



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: May 5, 2017  
MAHS Docket No.: 17-003332  
Agency No.: ██████████  
Petitioner: ██████████

**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 ██████████ from Detroit, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by ██████████ Eligibility Specialist, and ██████████, Family Independence Manager.

**ISSUE**

Did the Department properly close the Petitioner's Healthy Michigan Plan (HMP) Medical Assistance (MA) benefits?

**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 was an ongoing recipient of MA through the HMP.
2. The Petitioner completed a Redetermination for ██████████, which was received by the Department on ██████████. The Petitioner reported annual income of \$██████████. This income was due to a capital gains distribution from the mutual fund. Exhibit A, p. 8.
3. As part of the redetermination, the Petitioner provided the Department a tax reporting document from ██████████ showing total proceeds from fund withdrawals from the mutual fund in the amount of \$██████████ (total proceeds) Exhibit A, p. 13.

4. The Petitioner has an investment account from which he withdraws approximately \$ [REDACTED] monthly for his personal use. The withdrawal is accomplished pursuant to Petitioner's sale of mutual funds shares. Exhibit B, p. 13.
5. The Petitioner also provided his [REDACTED] Federal Income Tax Return - Form 1040 to the Department with the Redetermination. The 1040 reported \$ [REDACTED] in income from capital gains, and taxable interest, \$ [REDACTED] Exhibit C, pp. 18-21. The Petitioner also provided the Department with his State of Michigan Tax Return for [REDACTED] Form 1040, which reported the same income. Exhibit D, p. 25.
6. The Department included as countable income the monthly withdrawals from the Petitioner's investment account when determining the Petitioner's ongoing eligibility for HMP.
7. On [REDACTED] [REDACTED] [REDACTED], the Department issued a Health Care Coverage Determination Notice, (Notice) closing the Petitioner's HMP due to excess income. The Department's Notice reported \$ [REDACTED] in total countable income was used to make its determination. Exhibit E.
8. The Petitioner's mutual fund account worth is \$ [REDACTED]
9. The Petitioner requested a timely hearing on [REDACTED], protesting the Department's closure of his HMP MA.

### **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 closed the Petitioner's MA benefits for HMP due to excess income. Exhibit E. The Department, received the Petitioner's Redetermination on [REDACTED], and sought a Policy clarification from the Department unit which reviews MA issues. The Department sought clarification about whether the cash withdrawn from Petitioner's mutual fund should be treated as income produced by an asset, similar to an annuity, or in the alternative, whether the withdrawals should be considered assets converted from one form to another and therefore excluded. Exhibit F.

The Policy unit responded to the Department's caseworker's request for clarification and guidance by email on [REDACTED]. The response stated: "Typically, for MAGI related Medicaid, this would be considered income in the month received. Please see training below for OWDT, which is a great resource. Please refer to slide 4 regarding Lump Sum Payments." (Office of Workforce Development & Training (OWDT))

MA is available (i) to individuals who are aged (65 or older), blind or disabled under Supplemental Security Income (SSI)-related categories, (ii) to individuals who are under age 19, parents or caretakers of children, or pregnant or recently pregnant women, and (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage. BEM 105 (January 2016), p. 1.

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. BEM 500 (January 1, 2016), p. 4, (Emphasis supplied).**

HMP is a MAGI-related MA category that provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income at or below 133% of the federal poverty level (FPL) under the Modified Adjusted Gross Income (MAGI) methodology; (iii) do not qualify for or are not enrolled in Medicare; (iv) do not qualify for or are not enrolled in other MA programs; (v) are not pregnant at the time of application; and (vi) are residents of the State of Michigan. BEM 137 (January 2016), p. 1.

After a review of Department policy and the evidence presented at the hearing, it is determined that the Department improperly closed the Petitioner's HMP due to excess income because the withdrawals from the mutual fund by Petitioner was not income received by him. The mutual fund was an asset and the withdrawals were not income from the fund as will be explained below.

The Petitioner credibly testified that his mutual fund was made up from his savings he derived over the years from his after tax earned income. Thus, the funds placed with the mutual fund were already taxed. The Petitioner testified that the transactions he completed monthly, converted his mutual fund share into cash. The issue to be determined is whether the mutual fund distributions were income, or should they be considered assets and as such not considered when determining HMP eligibility.

A mutual fund is a regulated investment company generally created by "pooling" funds of investors to allow them to take advantage of a diversity of investments and professional management.

Dividends are distributions of money, stock or other property paid by a corporation or by a mutual fund. IRS Publication 550 (2016), Investment Income found online at:

[https://www.irs.gov/publications/p550/ch01.html#en\\_US\\_2016\\_publink100010124](https://www.irs.gov/publications/p550/ch01.html#en_US_2016_publink100010124)

The following references are all taken from the IRS Publication 550 for 2016 and are specific to the sections in bold print from that publication which can be accessed from that link under the topic in bold.

### **Dividends and other Distributions**

The most common kinds of distributions from mutual funds are:

- Ordinary dividends,
- Capital gain distributions, and
- Nondividend distributions.

Ordinary dividends are the most common type of distribution from a corporation or a mutual fund. They are paid out of earnings and profits and are ordinary income to you. This means they are not capital gains. You can assume that any dividend you receive on common or preferred stock is an ordinary dividend unless the paying corporation or mutual fund tells you otherwise. Ordinary dividends will be shown in box 1a of the Form 1099-DIV you receive. See Exhibit B.

**Dividends that are not qualified dividends.** The following dividends are not qualified dividends. They are not qualified dividends even if they are shown in box 1b of Form 1099-DIV.

- Capital gain distributions.

### **Capital Gain Distributions**

Capital gain distributions (also called capital gain dividends) are paid to you or credited to your account by mutual funds (or other regulated investment companies) and real estate investment trusts (REITs). They will be shown in box 2a of the Form 1099-DIV you receive from the mutual fund or REIT. See Exhibits B and C.

Most distributions are paid in cash (check). However, distributions can consist of more stock, stock rights, other property, or services. IRS Publication 550 (2016)

There are many types of dividends, ordinary (taxable) dividends are the most common type of distribution from a mutual fund. They are paid out of earnings and profits and are ordinary income to you. This means they are not capital gains. Capital gains distributions are not ordinary or qualified dividends.

In this case, the Department determined that the cash taken out of the mutual fund by the Petitioner every month was income to him. The cash in a mutual fund is no different than cash in a savings or checking account. The invested funds are managed by the mutual fund, and when withdrawn were not taxed as income. The Petitioner in this case received a capital gains distribution (income), which he had to pay taxes on; but the income or gain was based upon the gain or loss in value of the shares sold. Tax is paid only on the increase in value of the share in the fund realized when sold, based upon an

increase or decrease in value of the mutual fund share when sold as compared to the value of the share when purchased by the mutual fund. See Exhibit B, pp. 13-14. In this case, the Petitioner realized a capital gain distribution of \$ [REDACTED] on the distributions he received in [REDACTED] from the mutual fund. Exhibit B, pp. 12 and 13. Thus, based on the capital gain, the Petitioner must pay taxes on the \$ [REDACTED] gain realized in [REDACTED] from the distributions received from the mutual fund for [REDACTED].

The Petitioner's [REDACTED] Schedule D of his 1040 Federal Tax Return demonstrates this principle further. The Petitioner had proceeds from the mutual fund distribution of \$ [REDACTED] which initially cost \$ [REDACTED]. Thus, the Petitioner had a loss of \$ [REDACTED] on the total distribution. ( $\$ [REDACTED] - \$ [REDACTED] = \$ [REDACTED]$ ). The capital gain distribution on the distribution by the mutual fund was \$ [REDACTED] as reported by the fund [REDACTED]. Exhibit B. The loss of \$ [REDACTED] was deducted from the capital gain distribution and left \$ [REDACTED] in income.

The Petitioner's monthly withdrawals from the mutual fund are no different than the withdrawal from a checking or savings account. The checking account value is a cash asset, and the withdrawal from the asset is cash. The withdrawal is not income to the owner of the checking account. The same is true for the mutual fund in this instance. Because the mutual fund is an asset with a cash value, the funds distributed to the Petitioner in the form of cash is also an asset not income. See BEM 400

**Assets** mean:

- Cash (see Cash in this item).
- Personal property. **Personal property** is any item subject to ownership that is not real property (examples: currency, savings accounts and vehicles).
- Real property. **Real property** is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. BEM 400 (January 1, 2017), p. 1

Thus, it is determined that the distributions taken by Petitioner were not income; and the only income was from the capital gain distribution made by the mutual fund for [REDACTED] in the amount of \$ [REDACTED]. The distributions themselves of the cash were not income to the Petitioner. The mutual fund has a cash value just like a checking or savings account; thus, the asset is converted to cash when the cash equivalent of the mutual fund is distributed. In essence the distribution of the mutual fund is an item sold for cash and is still an asset; it was just converted from one type of asset to another. BEM 400. As HMP does not have an asset test, the distributions are cash derived from one asset to another asset, not income, and cannot be used to disqualify the Petitioner as there is no asset test for HMP. The Healthy Michigan Plan does not have an asset test. BEM 137, p. 3 (emphasis supplied). Thus, the only other requirement which must be met by Petitioner is whether the Petitioner's income met the HMP limit in effect at the time of the redetermination.

The determination by the Department for financial eligibility for HMP must be based upon income received in [REDACTED] by Petitioner as reported on his tax return.

To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500 (January 2016), p. 3. Income is verified via electronic federal data sources in compliance with MAGI methodology. MREM, § 1. In determining an individual's eligibility for MAGI-related MA, 42 CFR 435.603(h)(2) provides that for current beneficiaries and "for individuals who have been determined financially-eligible for Medicaid using the MAGI-based methods . . . , a State may elect in its State plan to base financial eligibility either on current monthly household income . . . or income based on projected annual household income . . . for the remainder of the current calendar year."

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% Federal Poverty Level (FPL).Cost Sharing.

BEM 137 (October 1, 2016), p. 1

The Healthy Michigan Plan does not have an asset test. BEM 137, p. 3, (emphasis supplied). Thus, the only other requirement which must be met by Petitioner was whether the Petitioner's income met the HMP limit in effect at the time of the redetermination.

For HMP income eligibility the Modified adjusted gross income must be at or below 133 percent of the Federal Poverty Level (FPL). BEM 137, p. 3.

In conclusion, the Petitioner's income as determined by Internal Revenue Service rules and on federal tax information and Petitioner's [REDACTED] 1040 Tax Return of \$ [REDACTED] for [REDACTED] did not exceed the HMP limit in effect for a group of one member which was \$ [REDACTED] and thus, it is determined that the Department improperly closed the Petitioner's MA HMP case.

**DECISION AND ORDER**

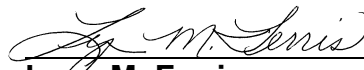
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it closed the Petitioner's HMP MA due to excess income.

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 reinstate the Petitioner's HMP effective [REDACTED], and reprocess the Petitioner's redetermination.
2. 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

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]

**DHHS**

[REDACTED]  
  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
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