



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 31, 2017  
MAHS Docket No.: 16-017928  
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 [REDACTED], from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

### **ISSUE**

Did the Department properly calculate the Petitioner's Medical Assistance (MA) spenddown amount?

### **FINDINGS OF FACT**

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

1. On [REDACTED], at a redetermination, the Petitioner during her telephone interview on for Food Assistance reported to the Department that her father pays her rent of \$ [REDACTED] monthly.
2. On [REDACTED], the Petitioner provided a written statement from her father that he gives her \$ [REDACTED] per month towards her bills. Exhibit B.
3. The Department added \$ [REDACTED] as in-home income and recalculated Petitioner's income and found Petitioner was eligible for MA subject to a spenddown of \$ [REDACTED] per month.

4. The Petitioner received Retirement, Survivors and Disability Insurance (RSDI) in the amount of \$ [REDACTED] in [REDACTED] and her RSDI will increase to \$ [REDACTED] in January 2017. Exhibit C.
5. The Department issued a Health Care Coverage Determination Notice (HCCDN) on [REDACTED], which advised the Petitioner that she was subject to a spenddown of \$ [REDACTED] monthly based upon her income. Exhibit A.
6. The Petitioner's MA spenddown for [REDACTED] is \$ [REDACTED] Exhibit D.
7. The Petitioner requested a timely hearing on [REDACTED], protesting the Department's action.

### 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, after a redetermination, determined that the Petitioner received assistance from her father for her rent in the amount of \$ [REDACTED]. This sum was reported by the Petitioner on [REDACTED], during an interview with her caseworker. Thereafter, the Petitioner's father provided a written, signed note to the Department on [REDACTED], advising that he provides her \$ [REDACTED] monthly towards her bills. Based upon the income information provided by the Petitioner, the Department recalculated the Petitioner's income eligibility for MA and imposed a deductible. A HCCDN issued [REDACTED], imposed a spenddown (deductible) in the amount of \$ [REDACTED] Exhibit A.

The issue in this case is whether the payment to the Petitioner by her father of \$ [REDACTED] for rent is unearned income or earned income (self-employment in home rental income) to the Petitioner. Apparently, the Department considered the payment by Petitioner's father as in-home rental income. Department policy found in BEM 504 considers the Income from Rental Room and Board and applies when a landlord rents out part of his own dwelling. BEM 504 provides:

Bridges counts the gross rent payment minus expenses as earned income from self-employment. Bridges allows the higher of the following:

- 60% of the rental payment.
- Actual rental expenses if the landlord chooses to claim and verify the expenses.

Based upon BEM 504, the Department reduced the \$ [REDACTED] paid by Petitioner's father to her to account for expenses by 60% of the rental amount received (\$ [REDACTED] and determined the income to be \$ [REDACTED] when calculating earned income in the spenddown budget. The Department determined the income based upon Petitioner's father's statement received by the Department on [REDACTED]. Exhibit B. There was no testimony that the Petitioner rents a room in her house to her father; and thus, the Department's using this policy in this manner and reducing the payments made by Petitioner's father by 60 % must be further verified as the treatment of this payment as in-home rental income is not supported by the evidence presented at the hearing. The Department must verify if Petitioner rents a room in her house or apartment to her father who then pays her rent. This is the only basis that the payment could be considered in home rental income.

In determining whether the payment made by Petitioner's father is income to Petitioner, the Department must also consider the following Department policy if it determines that the income is not in home rental income:

### **THIRD PARTY ASSISTANCE**

Payment of an individual's bills by a third party directly to the supplier using the third party's money is **not** income to the individual.

If the third party is paying the bill instead of paying money due the individual such as money owed for child support or owed on a loan, the payment is the individual's unearned income.

**Exceptions:** Exclude any portion of a payment that a court order or other legally binding agreement requires sending directly to an individual's creditor or service supplier.

Exclude voluntary spousal support used to pay the spouse's bill(s).

**Example:** Sally's ex-husband, Joe, pays Sally's rent. Joe uses his own money. Joe does **not** owe Sally any money. The payment is **not** income to Sally.

Thus, based upon the hearing summary, it appears that initially as reported to the Department, the Petitioner's father pays her rent. Based upon the above example, if the Petitioner's father pays her rent directly to her landlord, the payment is not income to the Petitioner. On the date of her hearing request, the Petitioner also provided another statement from her father that he pays Petitioner \$ [REDACTED] towards bills each month. This statement, although received on the same date as Petitioner's hearing request, was not acted upon by the Department in determining the Petitioner's spenddown on [REDACTED], in the amount of \$ [REDACTED]. Exhibit A, and see also Exhibits B and D. Further, this statement **does not** say that the Petitioner's father pays her in-home rental or that the money is paid by him as rent to Petitioner; instead, it says he gives the Petitioner \$ [REDACTED] each month for bills. The record did not establish that Petitioner lives with her father.

The Department provided a budget used to support its determination of the Petitioner's spenddown. The Budget presented was for a spenddown amount of \$ [REDACTED]. This spenddown was based upon the Petitioner's father letter that he pays petitioner \$ [REDACTED] towards bills each month. The Department's determination regarding whether the Petitioner's father's contributions to Petitioner should be considered income of Petitioner is the issue in this matter. The Department presented a budget, which was based upon the Petitioner's father's statement with regards to the \$ [REDACTED] payment made by Petitioner's father. BEM 541 requires that when calculating income other than unearned income the following calculation must be used:

#### **\$20 DISREGARD**

Subtract \$20 from the fiscal group's remaining unearned income. Subtract \$20 from the fiscal group's remaining earnings if there is no remaining unearned income.

#### **\$65 + 1/2 DISREGARD**

Disregard \$65 plus 1/2 of the fiscal group's remaining earnings. Use RFT 295 to determine this amount.

Based upon the review of the Department's budget offered to demonstrate that it correctly determined the correct spenddown, the budget presented is not correct as will be explained below. Exhibit D. Given the reported change by the Petitioner and the fact that the Department must verify the discrepancy in both amounts and how the money is paid to Petitioner, the Department must determine whether Petitioner's bills are paid directly by her father to the various suppliers; in which case, **the payments are not income to Petitioner**, or whether the money is paid directly to the Petitioner, **in which case, the payments would be unearned income to Petitioner**. Further, if it is

established that the Petitioner's father pays rent to her for in-home rental by him for rental of part of her home or apartment, then the income will be treated in accordance with BEM 504 and reduced by 60% for expenses associated with the rental as was done in the budget presented.

Determining how the payments are made by Petitioner's father, as well as, what they are paid for, will determine if the payment of money is income to Petitioner and what type of income. No evidence from the Department was presented as to whether the Department further verified the Petitioner's father statement and Petitioner's initial statement that her father paid her rent. Based upon Petitioner testimony at the hearing, it was not established whether her father lived with her and paid her rent for part of the premises; the Department must further verify the facts associated with the payments.

If the Petitioner's receipt of \$ [REDACTED] is paid directly to her as unearned income to pay her bills the amount of income, as determined by RFT 295 would be \$ [REDACTED] RFT 295, (December 1, 2013), p. 14. The Department's budget used total earned income of \$ [REDACTED] based upon in-home rental income of \$ [REDACTED] which was not established by the Department based upon the evidence presented. Thus, the budget presented is not supported by the evidence; and it was not established whether the income should be treated as in-home rental income as explained above or some other type of income. Therefore, it is determined that the Department has not met its burden of proof; and the budget must be recalculated; and the income received from Petitioner's father must be further verified as discussed above to determine if it is earned income from in-home rental, unearned income, or is not income because Petitioner's father pays her bills directly as explained above.

### 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 determined that the Petitioner's MA spenddown amount was \$ [REDACTED] as the Department did not satisfy its burden of showing that it acted in accordance with Department policy when making the income calculation in the budget. In addition, 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 did not verify further the father's statement about funds paid to Petitioner.

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 determine how the Petitioner receives the money paid by her father and whether her father pays the Petitioner's bills directly or pays her in-home rental due to living in her home.
2. Based upon the verification, the Department shall redetermine the Petitioner's MA Deductible spenddown amount in accordance with Department policy.
3. The Department shall provide the Petitioner written notice of its determination.

LMF/jaf



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**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]

[REDACTED]