



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 29, 2016
MAHS Docket No.: 16-015934
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 November 23, 2016, from Lansing, Michigan. The Petitioner appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Hearings Facilitator [REDACTED] [REDACTED]

ISSUE

Did the Department properly determine Petitioner's Medical Assistance (MA) eligibility and premium?

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 applied for MA.
2. In a Health Care Coverage Determination Notice dated October 10, 2016, (Exhibit 1 Pages 1-3) the Department informed Petitioner that she was approved for MA from August 1, 2016, through October 31, 2016, with a \$ [REDACTED] premium, and beginning November 1, 2016, with an estimated new premium of \$ [REDACTED] monthly.
3. Petitioner works at two part-time jobs, with gross wages from one job equaling \$ [REDACTED] bi-weekly (Pages 4-9) and with gross wages from the other job equaling \$ [REDACTED] over three bi-weekly periods (\$ [REDACTED] per pay period) (Pages 10-12).

4. When converted to a monthly amount (bi-weekly earnings times 2.15) her monthly earned income is \$ [REDACTED]
5. Petitioner also receives unearned income of \$ [REDACTED] quarterly in dividends (\$ [REDACTED] per month) (Page 13), \$ [REDACTED] per month from a pension (Page 14), and \$ [REDACTED] from Social Security (Page 16) for Retirement, Survivor, and Disability Income (RSDI).
6. When the Department calculated Petitioner's MA premium, it counted \$ [REDACTED] in unearned income (\$ [REDACTED] less a \$ [REDACTED] disregard) and earned income of \$ [REDACTED] (Page 20). It did not count her dividends as unearned income (Page 21).
7. After the Department calculated her monthly premium to be \$ [REDACTED] Petitioner submitted a hearing request on October 20, 2016, protesting the premium because, in her words, she cannot afford that premium.

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.

In this case, the Department calculated Petitioner's Freedom to Work monthly premium based upon her earned and unearned income. It did not count her dividend income. However, the Department is supposed to count dividends paid directly to the client "as unearned income in the month received." BEM 503 (7/1/16) p. 22. An individual receiving disability benefits from the Social Security Administration can receive "Freedom to Work" MA if their countable income does not exceed 250 percent of the Federal Poverty Level (FPL). BEM 174 (10/1/16) p. 3. The Department is supposed to determine countable earned and unearned income according to SSI-related MA policies in BEM 500, 501, 502, 503, 504, AND 530. *Id.* There are no premiums for individuals with Modified Adjusted Gross Income less than 138% of the FPL. *Id.* "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." *Id.* The FPL for an individual in 2016 is \$11,880 annually. <https://www.healthcare.gov/glossary/federal-poverty-level-FPL/>

Because Petitioner's income exceeds the FPL but does not exceed \$75,000, she must pay a premium of 2.5% of her income. According to the Department's witness, the Department calculated her income to include \$ [REDACTED] for her pension, \$ [REDACTED] for her RSDI, \$ [REDACTED] for her dividends, \$ [REDACTED] for one job, and \$ [REDACTED] for the other job (\$ [REDACTED] total earned income), giving her MAGI of \$ [REDACTED].

Per BEM 505, (7/1/16) p. 9, "A standard monthly amount must be determined for each income source used in the budget." "Convert stable and fluctuating income that is received more often than monthly to a standard monthly amount. Use one of the following methods:

"Multiply weekly income by 4.3.

"Multiply amounts received every two weeks by 2.15.

"Add amounts received twice a month."

Petitioner earns \$ [REDACTED] bi-weekly from her first job, and that is \$ [REDACTED] per month. From her second job, she earns \$ [REDACTED] bi-weekly, and that is \$ [REDACTED]. Her total monthly earned income is \$ [REDACTED]. The Department's calculations indicate they counted \$ [REDACTED] as her earned income. That is a slight over-statement of her earned income. Her dividends are \$ [REDACTED] quarterly, which is \$ [REDACTED] per month. The Department counted just \$ [REDACTED] per month, which is a slight under-statement of her unearned income. Her earned income was over-stated by \$ [REDACTED] and her unearned (dividends) was under-stated by \$ [REDACTED]. The net result was that her income was understated by \$ [REDACTED] per month. When that is multiplied by the premium factor of 2.5%, it might make at most a \$ [REDACTED] difference in her premiums (not counting any "disregards" required by policy).

Petitioner protested the monthly premium because she does not believe she can afford to pay it. The Department cannot base premiums on what a client believes she can afford; it must abide by policy. An Administrative Law Judge cannot base premiums on what a client believes she can afford; it must abide by policy. Policy calculates premiums as a percentage of countable income. There appears to be a slight miscalculation in this case of her income. It is unlikely to make any significant change in her premium, but the Department will be ordered to recalculate that premium.

DECISION AND ORDER

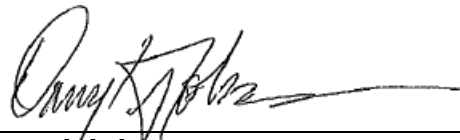
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's FTW premium.

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. Recalculate Petitioner's FTW MA premium effective November 1, 2016, and provide her with written notice of the premium.

DJ/mc



Darryl Johnson

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]