



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: December 6, 2016
MAHS Docket No.: 16-014965
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 December 1, 2016, from Lansing, Michigan. The Petitioner was represented by attorneys [REDACTED] and [REDACTED]. The Department of Health and Human Services (Department) was represented by Family Independence Manager [REDACTED].

Prior to the hearing being concluded, the parties agreed that the Department would fax documents to the undersigned to be included as exhibits, in addition to the hearing packet that was admitted as Respondent's Exhibit 1:

- Respondent's Exhibit 2 – Health Care Coverage Determination Notice
- Petitioner's Exhibit A – Contract with SCI
- Petitioner's Exhibit B – Expenses for 2015 and 2016

The Department faxed Exhibit 2, which included a note on the cover page stating, "the legal reps want to send their own documents, as it relates to customer's expenses." The Petitioner's exhibits were to be faxed by the Department on the afternoon of the hearing. They were not received from the Department or from the Petitioner's attorneys on the date of the hearing and therefore they have not been, and will not be, admitted into evidence.

ISSUE

Did the Department properly close Petitioner's Medical Assistance (MA) benefits in 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 was an on-going HMP recipient.
2. Petitioner's source of income comes from a contract he has with a company known as SCI.
3. Petitioner receives a paycheck each week, which is based upon the number of hours he works. He typically works a nine-hour day, for which he is paid \$ [REDACTED]
4. From his income, Petitioner pays to SCI the following fees:
 - a. Administration fee of \$ [REDACTED] weekly;
 - b. Postage fee of \$ [REDACTED] weekly;
 - c. SCI Program Fee of \$ [REDACTED] weekly to cover life insurance and an occupational hazard fee.
5. The \$ [REDACTED] Program Fee is optional; Petitioner has elected to pay these fees because it is cheaper to obtain these benefits through SCI than to obtain them on the open market.
6. Petitioner's income is reported on a 1099 by SCI; no deductions are made for federal, state, or other taxes.
7. Petitioner's gross reported income for 2015 was \$ [REDACTED] and his net loss was \$ [REDACTED]
8. Petitioner's only earned income is from SCI.
9. In a Health Care Coverage Determination Notice dated September 2, 2016 (Exhibit 2), the Department informed Petitioner that his HMP would be closing effective October 1, 2016, because his income exceeded the \$ [REDACTED] annual limit for a household of one between the ages of 19 and 64.
10. The Department allowed Petitioner a deduction from his income for the fees that are deducted, but otherwise considered him an employee for eligibility purposes, and did not deduct any other expenses associated with earning his income.
11. On September 28, 2016, the Department received Petitioner's hearing request, protesting the closure of his HMP.

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.

To participate in the HMP, “Modified adjusted gross income must be at or below 133 percent of the Federal Poverty Level (FPL).” BEM 137 (10/1/16) p. 3. BEM 500 (1/1/16) provides the income overview policy for the Department, including MAGI-related MA. BEM 500, p. 1. BEM 500, p. 4 defines “gross income” as “the amount of income before any deductions such as taxes or garnishments. This may be more than the actual amount an individual receives.”

Modified Adjusted Gross Income (MAGI) is defined in BEM 500, p. 3-4:

MAGI for purposes of Medicaid eligibility is a methodology which state agencies and the federally facilitated marketplace (FFM) must use to determine financial eligibility. It is based on Internal Revenue Service (IRS) rules and relies on federal tax information to determine adjusted gross income. It eliminates asset tests and special deductions or disregards.

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.

In this case, the Department assessed Petitioner’s eligibility for HMP by using his gross income, less the expenses deducted from his paycheck. The Department calculated his income for the MA budget as \$ [REDACTED] after \$ [REDACTED] in expenses.

Per BEM 505, “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.”

Four checks were considered (Exhibit 1 Pages 5-8):

Check Date	Settlement (Gross)	Adjustments	Total Pay
8/5/16	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
8/12/16	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
8/19/16	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
8/26/16	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Totals	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

His average weekly gross pay is \$ [REDACTED] and his monthly pay using the multiplier is \$ [REDACTED]. If the adjustments are subtracted, his average weekly pay is \$ [REDACTED] and \$ [REDACTED] monthly. The annual income limit of \$ [REDACTED] is the equivalent of \$ [REDACTED] monthly. Petitioner’s “take home pay” of \$ [REDACTED] is more than the monthly HMP limit. But, the Department did not provide any evidence to show that it based its determination on his MAGI, which it is supposed to do. Petitioner’s tax return was not admitted into evidence, but the testimony shows that his net “income” was actually a loss on his Schedule C. Petitioner testified that he has his tax returns prepared by a CPA. Those tax returns would provide more reliable details of his MAGI than would be found in his pay stubs.

BEM 500, p. 4 addresses self-employment income and notes that it is an exception to the “gross income” definition given above. “Exception: The amount of self-employment income before any deductions is called **total proceeds**. The **gross** amount of self-employment income means the amount after deducting allowable expenses from total proceeds, but before any other deductions.” Although this suggests that allowable expenses can only be deducted from self-employment income, the Department cannot overlook the fact that eligibility is based upon MAGI, not gross income.

Petitioner was in the same occupation in 2015 as he is in 2016. It might not be possible to determine definitively yet what his monthly income is for 2016, but if his 2015 tax return is any indication, it is likely that his MAGI meets the eligibility requirements. Because the Department did not provide evidence that his eligibility was evaluated based upon his MAGI, the determination must be reversed.

DECISION AND ORDER

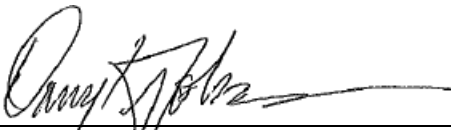
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner’s HMP MA.

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 HMP eligibility as of October 1, 2016, using the appropriate eligibility factors, and provide him with benefits if he meets the eligibility requirements.

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]

Counsel for Petitioner

[REDACTED]