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: August 30, 2017
MAHS Docket No.: 17-006860
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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, an in-person hearing was held on [redacted], from Southfield, Michigan. The Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by [redacted], Assistance Payment Worker.

ISSUES

1. Did the Department properly close Petitioner's Medical Assistance (MA) case under the Healthy Michigan Plan (HMP)?

2. Did the Department properly determine Petitioner's co-pay 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 an ongoing recipient of MA benefits under the HMP. (Exhibit C)

2. Petitioner was previously receiving unearned income in the monthly amount of $[redacted] from a retirement pension.

3. Based on her income, Petitioner was determined to be responsible for a monthly contribution towards the cost of her health care coverage.

4. On or around [redacted], Petitioner reported to the Department that her monthly unearned income from the retirement pension had decreased to $[redacted] (Exhibit A, p. 12)

5. On [redacted], Petitioner received a MI Health Account Statement which indicated that she owed $[redacted] in contributions for the next three months, with the first $[redacted] payment due on [redacted]. The Statement further indicated, "[y]ou will not pay more than 5% 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. 1-3)

6. The Department did not process Petitioner's reported change in income until [redacted]. Petitioner's MI Health Account was not updated to reflect Petitioner's decreased monthly income.

7. On [redacted], Petitioner received a MI Health Account Statement which indicated that she owed $[redacted] in contributions for the next three months, with a $[redacted] payment due on [redacted]. The bottom of the MI Health Account Statement directed recipients to call a Beneficiary Help Line (1-800 number) for questions. (Exhibit 1, pp. 4-7)

8. On or around [redacted], Petitioner reported to the Department that she received a one-time, non-recurring withdrawal of $[redacted] from her retirement IRA. (Exhibit A, p. 15)

9. On [redacted], Petitioner received a MI Health Account Statement which indicated that she owed $[redacted] in contributions for the next three months, with a $[redacted] payment due on [redacted]. The bottom of the MI Health Account Statement directed recipients to call a Beneficiary Help Line (1-800 number) for questions. (Exhibit 1, pp. 11-15)

10. The Department closed Petitioner's MA case under the HMP effective [redacted] The Department did not provide Petitioner with timely notice of the case closure. The Department indicated the case closure was due to excess income.

11. Petitioner's [redacted] MI Health Account Statement indicates that she continued to be responsible for $[redacted] in monthly contributions through [redacted]. The statement further indicates that Petitioner's account is overdue and a failure to pay the overdue balances owed could result in tax refund consequences. (Exhibit 1, at pp. 16-17)

12. Petitioner made repeated telephone calls to the Beneficiary Help Line regarding her monthly contribution and was informed that she should contact her case worker through the Department to resolve the issue.

13. On or around [redacted], Petitioner requested a hearing disputing the Department's actions with respect to her HMP case, specifically, the closure of her HMP case, the Department's calculation of her Modified Adjusted Gross Income (MAGI) and the amount of her monthly HMP cost-sharing contributions from [redacted]. (Exhibit A, pp. 2-15)

14. On [redacted] the Department sent Petitioner a Benefit Notice advising her that effective [redacted], her MA case under the HMP category had closed based on a reported change in income. (Exhibit A, pp. 17-18)

15. On or around [redacted], the Department corrected the income budgeting issues with Petitioner's case and reinstated Petitioner's MA coverage under the HMP effective [redacted]. The eligibility summary presented by the Department indicates that Petitioner was approved for and received HMP coverage from [redacted], ongoing, with no lapse in her benefits. (Exhibit C)

16. On [redacted], the Department sent Petitioner a Quick Note advising her among other things that her income has been corrected back to her reported change date of [redacted]. The Quick Note further advised Petitioner that she was required to contact her Healthy Michigan Plan Beneficiary Help Line with any questions regarding her contributions. (Exhibit B)

17. Petitioner's household size for purposes of MAGI-related MA coverage such as HMP is one. Petitioner's adjusted gross income as reflected on her 2016 Individual Tax Return was $[redacted] (Exhibit A, p. 16)

18. Along with the Quick Note, the Department sent Petitioner a packet of information on the MI Health Account, how a monthly contribution is determined and how to make payments towards her co-pays and monthly contributions using the MI Health Account. The packet further indicates that a group size of one with average monthly income between $[redacted] and $[redacted] will be responsible for a $[redacted] monthly contribution. (Exhibit B)

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, Petitioner requested a hearing disputing the Department's actions with respect to her MA case. Petitioner raised two concerns at the hearing: the closure of her MA case effective [redacted]; and the amount of her monthly contributions towards her HMP coverage. Petitioner's concerns will be addressed separately below.

MA HMP Case Closure

MA is available (i) to individuals who are aged (65 or older), blind or disabled under 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, which 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 105 (January 2016), p. 1; BEM 137 (January 2016), p. 1.

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, p. 1.

Petitioner, who is under age [redacted] not disabled, and not the caretaker of any minor children is potentially only eligible for MA under the HMP category. An individual is eligible for HMP if her household's income does not exceed 133% of the FPL applicable to the individual's group size. A determination of group size under the MAGI methodology requires consideration of the client's tax status and dependents. The evidence showed that Petitioner's household size for MAGI purposes is one. 133% of the annual FPL in [redacted] for a household with one member is $[redacted] https://aspe.hhs.gov/poverty-guidelines. Therefore, to be income eligible for HMP, Petitioner's annual MAGI cannot exceed $[redacted] as she is a current MA beneficiary.

In the present case, Petitioner was approved for MA benefits under the HMP based on her reported monthly earnings of $[redacted] consisting of her retirement pension. Petitioner timely reported that her monthly income was decreasing to $[redacted] effective [redacted]; however, the Department did not timely process Petitioner's reported income change and continued to budget $[redacted] in monthly pension income. In [redacted], Petitioner made a one-time, non-recurring $[redacted] withdrawal from her IRA account and timely notified the Department of the distribution. The Department testified that Petitioner's reported $[redacted] income change prompted its Bridges computer system to automatically certify Petitioner's case for closure effective [redacted], as it determined that her monthly and projected annual income now exceeded the income limit of the HMP. The Department conceded that it did not send Petitioner timely notice

of the case closure as required and that the first time Petitioner was notified of the case closure was with the Benefit Notice dated [redacted].

At the hearing, the Department testified that after receiving Petitioner's hearing request, it reprocessed her MA eligibility using the correct monthly income information of $[redacted] as reported in June 2016 and determined that she was eligible for MA under the HMP from [redacted], ongoing. The Department presented an unearned income budget summary and a MAGI-summary indicating that it is budgeting $[redacted] as Petitioner's monthly pension/retirement income. (Exhibit D). The Department also presented an eligibility summary showing that on [redacted], it reinstated Petitioner's MA case under the HMP category effective [redacted], and further that Petitioner continued to be eligible and approved for HMP coverage with no lapse. (Exhibit C).

The evidence presented established that prior to the hearing, the Department corrected the action that Petitioner requested a hearing on by reinstating her MA case under the HMP and approving her for MA under the HMP from the [redacted], case closure date, ongoing, with no lapse in coverage. Therefore, there remains no issue left to be resolved with respect to Petitioner's request for hearing regarding the closure of her MA case. As such, Petitioner's hearing request concerning the closure of her MA case is **DISMISSED.**

HMP Cost-Sharing Obligation

In the present case, Petitioner requested a hearing to dispute the monthly cost-sharing obligations or contributions assessed under her HMP case. Petitioner clarified that at issue was premium contribution charges that she incurred from [redacted] due to the Department's improper calculation of her MAGI for HMP purposes. Petitioner asserted that her annual income is below 100% of the FPL; and thus, she should not be responsible for a monthly contribution.

Pursuant to 42 CFR 431.201, MA applicants and beneficiaries have a right to a Medicaid hearing as a result of an action, which is defined as a reduction, suspension, termination or denial of Medicaid eligibility or covered service. 42 CFR 438.400(a)(1) provides that a State plan such as Medicaid in this case, is required to "provide an opportunity for a fair hearing to any person whose claim for assistance is denied or not acted upon promptly." Medicaid managed care organizations (MCOs) which service HMP beneficiaries are required to "establish internal grievance procedures under which Medicaid enrollees, or providers acting on their behalf, may challenge the denial of coverage of, or payment for, medical assistance." 42 CFR 438.400(a)(3).

Additionally, an MCO must give an HMP beneficiary timely and adequate written notice of an adverse benefit determination. An adverse benefit determination can include "[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); 42 CFR 438.404 (a). The adverse benefit determination notice must explain: the adverse benefit determination the MCO has

made or intends to make; the reasons for the determination; and the enrollee's right to request an appeal of the MCO's adverse benefit determination, including information on exhausting the MCO's one level appeal (described at 42 CFR 438.402(b)) and the right to request a State fair hearing consistent with 42 CFR 438.402(c). See 42 CFR 438.404(b)(1)-(6). The MCO must timely respond to a beneficiary's appeal of an adverse benefit determination and resolve each appeal by providing a written notice of resolution which includes the results of the resolution process and the right to request a State fair hearing. 42 CFR 438.408(a), (b)(1)-(2), (d), and (e). Generally, an enrollee may request a State fair hearing only after receiving the notice of resolution that the MCO is upholding the adverse benefit determination and exhausting the MCO appeals process; however, if the MCO fails to adhere to the notice and timing requirements in 42 CFR 438.408, the HMP enrollee is deemed to have exhausted the MCO appeals process and the enrollee may initiate a State fair hearing. 42 CFR 438.408(f)(1)(i).

At the hearing, Petitioner denied receiving any notices to appeal her cost-sharing obligation from her MCO. Petitioner testified that she did not receive an Adverse Benefit Determination or a Notice of Resolution and stated that the only option she was provided with was to contact the 1-800 Help Line and/or the Department. Petitioner made several attempts to contact both the local Department office and the 1-800 Help Line to discuss her monthly contribution, but was unsuccessful and her requests for assistance concerning the alleged incorrect HMP contribution were unresolved. The evidence established that Petitioner is deemed to have exhausted the MCO appeals process and is entitled to a State fair hearing regarding the amount of her cost-sharing obligations, which will be addressed below.

It was undisputed that Petitioner was an ongoing recipient of MA benefits under the Healthy Michigan Plan (HMP) category. The HMP has beneficiary cost-sharing obligations which can include copays and additional monthly contributions based on a beneficiary's income level. HMP managed care members are required to satisfy cost-sharing contributions through a MI Health Account. The cost sharing requirements will be monitored through the MI Health Account by the health plan. These requirements begin after the beneficiary has been enrolled in a health plan for six months. BEM 137, pp. 1-2.

Additionally, HMP beneficiaries at 100% to 133% of the FPL are required to pay a monthly contribution into a MI Health Account. 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 based on 2% of the HMP beneficiary's annual income. MSA Bulletin No. 14-11, p. 4. According to the chart included in the MI Health Account information packet sent to Petitioner, a group size of one with average monthly income between $[redacted] and $[redacted] will be responsible for $[redacted] in monthly contributions and a group size of one with average monthly income between $[redacted] and $[redacted] will be responsible for a $[redacted] monthly contribution. (Exhibit B).

At the hearing, Petitioner provided for review several MI Health Account Statements for the time period at issue, [redacted], detailing the amounts of her

monthly contributions and the due dates for which she was required to make contribution payments. (Exhibit 1). According to the MI Health Account Statements, Petitioner was determined to be responsible for monthly contribution payments of either $[redacted] or $[redacted] (Exhibit 1). The Department did not present any evidence in support of its determination that based on Petitioner's annual and monthly MAGI, she was responsible for $[redacted] or $[redacted] in contribution payments. The Department remained unable to explain how Petitioner's cost-sharing contributions were determined.

However, upon review of documentation presented, the evidence suggests that the Department determined Petitioner was responsible for the $[redacted] and $[redacted] monthly contributions based on the previous amount of her monthly retirement income of $[redacted] As referenced in the above discussion, the Department conceded that it had incorrectly calculated Petitioner's MAGI by failing to timely process Petitioner's reported decrease in her monthly retirement income to $[redacted] effective [redacted] and improperly continued to budget the prior amount of $[redacted] At the hearing, the Department testified that since [redacted] the correct amount of Petitioner's monthly income is $[redacted] When this monthly amount is taken annually, Petitioner's MAGI is below 100% of the FPL. Therefore, Petitioner should not be responsible for a monthly cost-sharing contribution towards her HMP MA coverage.

The Department conceded that it had improperly determined that Petitioner was responsible for monthly cost-sharing contributions beginning [redacted]. The Department presented an email dated [redacted], from the Department's Bureau of Legal Affairs indicating that an adjustment is being made to Petitioner's MI Health Account to remove the contributions imposed on Petitioner's case beginning [redacted] and continuing through [redacted]. The email further indicates that the adjustment is being made because Petitioner's income fell below 100% of the FPL in [redacted] and thus, she should not have been determined responsible for a contribution. (Exhibit E). As of the hearing date, however, there was no evidence that the adjustment to Petitioner's MI Health Account had been made, as the change/adjustment letter referenced in the email was not presented for review. Thus, the Department did not establish that it properly determined the amount of Petitioner's cost-sharing obligations effective [redacted] or that it had fully corrected the action taken by adjusting Petitioner's MI Health Account and removing the improperly imposed contributions. (Exhibit E).

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 the amount of Petitioner's monthly cost-sharing contributions under the HMP.

DECISION AND ORDER

Accordingly, the hearing request regarding the closure of Petitioner's MA case is **DISMISSED** and the Department's decision regarding the calculation of Petitioner's cost-sharing obligation 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. Adjust Petitioner's MI Health Account by removing the monthly contributions imposed effective [redacted], ongoing (See Exhibit E); and

2. Notify Petitioner in writing of the adjustments made to MI Health Account.

Zainab Baydoun

ZB/jaf

Zainab A. Baydoun
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]