



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: February 16, 2017
MAHS Docket No.: 17-000351
Agency No.: ██████████
Petitioner: ██████████

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 February 9, 2017, from Detroit, Michigan. The Petitioner was present at the hearing and provided testimony. Petitioner's father, ██████████, was also present at the hearing. The Department of Health and Human Services (Department) was represented by ██████████ ██████████ Family Independence Manager.

ISSUES

Whether the Department properly determined that Petitioner is not eligible for the Healthy Michigan Plan (HMP) coverage effective January 1, 2017?

Whether the Department properly determined that Petitioner is not eligible for other Medical Assistance (MA) coverage effective January 1, 2017?

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 ongoing recipient of HMP coverage
2. Petitioner is 41-years-old, her household size is three (two minor children plus Petitioner), and her tax composition is three because she claims her two children as tax dependents.

3. Petitioner and her two children each receive ██████ in monthly Retirement, Survivors, Disability Insurance (RSDI) income, resulting in a total of ██████ of Social Security benefits the household receives.
4. Petitioner also receives biweekly employment earnings, which fluctuate. Exhibit A, pp. 5-6.
5. On December 21, 2016, the Department sent Petitioner a Health Care Coverage Determination Notice (determination notice) notifying her that she was not eligible for MA benefits effective January 1, 2017 because she was not under 21, pregnant, a caretaker of a minor child in her home, not over 65 (aged), blind or disabled. Exhibit A, p. 4.
6. The determination notice failed to inform Petitioner that she was found not eligible for HMP coverage due to excess income.
7. Petitioner is ineligible for HMP coverage due to excess income.
8. On January 4, 2017, Petitioner filed a hearing request, protesting the Department's action. 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 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

Based on Petitioner's hearing request and testimony, the undersigned Administrative Law Judge (ALJ) will address her following concerns: (i) whether the Department properly determined that Petitioner is not eligible for HMP coverage effective January 1, 2017; and (ii) whether the Department properly determined that Petitioner is not eligible for other MA categories effective January 1, 2017.

HMP coverage

The Healthy Michigan Plan (HMP) is based on Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (October 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) Cost Sharing.

BEM 137, p. 1.

In the present case, the Department claimed that Petitioner was not eligible for HMP coverage effective January 1, 2017 due to excess income. It is undisputed that Petitioner's household composition for purposes of MAGI-related coverage is three. In order to be eligible for HMP coverage, Petitioner's income must be at or below 133% of the FPL for a household size of three (Petitioner plus her two children). The 2016 Poverty Guidelines indicated that the poverty guidelines for persons in family/household size of three is [REDACTED] 2016 Poverty Guidelines, *U.S. Department of Health & Human Services*, April 25, 2016, p. 1. Available at: <https://aspe.hhs.gov/computations-2016-poverty-guidelines>. However, the poverty guidelines for a household size of three 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] multiplied by 1.33) of the FPL for a household size of three. For monthly eligibility, the income must be at or below [REDACTED] for a household size of three (\$ [REDACTED]).

Then, it must be determined whether Petitioner's income is countable. In this case, Petitioner's employment earnings and their RSDI income are countable sources of income for MAGI related determinations. MAGI Related Eligibility Manual, *Michigan Department of Community Health* (DCH), May 2014, p. 16. Available at http://michigan.gov/documents/mdch/MAGI_Manual_457706_7.pdf.

Next, the undersigned ALJ will review the income the Department used to make its determination that her income exceeded the limits. The undersigned ALJ, though, will not even review the Petitioner's employment earnings because her household's RSDI income alone makes her ineligible for HMP coverage.

Medicaid eligibility is determined on a calendar month basis. BEM 105 (October 2016), 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 the Department properly determined that Petitioner was not eligible for HMP benefits effective January 1, 2017. The evidence established that the household's monthly RSDI income is [REDACTED]. This RSDI income of [REDACTED] exceeds the monthly eligibility of [REDACTED] for HMP purposes. Furthermore, if the undersigned ALJ takes the monthly RSDI income amount of [REDACTED] and multiplies it by 12 months, the result is an annual income of [REDACTED]. The household's annual RSDI income would also exceed the annual HMP income limit of [REDACTED] for a household size of three. As such, the Department acted in accordance in Department policy when it determined that Petitioner was not eligible for HMP benefits effective January 1, 2017, due to excess

income. See BEM 105, p. 2; BEM 137, p. 1; BEM 500, pp. 3-4; 42 CFR 435.603(h)(1) to (3); and MAGI Related Eligibility Manual, pp. 1-51.

It should be noted that the determination notice dated December 21, 2016, failed to properly inform Petitioner that she was found not eligible for HMP coverage effective January 1, 2017 due to excess income. However, the undersigned ALJ finds this to be harmless error because Petitioner is clearly not eligible for HMP coverage due to excess income.

Other MA categories

Even though Petitioner is not eligible for HMP coverage, there are other MA categories available to Petitioner. The determination notice stated that Petitioner was not eligible for MA coverage effective January 1, 2017 because she was not a caretaker of a minor child in her home. Exhibit A, p. 4. This is incorrect. Petitioner is a caretaker of her two minor children, which means that she might be eligible for other MA categories, including MA – Group 2 Caretaker Relatives (G2C) coverage. G2C is available to parents and other caretaker relatives who meet the eligibility factors. BEM 135 (October 2015), p. 1. Furthermore, policy clearly states that an ex parte review is required before Medicaid closures when there is an actual or anticipated change, unless the change would result in closure due to ineligibility for all Medicaid. BEM 105, p. 5. When possible, an ex parte review should begin at least 90 days before the anticipated change is expected to result in case closure. BEM 105, p. 5. The review includes consideration of all MA categories. BEM 105, p. 5. What the above policy means is, even if she is not eligible for HMP coverage, she might be eligible for other MA categories when an ex parte review is completed. However, as shown above, the undersigned ALJ finds that the Department failed to conduct a proper ex parte review of her eligibility for other MA categories, i.e., G2C eligibility. Accordingly, the Department will redetermine Petitioner's MA eligibility for the most beneficial MA category she is eligible to receive for January 1, 2017 in accordance with Department policy. See BEM 135, pp. 1-7.

It should be noted that the Department conducted subsequent actions that resulted in Petitioner being eligible for a deductible program. However, the Department failed to present any documented evidence showing that she was found eligible for a deductible program. Moreover, the actions taken by the Department were conducted subsequent to her hearing request, which the undersigned ALJ lacks the jurisdiction to address. Thus, the Department will redetermine her MA eligibility effective January 1, 2017.

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 (i) the Department properly determined that Petitioner is not eligible for HMP coverage effective January 1, 2017, due to excess income; and (ii) the Department failed to conduct a proper ex parte

review of her case to determine if she is eligible for other MA categories effective January 1, 2017, resulting in an improper closure of MA benefits.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to HMP coverage and **REVERSED IN PART** with respect to the ex parte review of her eligibility for other MA categories.

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 MA eligibility effective January 1, 2017;
2. Issue supplements to Petitioner for any MA benefits she was eligible to receive but did not from January 1, 2017, ongoing; and
3. Notify Petitioner of its decision.

EF/tm



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]
[REDACTED]
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CC:

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