



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 25, 2017
MAHS Docket No.: 17-002001
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; 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] [REDACTED] from Detroit, Michigan. The Petitioner was present for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly close Petitioner’s Health Michigan Plan (HMP) coverage effective [REDACTED], due to excess income?

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 [REDACTED] years old, his household size is one, and his tax composition is one.
3. On [REDACTED], Petitioner submitted a New Hire Client Notice (DHS-4635) (new hire), in which he reported the following: (i) his employment started [REDACTED]; (ii) he is paid \$ [REDACTED] an hour; (iii) he is paid biweekly; and (iv) his hours varies and he notated that based on what production requires, sometimes he works one week, but may be off for two weeks. Exhibit A, pp. 9-10.

4. As a result of Petitioner's new hire, the Department budgeted his income using Bridges Eligibility Manual (BEM) 530 prospecting income; and it was determined that he was ineligible for HMP benefits due to excess income. Exhibit A, p. 1.
5. On [REDACTED], the Department sent Petitioner a Health Care Coverage Determination Notice (determination notice) notifying him that his HMP benefits closed effective [REDACTED], ongoing, due to excess income. Exhibit A, pp. 13-15.
6. On [REDACTED] [REDACTED], Petitioner filed a hearing request, protesting the Department's action. Exhibit A, p. 2.

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 filed a hearing request, protesting the closure of his HMP coverage effective [REDACTED]. Exhibit A, p. 2.

MA is available (i) under Supplemental Security Income (SSI)-related categories to individuals who are aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled or (ii) for children under 19, parents or caretakers of children, pregnant or recently pregnant women, former foster children, MOMS, MICHild and HMP based on the Modified Adjusted Gross Income (MAGI) methodology. BEM 105 (October 2016), p. 1. The evidence at the hearing established that the most beneficial MA category available to Petitioner was HMP.

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.

The analysis now turns to whether Petitioner's income was at or below 133% of the FPL for a household size of one. The 2016 Poverty Guidelines indicated that the poverty guidelines for persons in family/household size of one is \$11,880. 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 one 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] (\$ [REDACTED] multiplied by 1.33) of the FPL for a household size of one. For monthly eligibility, the income must be at or below \$ [REDACTED] for a household size of one (\$ [REDACTED] divided by 12 months).

Next, the undersigned Administrative Law Judge (ALJ) will review the income the Department used to make its determination that his income exceeded the limits effective [REDACTED]. In the present case, the Department calculated Petitioner's annual income to be \$ [REDACTED] (stated in the determination notice) and that this income exceeded the annual limit of \$ [REDACTED] Exhibit A, p. 14. However, the undersigned was unclear how the Department calculated his annual income of \$ [REDACTED]. The Department testified that a result of Petitioner's new hire, the Department budgeted his income using BEM 530 prospecting income. Exhibit A, p. 1. But, BEM 530, MA Income Budgeting, is not applicable to MAGI-related income calculations, such as HMP, instead, this policy states that it is applied to Supplemental Security Income (SSI)-related MA benefits. See BEM 530 (January 2014), pp. 1-5.

Moreover, the undersigned discovered two possible income calculations that it used to determine his annual income: (i) pay date of [REDACTED], income of \$ [REDACTED] (check stubs verification); and (ii) pay date [REDACTED], income of \$ [REDACTED] (based on client statement). Exhibit A, pp. 16-17. However, when the undersigned uses the above amounts to convert it into an annual income, the undersigned does not calculate an annual income of \$ [REDACTED].

Finally, Petitioner informed the Department in his new hire that his income fluctuates and/or is inconsistent, which the Department needs to take into consideration. Exhibit A, p. 10. In fact, it was discovered that Petitioner's employment ended on or about [REDACTED]. The Department did send Petitioner an employment verification on [REDACTED], to verify his income; and it was due back on [REDACTED].

Exhibit A, pp. 5-8. The Department testified that Petitioner did not submit any verification by the due date. The undersigned has concerns with the issuance of the employment verification because it was sent on the same day his HMP determination notice was issued; and the employment verification indicated that it was to determine his eligibility for Food Assistance Program (FAP) benefits, not HMP. See Exhibit A, p. 5. Thus, as shown above, the undersigned has concerns with how the Department calculated his MAGI-related income.

Medicaid eligibility is determined on a calendar month basis. BEM 105, 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.

In order to determine income in accordance with MAGI, a client's adjusted gross income (AGI) is added to any tax-exempt foreign income, tax-exempt Social Security benefits, and tax-exempt interest. AGI is found on IRS tax form 1040 at line 37, form 1040 EZ at line 4, and form 1040A at line 21. Alternatively, it is calculated by taking the "federal taxable wages" for each income earner in the household as shown on the paystub or, if not shown on the paystub, by using gross income before taxes reduced by any money the employer takes out for health coverage, child care, or retirement savings. The figure is multiplied by the number of paychecks the client expects in 2016 to estimate income for the year. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>. Additionally for review, is a chart that shows common types of income countable towards a MAGI eligibility determination and with respect to federal taxable wages from employment, a client is to use federal taxable wages if indicated on a paystub and if not, use gross income and subtract amounts your employer takes out of your pay for child care, health insurance, and retirement plans. See <https://www.healthcare.gov/income-and-household-information/how-to-report/> and <https://www.healthcare.gov/income-and-household-information/how-to-report/>.

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 . . .

After a thorough review, it is determined that the Department failed to establish that it properly calculated Petitioner's MAGI income. As stated above, the Department argued that Petitioner's annual income of \$ [REDACTED] as shown in the determination notice, exceeded the HMP income limits for a group size of one. However, the undersigned was unclear how the Department calculated his annual income of \$ [REDACTED]. Thus, the Department's determination that Petitioner had excess income for an MAGI-related MA program such as HMP was not supported by the evidence presented at the hearing. The Department needs to recalculate Petitioner's income and also take into consideration his fluctuating or irregular income because he properly notified the Department of his inconsistent income in the new hire submitted on [REDACTED]. Exhibit A, pp. 9-10. Policy and the federal regulation allows the Department to take into consideration his fluctuating or irregular income. See BEM 105, p. 2 and 42 CFR 435.603(h)(1) and (3). A federal income tax return or more detailed paystubs/earnings statements may be a more accurate reflection of Petitioner's MAGI for MA purposes.

Accordingly, the undersigned finds that the Department failed to satisfy its burden of showing that it properly closed Petitioner's HMP coverage effective [REDACTED]. The Department must reinstate and reprocess Petitioner's MA case and determined if he is income eligible for MAGI related MA program such as HMP.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's HMP coverage effective [REDACTED].

Accordingly, the Department's HMP 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. Reinstate Petitioner's MA case under the HMP program effective [REDACTED]
2. Reprocess Petitioner's HMP coverage using accurate income verifications and in accordance with Department policy;
3. Provide Petitioner MA coverage he is eligible to receive but did not from [REDACTED], ongoing; and
4. Notify Petitioner of its decision.

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

Petitioner

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

DHHS

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