



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: January 19, 2017
MAHS Docket No.: 16-013799
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, an in-person hearing was held on [REDACTED], from Ypsilanti, Michigan. The Petitioner was represented by Attorney [REDACTED] from [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistant Attorney General; [REDACTED], Assistance Payment's Worker; and [REDACTED] Family Independence Manager.

ISSUE

Did the Department properly deny Petitioner's application for the Medicare Savings Program (MSP)?

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 applied for Medical Assistance (MA) on [REDACTED], for the Petitioner and his spouse and for the Medicare Savings Program (MSP) for himself. In the application, the Petitioner noted that he is applying for MA and the MSP, and his wife is applying for the Healthy Michigan Plan (HMP). Exhibit A.
2. The Petitioner receives Retirement, Survivors and Disability Insurance (RSDI) from Social Security in the amount of \$ [REDACTED]
3. The Petitioner's wife is self-employed and reported net income of \$ [REDACTED] for the application month. Exhibit A, p. 31.

4. The MSP income eligibility determinations is not determined based upon MAGI income as the program is a Medicaid program.
5. The Petitioner's [REDACTED] Income Tax Return, Schedule C, showed a net profit of \$ [REDACTED] from the Petitioner's wife's self-employment. Exhibit C, p. 55.
6. The Department issued a Health Care Coverage Determination Notice (HCCDN) on [REDACTED] denying the Petitioner's application for the MSP effective [REDACTED], due to his income exceeding the income limit. Exhibit B.
7. The Petitioner requested a timely hearing on [REDACTED], 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.

The Medicare Savings Program financial eligibility factors are set forth in Department policy and provide that the Department must use fiscal and asset group policies for SSI-related groups found in BEM 211. Income eligibility determinations require:

Income eligibility exists when net income is within the limits in RFT 242 or 247. Income eligibility **cannot** be established with a patient-pay amount or by meeting a deductible.

Determine countable income according to the SSI-related MA policies in BEM 500, 501, 502, 503, 504 and 530, **except** as explained in COUNTABLE RSDI in this item. Apply the deductions in BEM 540 (for children) and 541 (for adults) to countable income to determine net income. BEM 165, p. 8

For RSDI, Department policy uses the countable amount for the month being tested. BEM 165, p.8.

In this case, the Department denied the Petitioner's application for MA for the MSP effective [REDACTED]. The Department's Notice dated [REDACTED], advised the Petitioner that he was ineligible and that the denial was due to Petitioner's MA group's income exceeding the income limit for the MSP. Exhibit B. The Department presented a budget to demonstrate the basis for the denial. The Department used unearned income based on Petitioner's RSDI of \$ [REDACTED] and self-employment income for his spouse of \$ [REDACTED] Exhibit F.

At issue in this case is whether the Department correctly calculated the self-employment income as the Petitioner's RSDI income of \$ [REDACTED] was correct. The Department testified initially that the self-employment income was determined based upon Petitioner's [REDACTED] 1040 Federal Income Tax Return. Exhibit C, p. 49. The self-employment income was determined by the Department by dividing the income tax adjusted gross income amount of \$ [REDACTED] by 12 months. When this calculation is performed, the monthly amount is \$ [REDACTED] which does not correlate to the \$ [REDACTED] income amount used in the budget. Exhibit C. In addition, use of this income to determine self-employment income is incorrect, as the income included as self-employment income also included income from debt cancellation which is not self-employment income.

The Department then further explained that the self-employment income was based upon Self-employment Income and Expense Statements provided to it by Petitioner's Spouse filed with the Department in [REDACTED]. Exhibit E. The Department advised that it did not use the information contained in the Self-employment Income and Expense Statements. However, it ultimately turned out that the Department used the tax information contained in the [REDACTED] Income Tax Return 1040 as follows: The Department took the total adjusted gross income of \$ [REDACTED] and deducted 25% from the income for self-employment expenses, which resulted in income of \$ [REDACTED] which it then divided by 12 to get the monthly amount of \$ [REDACTED]. This calculation was ultimately admitted by the Department at the hearing to be incorrect. The adjusted gross income was taken from the Income Tax Return provided to the Department as part of the application process. Exhibit C. The adjusted gross income includes \$ [REDACTED] in self-employment income and \$ [REDACTED] in cancelled debt income due to the bank cancellation of a second mortgage. The error occurred because non self-employment income was included and self-employment expenses should not be calculated based upon income due to debt cancellation. Thus, based upon the evidence presented the budget to determine income eligibility and used to deny the Petitioner's MSP application was incorrect as it was not based upon the correct income.

In determining eligibility for the Supplemental Security Income (SSI)-related programs, the Department must determine all countable income for the MA fiscal group. In this case, the Petitioner's spouse had reported self-employment income on the application of \$ [REDACTED]. The Department presented self-employment income and expense statements received on [REDACTED], prior to the [REDACTED], application. The Department did not use the information contained in the self-employment income and expense statements to determine self-employment income, but instead incorrectly used the Income Tax Return information as discussed above. Exhibit E. As the Department

did not use these statements, they cannot support the Department's denial of the Petitioner's application for the MSP, and for reasons explained below, are not the proper verification for Medicaid income determinations.

Department policy provides how self-employment income is calculated:

The amount of self-employment income before any deductions is called total proceeds. 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. See Farming Expenses below. BEM 502, (October 2016) p. 3.

Allowable expenses (except MAGI related MA) are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses.

MAGI related Medicaid uses net income as declared on the federal tax return. BEM 502, (October 2016) p. 3, (emphasis supplied). See also BEM 502, p. 7.

Policy also requires that the Department must verify countable income at application prior to authorizing benefits. BEM 502, p. 6.

Department policy also specifically requires that for Medicaid, verification of self-employment income is based upon the Schedule C, Profit or Loss from Business and provides:

Schedule C, Profit or Loss From Business is the primary source of verification. This form is generally used in conjunction with IRS Form 1040, 1040NR or 1041. Schedule C, is acceptable even if not yet filed with the IRS.

The DHS-431, Self-Employment Statement, is not acceptable verification for Medicaid purposes. BEM 502, p. 7.

Thus, because the Medicare Savings Program is a Medicaid program, the [REDACTED] Schedule C, Income Tax Filing Form, is primary verification of self-employment income and should have been used by the Department to calculate the Petitioner's income eligibility for the Medicare Savings Program. BEM 105.

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 denied the Petitioner [REDACTED], application for MSP.

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 re register the Petitioner's [REDACTED], application for the Medicare Cost Savings program and determine the Petitioner's eligibility.
2. The Department shall provide written notice to the Petitioner and his Attorney of its determination.

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

Counsel for Respondent

[REDACTED]

DHHS

[REDACTED]

Petitioner

[REDACTED]

Counsel for Petitioner

[REDACTED]

[REDACTED]