



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: February 17, 2017  
MAHS Docket No.: 17-[REDACTED] and  
16-[REDACTED]  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Darryl Johnson

### **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 three-way telephone hearing was held on February 15, 2017, from Lansing, Michigan. The Petitioner was represented by herself and her husband, [REDACTED]. The Department of Health and Human Services (Department) was represented by Family Independence Specialist [REDACTED] and General Services Program Manager [REDACTED].

Hearing requests were submitted by Petitioner on two dates. Two hearings were scheduled (Docket Numbers stated above). The cases were consolidated into one hearing, and one Decision will be issued.

### **ISSUE**

Did the Department properly determine Petitioner's eligibility for Medical Assistance (MA)?

In her Hearing Request (Exhibit B Page 3) Petitioner checked boxes which suggested she was requesting a hearing on action regarding her Food Assistance Program (FAP). At the beginning of the hearing, Petitioner stated on the record that she was not contesting any action taken with respect to her FAP.

### **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 on-going MA recipient.
2. Petitioner and her husband live with two of their children at the same address.
3. Petitioner and her husband file their tax returns as “married filing jointly” and claim their two youngest children, who live with them, as dependents.
4. The group’s monthly income includes the following:
  - a. Husband - \$ [REDACTED] disability benefits (Exhibit B Page 4)
  - b. Petitioner - \$ [REDACTED] disability benefits (Exhibit B Pages 7-8)
  - c. Child One - \$ [REDACTED] Supplemental Security Income (SSI) and \$ [REDACTED] Retirement, Survivor’s and Disability Income (RSDI) (Exhibit B Pages 10-11)
  - d. Child Two - \$ [REDACTED] RSDI
5. On November 29, 2016, the Department mailed a Verification Checklist (Exhibit A, Pages 4-5), with responses due to verify her checking account by December 9, 2016.
6. On November 29, 2016, the Department also mailed a Health Care Coverage Determination Notice (Exhibit A Pages 6, 8, and 9), informing Petitioner that Petitioner and her husband were not eligible for MA due to excess income, based upon Petitioner’s annual income of \$ [REDACTED] and her husband’s annual income of \$ [REDACTED]
7. On December 5, 2016, and January 13, 2017, the Department received hearing requests from Petitioner, protesting the MA closure.

### **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 household is made up of four people, each of whom receives unearned income. Combined, the income totals \$ [REDACTED] per month.

Petitioner testified that her husband will often leave home and she does not know where he goes. She implied that he was gone much more than he was at home. She said that she sees him “a few times a month.” Her position was that his income should not be counted for the purpose of determining her eligibility for MA since he does not live at home.

When she was asked when she last saw him, she said, “Yesterday.” When questioned further, she said that she saw him around 12:30 when he brought their daughter home from school. She was asked when he left, and then she said that he had not left. It turned out that he was still at the home. That conflicts with her sworn testimony that she last saw him “yesterday.” Petitioner was instructed to put her husband on the phone, which she did. He was sworn in and then questioned. He testified that he does leave home and, because of migraines and other issues, he will sometimes sleep in his vehicle. He could not say how many nights he spent in the home over the past two weeks, but he testified that he considers their home to be his residence. He said that they filed their tax return this year, “married, filing jointly.”

BEM 500 (1/1/16) is the “Income Overview” policy that governs many programs, including MA. As explained at page 4 of BEM 500, “MAGI for purposes of Medicaid eligibility is a methodology which state agencies and the federally facilitated marketplace (FFM) must use to determine financial eligibility. It is based on Internal Revenue Service (IRS) rules and relies on federal tax information to determine adjusted gross income. It eliminates asset tests and special deductions or disregards.

“Every individual is evaluated for eligibility based on MAGI rules. 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.”

Countable income is defined also. “Income remaining after applying the policy in the income related items is called **countable**. This is the amount used to determine eligibility and benefit levels. Count all income that is **not** specifically excluded.” The definition for unearned income is “all income that is not earned.” “Gross income” is defined as “the amount of income before any deductions such as taxes or garnishments. This may be more than the actual amount an individual receives.”

A separate manual, BEM 503 (1/1/17), addresses unearned income. At page 28 it states, “RSDI is a federal benefit administered by the Social Security Administration that is available to retired and disabled individuals, their dependents, and survivors of deceased workers. Bridges counts the gross benefit amount as unearned income.”

When determining the MA budget, “Bridges excludes the amount of current SSA-issued SSI as income.” The household income includes \$ [REDACTED] in SSI that Child One receives from the Social Security Administration (SSA). When that is removed, the household is

left with \$ [REDACTED] per month in unearned income. The income limit for a household of four, with members between 19 and 64 years of age is \$ [REDACTED] annually, which is the same as \$ [REDACTED] per month. Petitioner's income is well-above the income limit. If a household member is between the age of 1 and 18 years, the limit is \$ [REDACTED] per year, or \$ [REDACTED] per month. Again, the household income is above the limit.

It will be noted that the hearing packet (Exhibit A) has short-comings. Pages were out of order, and pages were missing. Those short-comings make the review of the case unnecessarily difficult. The Health Care Coverage Determination Notice from November 29, 2016 had five pages, but the Department included only the first three pages, and pages 1-3 were marked and included in the packet in the following order, as Exhibit Pages 6, 10, and 8. More care needs to be taken when preparing the packet. Also, the hearing summary (Exhibit A, Page 1) says that Petitioner's MA was changed to include "a deductible beginning 01/01/17. The deductible amount is \$ [REDACTED]. There is nothing in the packet that shows how that deductible was calculated, or how they informed Petitioner that she was subject to such a deductible.

The burden is on the Department to show that it properly closed Claimant's MA.

When the Department presents a case for an administrative hearing, policy allows the Department to use the hearing summary as a guide when presenting the evidence, witnesses and exhibits that support the Department's position. See BAM 600 (10/1/16), page 9. But BAM 600 also requires the Department to **always** include the following in planning the case presentation: (1) an explanation of the action(s) taken; (2) a summary of the policy or laws used to determine that the action taken was correct; (3) any clarifications by central office staff of the policy or laws used; (4) the facts which led to the conclusion that the policy is relevant to the disputed case action; (5) the DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. See BAM 600 at page 36. This implies that the Department has the initial burden of going forward with evidence during an administrative hearing.

Placing the burden of proof on the Department is a question of policy and fairness, but it is also supported by Michigan law. In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167; 405 NW2d 88 (1987), the Michigan Supreme Court, citing *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 (1979), said:

The term "burden of proof" encompasses two separate meanings. 9 Wigmore, Evidence (Chadbourn rev), § 2483 et seq., pp 276 ff.; McCormick, Evidence (3d ed), § 336, p 946. One of these meanings is the burden of persuasion or the risk of nonpersuasion.

The Supreme Court then added:

The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the

issue has not been produced. It is usually cast first upon the party who has pleaded the existence of the fact, but as we shall see, the burden may shift to the adversary when the pleader has his initial duty. The burden of producing evidence is a critical mechanism in a jury trial, as it empowers the judge to decide the case without jury consideration when a party fails to sustain the burden.

The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced. See *McKinstry*, 428 Mich at 93-94, quoting McCormick, Evidence (3d ed), § 336, p 947.

In other words, the burden of producing evidence (i.e., going forward with evidence) involves a party's duty to introduce enough evidence to allow the trier of fact to render a reasonable and informed decision. Thus, the Department must provide sufficient evidence to enable the Administrative Law Judge to ascertain whether the Department followed policy in a particular circumstance.

Based upon the analysis above, it appears that the Department was correct when it closed Petitioner's MA, but the evidence submitted is insufficient to determine whether the Department properly provided her with MA with a \$ [REDACTED] deductible.

### **DECISION AND ORDER**

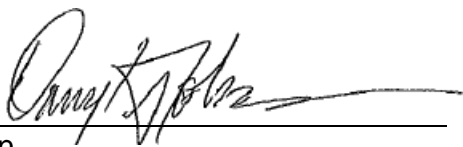
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the failed to satisfy its burden of showing that it acted in accordance with Department policy when it imposed a \$ [REDACTED] deductible on Petitioner's MA.

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. Redetermine Petitioner's MA eligibility beginning January 1, 2017.

DJ/nr

  
\_\_\_\_\_  
Darryl Johnson  
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]