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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: October 20, 2016
MAHS Docket No.: 16-013088
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 [REDACTED] from Detroit, Michigan. The Petitioner was represented by [REDACTED] (Petitioner); and her son/Authorized Hearing Representative (AHR), [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator.

ISSUE

Did the Department properly close Petitioner, her spouse's, and her son's (AHR) Medical Assistance (MA) benefits effective [REDACTED]?

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, her spouse, and her son (hereinafter referred to as the "AHR") were ongoing recipients of MA benefits.
2. Petitioner is [REDACTED] years old, she is employed, and not a parent or caretaker of a dependent child, she is not aged (65 or older), blind, or disabled.
3. Petitioner's spouse is [REDACTED] years old, he is employed, and not a parent or caretaker of a dependent child, he is not aged (65 or older), blind, or disabled.

4. The AHR is [REDACTED] years old, he is not employed, and not a parent or caretaker of a dependent child, he is not aged (65 or older), blind, or disabled.
5. All three household members reside together.
6. On [REDACTED], Petitioner submitted a redetermination for her Food Assistance Program (FAP) benefits. Exhibit B, pp. 1-6.
7. In the redetermination, Petitioner indicated that she intends to file a joint tax return with her spouse, but did not indicate whether the AHR intends or does not intend to file a tax return, or be claimed as a dependent. Exhibit B, p. 2.
8. On [REDACTED], the Department received the spouse's Verification of Employment, which indicated that his average weekly earnings is \$[REDACTED] Exhibit B, pp. 7-8.
9. On [REDACTED] the Department received two of Petitioner's pay stubs, which stated the following: (i) pay date of [REDACTED], biweekly pay, gross earnings of \$[REDACTED] and net earnings of \$[REDACTED] and (ii) pay date of [REDACTED], biweekly pay, gross earnings of \$[REDACTED] and net earnings of \$[REDACTED] Exhibit A, pp. 9-10.
10. As a result of the reported earnings, the Department redetermined all three household members' MA eligibility and determined they are not eligible for MA benefits, specifically, the Health Michigan Plan (HMP), due to excess income.
11. On [REDACTED], the Department sent Petitioner a Health Care Coverage Determination Notice (determination notice) notifying all three household members were not eligible for MA benefits effective [REDACTED]. Exhibit A, pp. 4-7.
12. On [REDACTED], Petitioner's AHR filed a hearing request, protesting the MA benefits and the Family Independent Program (Cash) benefits. Exhibit A, pp. 2-3.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

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.

Preliminary matter

In this case, Petitioner's AHR also requested a hearing to dispute the FIP (Cash) benefits. See Exhibit A, p. 3. However, the AHR indicated that he checked marked this in error and instead, wanted to dispute their FAP benefits. Based on this information, the undersigned Administrative Law Judge (ALJ) lacks the jurisdiction to address Petitioner's dispute with the FAP benefits because they failed to properly request a hearing to dispute this program. See BAM 600 (October 2015), pp. 1-6. The undersigned ALJ is limited only to the programs they request in the hearing and the Petitioner/AHR failed to indicate anywhere in the hearing request that they are disputing the FAP benefits. Exhibit A, pp. 2-3. As such, the undersigned ALJ will only address Petitioner's concerns regarding the MA benefits and the FIP (Cash) hearing request is DISMISSED. See BAM 600, pp. 1-6.

MA benefits

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 the most beneficial MA category available to Petitioner, her spouse, and the AHR 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 determined that that all three household members were not eligible for HMP benefits because their income was at or below 133% of the FPL. However, before proceeding into the analysis of whether all three household members are income eligible for HMP coverage, an issue arose to whether the Department properly determined their household composition. In this case, the Department indicated that the MA benefits were denied because the household income exceeded the limits for a household size of two. See Exhibit A, p. 1. (Hearing Summary). However, the evidence appears to indicate that the household composition might actually be three.

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. Available at http://michigan.gov/documents/mdch/MAGI_Manual_457706_7.pdf. 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 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, the evidence established that Petitioner and her spouse intended to file a joint federal income tax return as reported in her redetermination received on May 25, 2016. See Exhibit B, p. 2. However, Petitioner did not indicate whether the AHR intends or does not intend to file a tax return, or be claimed as a dependent. Exhibit B, p. 2. The AHR testified that he believed he was claimed as a dependent, but was uncertain. This is important to know for HMP purposes because the income limits are based on the size of the household and the principles of tax dependency. For example, if Petitioner claimed the AHR as a dependent, then the household size should be three for all the group members. But, if the AHR claimed his own tax return, then his household size is one and Petitioner and his spouse's household size is two (joint tax return). Therefore, the Department must redetermine all three household members' household composition effective [REDACTED], in

accordance with Department policy, manuals, and federal regulations. MAGI Related Eligibility Manual, pp. 14-15 and see also 42 CFR 435.603(f)(1)-(2).

The next issue was whether the household'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] for two, and \$ [REDACTED] for three. 2016 Poverty Guidelines, *U.S. Department of Health & Human Services*, [REDACTED], p. 1. Available at: <https://aspe.hhs.gov/poverty-guidelines>. For purposes of this decision, the undersigned will look at the income limit for a household size of two as the Department made its decision that Petitioner was not income eligible based on this group size. But, if the Department determines the group size is three, then obviously, the income limit would increase to a household size of three. Nevertheless, 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 two. For monthly eligibility, the income must be at or below \$ [REDACTED] for a household size of two (\$ [REDACTED] divided by 12 months).

For purposes of this analysis, the undersigned will review the income the Department used to make its determination below.

First, the determination notice indicated that Petitioner's annual income was \$ [REDACTED]. See Exhibit A, p. 5. The Department presented an "Employment Budget – Summary" document that indicated Petitioner's monthly MA budget amount is \$ [REDACTED]. See Exhibit A, p. 8. This was based on Petitioner's two pay stubs that were submitted to the Department on [REDACTED]. Exhibit A, pp. 9-10. A review of the pay stubs found that Petitioner received gross earnings of \$ [REDACTED] for a pay date of [REDACTED], and gross earnings of \$ [REDACTED] for a pay date of [REDACTED], resulting in monthly gross income of \$ [REDACTED]. Exhibit A, pp. 9-10. The undersigned ALJ finds that the Department properly calculated Petitioner's monthly MA income amount to be \$ [REDACTED]. However, the issue is how the Department calculated the annual income of \$ [REDACTED]. To obtain the annual income, the undersigned ALJ took \$ [REDACTED] multiplied by 12 months, resulting in an annual income of \$ [REDACTED]. This is \$ [REDACTED] less than the amount the Department calculated.

Second, the determination notice indicated that the spouse's annual income was \$ [REDACTED]. See Exhibit A, p. 5. The Department presented an "Employment Budget – Summary" document that indicated the spouse's monthly MA budget amount is \$ [REDACTED]. See Exhibit A, p. 8. This was based on the spouse's Verification of Employment, which indicated that his average weekly earnings is \$ [REDACTED]. Exhibit B, pp. 7-8. The Department took his average weekly amount of earnings of \$ [REDACTED] and multiplied it by four to obtain the monthly gross MA budget income of \$ [REDACTED] (\$ [REDACTED] times 4). The undersigned ALJ finds that the Department properly calculated the spouse's monthly MA income amount to be \$ [REDACTED]. However, the issue is how the Department calculated the annual income of \$ [REDACTED]. To obtain the annual income, the undersigned ALJ took

\$ [REDACTED] multiplied by 12 months, resulting in an annual income of \$ [REDACTED]. This is less than the amount the Department calculated.

Now, when the undersigned takes both Petitioner and her spouse's income and adds them together, this results in a total household annual income of \$ [REDACTED] (\$ [REDACTED] Petitioner's annual income plus \$ [REDACTED] the spouse's income), which is below the HMP annual income limit of \$ [REDACTED] for a household size of two. In fact, their monthly income of \$ [REDACTED] (\$ [REDACTED] divided by 12 months) is below the monthly HMP income limit of \$ [REDACTED] for a household size of two. As such, the evidence indicates that all three group members are income eligible for HMP purposes. Remember, the AHR does not have any income, so regardless if whether the group size is two or three, all three group members would be income eligible for HMP purposes based on the evidence presented.

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 ALJ finds that all three household members are income eligible for HMP purposes. As shown above, regardless if whether the household size is two or three, because the AHR has no income, the undersigned finds that the household's annual income of \$ [REDACTED] is below the HMP annual income limit of \$ [REDACTED] for a household size of two and their monthly income of \$ [REDACTED] is below the monthly HMP income limit of \$ [REDACTED] for a household size of two. As such, the undersigned ALJ finds that the Department improperly determined that all three household members were not income eligible for HMP benefits in accordance with Department policy. See BEM 105, p. 2; BEM 500, pp. 3-4; and 42 CFR 435.603(h)(2)-(3). But, there are other eligibility requirements to receive HMP coverage, as income is only one eligibility factor among others. Thus, the Department will redetermine all three household member's MA eligibility, including HMP eligibility, effective [REDACTED], in accordance with Department policy.

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 improperly closed Petitioner's, her spouse's, and the AHR's MA benefits effective [REDACTED].

Accordingly, the Department's MA 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, her spouse's, the AHR's MA eligibility (including HMP eligibility and household composition) for [REDACTED];
2. Issue supplements to Petitioner, her spouse, and the AHR for any MA benefits they were eligible to receive but did not from [REDACTED], ongoing; and
3. Notify Petitioner of its decision.

IT IS ALSO ORDERED that Petitioner's **FIP (Cash)** hearing request is **DISMISSED** and the undersigned ALJ lacks any jurisdiction to address Petitioner's concerns regarding the FAP benefits.

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

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

Petitioner

[REDACTED]

Via email

[REDACTED]