



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: April 26, 2016
MAHS Docket No.: 16-003906
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 April 25, 2016, from Detroit, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by [REDACTED] [REDACTED] Hearing Facilitator, and [REDACTED], Assistance Payments Worker.

ISSUE

Did the Department properly close the Petitioner's Healthy Michigan Plan (HMP) Medical Assistance (MA) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Petitioner originally sought a hearing regarding the closure of his Food Assistance Program (FAP) benefits but withdrew his request for hearing regarding FAP on the record at the hearing.
2. The Petitioner was an ongoing recipient of the HMP MA benefit plan. Pursuant to a Redetermination, the Department closed the Petitioner's HMP due to excess income.
3. The Petitioner receives our Retirement, Survivors and Disability Insurance (RSDI) in the amount of \$ [REDACTED] per month. The Petitioner also is employed and receives

earned income. At the time of the hearing, the Petitioner was [REDACTED] years of age. Exhibits 1 and 2.

4. The Petitioner's gross income for 2015 was \$ [REDACTED] (\$ [REDACTED] in RSDI, and \$ [REDACTED] in earned income. Exhibit 2.
5. The Petitioner's gross income for 2016 through March 1, 2016, pay date was \$ [REDACTED] (\$ [REDACTED] in RSDI and \$ [REDACTED] in earned income). Exhibit 2.
6. The Department did not undertake an ex parte review prior to closing the Petitioner's HMP.
7. The Department issued a Health Care Coverage Determination Notice dated February 5, 2016, which found the Petitioner ineligible for HMP effective March 1, 2016, due to Petitioner's countable income exceeding the income limit for a group size of one. Exhibit 3.
8. The Petitioner requested a timely hearing on March 16, 2016, protesting the Department's actions.

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 closed the Petitioner's MA, HMP due to the Petitioner's countable income exceeding the income limit for HMP of \$ [REDACTED]. The Department based its determination of Petitioner's income on data drawn from the State Online Query (SOLQ) for his unearned income from RSDI in the amount of \$ [REDACTED] monthly and weekly earned income received as reported by the Work Number. The Department looked at January 2016 income when determining eligibility. The Department presented no evidence with respect to whether it considered the Petitioner's eligibility for other MA programs that he might be eligible for such as Medicaid subject to a spenddown or the Freedom to Work (FTW) program.

The Petitioner disputed the closure of his HMP case. In the February 5, 2016, Health Care Coverage Determination Notice, the Department notified Petitioner that his MA case was closing effective March 1, 2016, because he was not under 21 or over 65, pregnant, the caretaker of a minor child, blind, or disabled and because he had annual income of over \$ [REDACTED]. At the hearing, the Department acknowledged that Petitioner was disabled and explained that the closure of his MA case was due to his income ineligibility for HMP. The Department explained that Petitioner was initially approved for MA under the HMP program, but when it became aware that he had earned income from employment, it determined that he was not income-eligible for HMP and closed his MA under that program.

Healthy Michigan Plan provides MA coverage to individuals who are (i) 19 to 64 years of age; (ii) have income at or below 133% of the federal poverty level (FPL) under the Modified Adjusted Gross Income (MAGI) methodology; (iii) do not qualify for or are not enrolled in Medicare; (iv) do not qualify for or are not enrolled in other MA programs; (v) are not pregnant at the time of application; and (vi) are residents of the State of Michigan. MPM, Healthy Michigan Plan, § 1.1.

In this case, the Department determined that Petitioner was not income-eligible for HMP. An individual is eligible for HMP if their household's income does not exceed 133% of the FPL applicable to the individual's group size. A determination of group size under the MAGI methodology requires consideration of the client's tax filing status household size. In this case, Petitioner testified that he did not file taxes or claim any dependents and that he was the sole member of his household. Therefore, for MAGI purposes, he has a household size of one. MREM, § 5.2. 133% of the annual FPL in 2015 for a household with one member is \$ [REDACTED] <http://aspe.hhs.gov/POVERTY/15poverty.cfm>. Therefore, to be income eligible for HMP, Petitioner's annual income cannot exceed \$ [REDACTED].

At the hearing, based on the evidence of earned and unearned income earnings received, the Department established that the Petitioner's 2015 gross income was \$ [REDACTED] and thus, exceeded the 2015 HMP limit for a group of one individual. For 2016 the Petitioner's gross income as of March 1 was \$ [REDACTED] and was outpacing 2015 income; and thus, it was reasonable for the Department to assume that the gross income would exceed the HMP limit of \$ [REDACTED]. The Petitioner confirmed the receipt of RSDI in the amount of \$ [REDACTED] per month and did not dispute his weekly earnings from employment reported by the Work Number. While the number of hours the Petitioner worked in 2016 so far clearly is fluctuating based on a two-month history, January 2016 gross income was \$ [REDACTED] February 2016 gross income was \$ [REDACTED] and two pays in March had totaled \$ [REDACTED]. Under these circumstances, the Department is required to prospect income; however, it was not an unreasonable determination by the Department to assume that at the current pace the Petitioner's income would exceed the HMP income limit, nor was the Department advised by the Petitioner that his income was fluctuating.

Prospecting income means arriving at a best estimate of the person's income. Prospect income when you are estimating income to be received in a processing or future month. Your best estimate may not be the exact amount of income received.

Some of the reasons income fluctuates is because:

- The number of hours worked in a month may fluctuate.
- The amount of tips may vary from payday to payday.

Use the following guidelines for prospecting income:

- For fluctuating earned income, use the expected hourly wage and hours to be worked, as well as the payday schedule, to estimate earnings.
- Paystubs showing year-to-date earnings and frequency of pay are usually as good as multiple paystubs to verify income.
- A certain number of paystubs is not required to verify income. If even one paystub reflects the hours and wages indicated on the application, that is sufficient information.
- If a person reports a pay rate change and/or an increase or decrease in the number of hours they usually work, use the new amount even if the change is not reflected on any paystubs.
- If you have an opportunity to talk with the client, that may help establish the best estimate of future income.

BEM 530, (January 1, 2014), p. 3.

Thus, based on the information available at the time it made its determination, the Department correctly determined that the Petitioner was no longer eligible for the HMP MA benefit program.

Ex parte Review and Freedom to Work

Upon further review of the hearing evidence and upon further research, it is determined that the Department improperly closed the Petitioner's MA without an ex parte review.

Before closing a client's MA case due to ineligibility, Department policy provides that the Department must conduct an ex parte review unless the client was ineligible for any MA coverage. BAM 220 (October 2015), p. 17; BAM 210 (October 2015), p. 1. A client is entitled to the most beneficial MA category, which is the category which results in eligibility or the least amount of excess income. BEM 105 (October 2014), p. 2. When the ex parte review shows that an MA recipient is eligible for MA under another category, the Department must change the coverage. BAM 220, p. 17. When the ex parte review shows that a recipient may have continuing eligibility under another MA category but there is not enough information in the case record to determine continued eligibility, the Department must send a verification checklist (VCL) to proceed with the ex parte review. BAM 220, pp. 17-18. If the client fails to provide requested verification or if a review of the information provided establishes that the recipient is not eligible under any MA category, the Department then sends timely notice of MA case closure.

In this case, the Department presented no evidence that it considered whether or not the Petitioner was eligible for another MA category or whether it determined if Petitioner was eligible for MA under a Supplemental Security Income (SSI)-related category, which are categories providing MA coverage to individuals who are aged, disabled or blind. BEM 105, p. 1, or for Medicaid based upon a spenddown. Given the fact that the Petitioner is disabled, is aged [REDACTED] and receiving RSDI, the Department must also determine whether the Petitioner was eligible for the Freedom to Work Program. The Freedom to Work Program allows a disabled individual to work and still receive MA subject to eligibility requirements for both financial and assets. As the Petitioner is still 64 years of age, he may be eligible and should have been considered for this program prior to the closure of his HMP. The FTW program eligibility requirements are set forth in BEM174:

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.

Note: SSI recipients whose SSI eligibility has ended due to financial factors are among those who should be considered for this program.

NON-FINANCIAL ELIGIBILITY FACTORS

1. The client must be disabled according to the disability standards of the Social Security Administration, except employment, earnings, and substantial gainful activity (SGA) cannot be considered in the disability determination.
2. The client must be employed. FTW coverage is retained when a participant is relocated due to employment.
3. The MA eligibility factors in the following items must be met:
 - BEM 220, Residence.
 - BEM 221, Identity.
 - BEM 223, Social Security Numbers.
 - BEM 225, Citizenship/Alien Status.
 - BEM 257, Third Party Resource Liability.
 - BEM 265, Institutional Status.
 - BEM 270, Pursuit of Benefits.
 - Groups
 - A client eligible under the FTW category is a fiscal and asset group of one.
 - Assets
 - Initial Eligibility
 - The asset limit for the initial eligibility determination is set to the Medicare Savings Program asset limit for an individual in that calendar year.
 - Ongoing Eligibility
 - Once eligibility for FTW is established, countable assets cannot exceed the asset limit for FTW in BEM 400.
 - Accumulated assets that are excluded (not countable) while the participant is enrolled in the FTW program will continue to be excluded if the beneficiary loses eligibility for the FTW program and has a determination of eligibility in another SSI-related Medicaid category.
 - 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. BEM 174, (October 1,2015), p. 1-3

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 acted in accordance with Department policy when it determined that the Petitioner was no longer eligible for the Healthy Michigan Plan benefit program.

The Department did not act in accordance with Department policy when it failed to determine whether the Petitioner was eligible for Medicaid with a spenddown or eligible for the Freedom to Work Program.

DECISION AND ORDER

Accordingly, the Department's decision is

AFFIRMED IN PART with respect to the closure of the Petitioner's MA under the HMP and
REVERSED IN PART with respect to its failure to determine by ex parte review whether the Petitioner was eligible for any other MA including FTW and Medicaid subject to a spenddown.

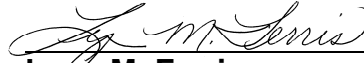
The Petitioner's request for hearing regarding the closure of his FAP was withdrawn by the Petitioner at the hearing and is accordingly, hereby ordered **DISMISSED**.

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. Reinstate Petitioner's MA case under the HMP program effective March 1, 2016;
2. Continue the ex parte review to determine Petitioner's eligibility for SSI-related MA and Freedom to Work;
3. Provide Petitioner with ongoing MA coverage while the ex parte review continues and with MA coverage he is eligible to receive, if any, after the ex parte review is concluded; and

4. Notify Petitioner in writing of its decision.

LMF/jaf



Lynn M. Ferris
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]

cc:

[REDACTED]