner's eligibility (including income eligibility and allowable expenses) for health care coverage.

3. After the Department reprocesses and redetermines Petitioner's August 1, 2016 application, the Department shall provide Petitioner with written notification of its decision.

IT IS SO ORDERED.

CAP/mc



C. Adam Purnell
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]