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: July 24, 2017
MAHS Docket No.: 17-006265
Agency No.: [redacted]
Petitioner: [redacted]

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; 42 CFR 438.400 to 438.424; 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. Petitioner was present for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by [redacted], Eligibility Specialist, and [redacted] Assistance Payments Supervisor.

ISSUES

1. Did the Department properly calculate Petitioner's annual income for purposes of Modified Adjusted Gross Income (MAGI)-related Medicaid (MA) coverage?

2. Did the Petitioner show that the Department failed to properly determine her copay amount and/or the amount of contributions under the Healthy Michigan Plan (HMP)?

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 active for health care benefits and enrolled in HMP coverage in which she was required to pay for copays and contributions. [Exhibit B, p. 1, and Exhibit 1, pp. 1-13.]

2. On or about [redacted], Petitioner submitted her redetermination (DHS-1010). In the redetermination, she reported her gross biweekly income to be $[redacted] and that she worked [redacted] hours per bi-weekly pay period. She also indicated that she is a substitute teacher and her income is different every month. She selected for the

next year to have the Department automatically renew her health care coverage eligibility. [Exhibit A, pp. 6-11, and Exhibit B, p. 8.]

3. The Department found Petitioner responsible for copays and contributions for her HMP coverage. [Exhibit B, p. 8.]

4. On [redacted], the Department sent Petitioner a Health Care Coverage Determination Notice (determination notice) notifying her that she was approved for HMP coverage effective [redacted], ongoing. The determination notice also did not disclose the annual income amount the Department used to calculate eligibility. [Exhibit B, pp. 1 and 4-6.]

5. Petitioner's adjusted gross income for her [redacted] tax filings was $[redacted] [Exhibit A, p. 12.]

6. Petitioner's household composition for purposes of MAGI-related MA coverage was one. [Exhibit A, p. 44.]

7. On [redacted], Petitioner received a MI Health Account Statement, which indicated that she owed a total of $[redacted] in copays and contributions for the next three months and with the first payment due on [redacted]. The statement indicates, "[y]ou will not pay more than [redacted] of your income for your coverage." The bottom of the MI Health Account Statement directed recipients to call a Beneficiary Help Line (1-800 number) for questions. [Exhibit 1, pp. 1-2.]

8. Petitioner sought assistance with her copays and contributions from the Department but to no avail.

9. In [redacted], Petitioner received a letter from the Department, which stated that her costs for health coverage through HMP are changing. The letter stated starting on [redacted], copayment amounts are going up for some HMP members; and people with incomes above a certain amount, known as the federal poverty level (FPL), will pay higher copays. The letter provided a spreadsheet of the increased costs. [Exhibit 1, p. 4.]

10. On [redacted], Petitioner received another MI Health Account Statement, which indicated that she owed a total of $[redacted] in copays and contributions for the next three months and with the first payment due on [redacted]. The MI Health Account Statement provided the same Beneficiary Help Line contact number for questions. [Exhibit 1, pp. 5-6.]

11. Because Petitioner selected to have her health care coverage automatically renewed for the next year in the [redacted] redetermination, the Department redetermined her eligibility for HMP coverage in [redacted].

12. On [redacted], the Department sent Petitioner a determination notice notifying her that she was approved for HMP coverage effective [redacted], ongoing; and the form reported her total countable annual income to be $[redacted] [Exhibit A, pp. 43-45.]

13. On [redacted], 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 matters

Based on Petitioner's hearing request and testimony, she disputed the following: (i) the amount of her copays and contributions (hereinafter referred to as "cost-sharing obligations," BEM 137 (October 2016), p. 1) dating back to [redacted] and (ii) the calculation of her annual income of $[redacted] effective [redacted].

In regards to Petitioner's dispute with the calculation of her cost-sharing obligations dated between [redacted] and [redacted] the undersigned Administrative Law Judge (ALJ) lacks the jurisdiction to address her benefits dating back to this time period. As part of the evidence record, Petitioner presented a MI Health Account Statement generated on [redacted], which informed her that she owes cost-sharing obligations, with the first payment due on [redacted]. [Exhibit 1, pp. 1-2.] This statement was the earliest documentation Petitioner provided showing that she owed cost-sharing obligations. Petitioner failed to present any evidence showing that she owed any cost-sharing obligations prior to the [redacted], statement. As such, the undersigned will not address any of Petitioner's alleged cost-sharing obligations prior to the [redacted], statement, but will address Petitioner's concerns for her cost-sharing obligations beginning [redacted]. Furthermore, the undersigned will address Petitioner's concerns regarding the calculation of her annual income effective [redacted].

Overview of Cost-Sharing Obligations and MAGI Income Policy

Petitioner is a MA recipient under the HMP, which is based on Modified Adjusted Gross Income (MAGI) methodology. BEM 137, p. 1. HMP 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.

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).

BEM 137, p. 1.

HMP has beneficiary cost-sharing obligations. BEM 137, p. 1. Cost sharing includes copays and contributions based on income, when applicable. BEM 137, p. 1. HMP beneficiaries, who are exempt from cost-sharing requirements by law, are exempt from HMP cost-sharing obligations. BEM 137, p. 2. Similarly, services that are exempt from any cost sharing by law, such as preventive and family planning services, are also exempt for beneficiaries. BEM 137, p. 2.

Copayments for services may apply to HMP beneficiaries. BEM 137, p. 1. Copayments may be required and due at the point of service for office visits, pharmacy, inpatient hospital stays, outpatient hospital visits, and non-emergency visits to the Emergency Department for beneficiaries age 21 years and older. BEM 137, p. 2. Copays are collected at the point of service, with the exception of chronic conditions and preventive services. BEM 137, p. 1.

HMP beneficiaries at 100% to 133% of the FPL are required to pay a monthly contribution into a MI Health Account. See Michigan Department of Community Health (DCH) – Medical Services Administration (MSA) bulletin no. MSA 14-11, February 27, 2017, p. 4. Available at http://www.michigan.gov/documents/mdch/blank_page_448984_7.pdf. The contribution will be required after the first six months of enrollment and will be based on 2% of the HMP beneficiary's annual income. See MSA bulletin no. 14-11, p. 4. If a MI Health Account is maintained for a HMP managed care member, cost-sharing obligations, which include copays and additional contributions based on a beneficiary's income level, will be satisfied by and monitored through the MI Health Account by the health plan. BEM 137, p. 2.

In determining whether the HMP beneficiary is subject to cost-sharing obligations, a determination of Petitioner's annual income must best conducted in compliance with MAGI methodology.

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, pp. 3-4.

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; see also MAGI Related Eligibility Manual, *Michigan Department of Community Health* (DCH), May 2014, p. 13. Available at http://michigan.gov/documents/mdch/MAGI_Manual_457706_7.pdf.

In this case, Petitioner's issues concerns her annual income calculation and the determination of her cost sharing obligations.

MAGI Annual Income

On [redacted], the Department sent Petitioner a determination notice notifying her that she was approved for HMP coverage effective [redacted] ongoing; and the form reported her total countable annual income to be $[redacted] [Exhibit A, pp. 43-45.] Petitioner disputed the calculation of her annual income and on [redacted], she provided proof of her income to the Department. [Exhibit A, p. 1.] On [redacted], the Department sent Petitioner a Benefit Notice notifying her that her income had been adjusted to a gross annual income of $[redacted] [Exhibit A, pp. 46-47.] However, the Benefit Notice failed to indicate if the adjustment to her income was applied retroactively to [redacted]. It was further discovered that the Department again recalculated her annual income to be $[redacted] because it matched her [redacted] tax return. [Exhibit B, pp. 10-11 (Department's e-mail correspondence with "MDHHS Application Support").] But there was no evidence presented showing if another notice was issued to Petitioner informing her that her annual income was adjusted to $[redacted] effective [redacted]. As such, the undersigned finds that the Department failed to satisfy its burden of showing that it properly calculated her annual income at redetermination effective [redacted], in accordance with Department policy. The Department is ordered to redetermine and recalculate Petitioner's income for MAGI-related MA coverage effective [redacted], ongoing.

Cost-Sharing Obligations

The second issue presented is whether the Department properly determined Petitioner's cost-sharing obligations under HMP coverage effective [redacted].

At the hearing, Petitioner indicated that she had requested a hearing to challenge an alleged incorrect cost-sharing obligations that had been assessed on her HMP case. Petitioner provided a MI Health Account Statement dated [redacted], which indicated that she has cost-sharing obligations, with the first payment due on [redacted]. [Exhibit 1, pp. 1-2.] Petitioner indicated that she sought assistance with her cost-sharing obligations from the Department but to no avail.

Additionally, the undersigned asked Petitioner if she received from her health plan provider any notices to appeal her cost-sharing obligations, such as an "Adverse Benefit Determination" or a "Notice of Resolution," but she denied ever receiving such notices. Petitioner's only remedy to dispute the cost-sharing obligations at the time was to contact the 1-800 Help Line and/or the Department.

Pursuant to 42 CFR 431.201, MA applicants and beneficiaries have a right to a Medicaid hearing as a result of an action, which means a reduction, suspension,

termination or denial of Medicaid eligibility or covered service. A managed care organization (MCO) which services HMP beneficiaries, must give an HMP beneficiary timely written notice of an adverse benefit determination, which includes "[t]he denial of an enrollee's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other enrollee financial liabilities." 42 CFR 438.400(b)(7). Upon receipt of such a notice, the HMP beneficiary is entitled to appeal the adverse benefit determination and to have the MCO timely respond to the appeal. 42 CFR 438.408(a) and (b)(1)-(2). If the MCO fails to adhere to the timeframe, the HMP enrollee is deemed to have exhausted her appeals process and the enrollee may initiate a State fair hearing. 42 CFR 438.408(c)(3) and (f)(1)(i).

Here, there is no dispute that Petitioner is entitled to a fair hearing. The undersigned finds that Petitioner is deemed to have exhausted her appeals process because she was not notified by the MCO how she could appeal the cost-sharing decision and received no assistance to her inquiries. Therefore, Petitioner has been unable to resolve her issues concerning the cost-sharing obligations; and she is entitled to request a State fair hearing under 42 CFR 438.408(c)(3) and (f)(1)(i).

In this case, Petitioner provided credible testimony and evidence showing that she was responsible for cost-sharing obligations as early as [redacted] and disputed these amounts. In fact, Petitioner provided her MI Health Account Statement dated [redacted], which showed the amount she owed for her cost-sharing obligations beginning in [redacted]. [Exhibit 1, pp. 1-2.] Petitioner argued that she has been unable to resolve her issue.

In response, the Department failed to present sufficient evidence and testimony showing how the cost-sharing obligations were calculated or why there is a proper basis for her cost-sharing obligations.

As stated above, Petitioner is entitled to a fair hearing to dispute her cost-sharing obligations. However, the Department failed to satisfy its burden of showing that it properly determined Petitioner's cost-sharing obligation under the HMP coverage effective [redacted], ongoing. The undersigned has carefully considered and weighed the testimony and other evidence in the record. BAM 600 indicates that the undersigned must determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600 (April 2017), p. 36. As such, the undersigned finds that the Department failed to show that it acted in accordance with Department policy when it determined Petitioner's cost sharing obligations effective [redacted]. Therefore, the Department is ordered redetermine and recalculate Petitioner's HMP cost-sharing obligation amounts going back to [redacted].

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 failed to show that it properly calculated Petitioner's annual income at redetermination for purposes of her MAGI-related MA eligibility effective [redacted]; and (ii) the

Department failed to properly determine Petitioner's cost sharing obligations for purposes of her HMP benefits case effective [redacted].

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 and recalculate Petitioner's HMP cost sharing obligation amounts going back to [redacted];

2. Redetermine and recalculate Petitioner's income for MAGI-related MA coverage effective [redacted], ongoing;

3. After the Department redetermines and recalculates the above, the Department shall issue Petitioner written communication detailing its findings; and

4. To the extent required by policy, the Department shall provide Petitioner with retroactive and/or supplemental benefits.

EJF/jaf

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]

Petitioner [redacted]