



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 12, 2017
MAHS Docket No.: 17-002722
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 April 3, 2017, from Detroit, Michigan. Petitioner, [REDACTED] and his spouse, [REDACTED] were present at the hearing and both provided testimony. The Department of Health and Human Services (Department) was represented by [REDACTED] Hearings Facilitator.

ISSUE

Did the Department properly deny Petitioner and his spouse's eligibility for the Healthy Michigan Plan (HMP) – Medical Assistance (MA) coverage effective March 1, 2017?

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 and his spouse were ongoing recipients of HMP coverage. Exhibit A, pp. 45-46.
2. Petitioner and his spouse are between the ages of 19-64 for HMP eligibility, their household size is two, and their tax composition is two.
3. Petitioner and his spouse are owners of a local party store called [REDACTED] and the store is listed as an S-Corporation on their income taxes. Exhibit A, pp. 23 and 31.

4. Income is generated from the party store. Exhibit A, pp. 1 and 31.
5. Petitioner and his spouse draw employment wages (earned income) from the S-Corporation. Exhibit A, pp. 1, 18-21, and 23-27.
6. In November 2016, Petitioner submitted a redetermination and included their pay stubs from the S-Corporation. Exhibit A, pp. 18-21 and 23-27.
7. On January 13, 2017, the Department sent Petitioner a Verification Checklist (VCL), which requested verification of all income and assets owned by both, including business tax returns, bank statements, lands, stocks, bonds, properties, 401ks or bank account balances. Exhibit A, pp. 10-11. The verifications were due back by January 23, 2017. Exhibit A, p. 10.
8. On January 22, 2017, Petitioner submitted Form 1040, U.S. Individual Income Tax Return for 2015; and Form 1120S, U.S. Income Tax Return for an S Corporation for 2015. Exhibit A, pp. 29-35.
9. The Department redetermined Petitioner and his spouse's eligibility for HMP coverage and determined they were ineligible due to excess income.
10. The Department calculated Petitioner and his spouse's income as follows: (i) Petitioner had monthly countable wages from the S-Corporation totaling [REDACTED]; (ii) the spouse had monthly countable wages from the S-Corporation totaling [REDACTED]; and (iii) Petitioner had monthly self-employment income from the S-Corporation totaling [REDACTED] Exhibit A, p. 13.
11. On February 13, 2017, the Department sent Petitioner a Health Care Coverage Determination Notice (determination notice) notifying him and his spouse were not eligible for HMP benefits effective March 1, 2017, due to excess income. Exhibit A, pp. 5-9.
12. The Department, in error, budgeted the S-Corporation as self-employment income, whereas, the S-Corporation should have been budgeted as unearned income. Exhibit C, pp. 1-2.
13. On February 21, 2017, Petitioner filed a hearing request, protesting the Department's action. Exhibit A, pp. 2-4.

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.

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 and his spouse 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 and his spouse's income was at or below 133% of the FPL for a household size of two. The 2017 Poverty Guidelines indicated that the poverty guidelines for persons in family/household size of two is \$16,240. 2017 Poverty Guidelines, *U.S. Department of Health & Human Services*, January 26, 2017, p. 1. Available at: <https://aspe.hhs.gov/poverty-guidelines>. However, the poverty guidelines for a household size of two must be multiplied by 1.33 (133%) to obtain the 133% FPL calculation. The result is that Petitioner and his spouse's annual income must be at or below [REDACTED]) of the FPL for a household

size of two. For monthly eligibility, the income must be at or below [REDACTED] for a household size of two ([REDACTED] divided by 12 months).

It should be noted that the income limits listed on the determination notice dated February 13, 2017 are based on the 2016 poverty guidelines. Exhibit A, pp. 5-8. However, the undersigned Administrative Law Judge (ALJ) is addressing the 2017 poverty guidelines as the closure occurred in March of 2017.

Next, the undersigned will review the income the Department used to make its determination that their income exceeded the limits for March 1, 2017, ongoing.

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.

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 . . .

In the present case, the Department had three different sources of income in which it made the conclusion that Petitioner and his spouse's income had exceeded the limits. Specifically, the Department calculated Petitioner and his spouse's income as follows: (i) Petitioner had monthly countable wages from the S-Corporation totaling [REDACTED] (ii) the spouse had monthly countable wages from the S-Corporation totaling [REDACTED] and (iii) Petitioner had monthly self-employment income from the S-Corporation totaling [REDACTED]. Exhibit A, p. 13. It should be noted that the spouse had a second business, a candle making business, but that it did not appear to show a profit for the past year. Exhibit A, p. 1.

There was no dispute that Petitioner and his spouse drew employment wages (earned income) from the S-Corporation. Policy states that wages are the pay an employee receives from another individual organization or S-Corp/LLC. BEM 501 (July 2016), p. 6. Wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. BEM 501, p. 6. Furthermore, wages/salary are common sources of income which are countable in a MAGI related determination. MAGI Related Eligibility Manual, *Michigan Department of Community Health* (DCH), May 2014, p. 16. Available at http://michigan.gov/documents/mdch/MAGI_Manual_457706_7.pdf. As such, Petitioner and his spouse's wages from the S-Corporation are countable in their MAGI related determination, including HMP.

However, an issue arose with the method in which the Department budgeted Petitioner and his spouse's income generated from the S-Corporation. Exhibit A, pp. 1 and 31. Specifically, the Department calculated the income generated from the S-Corporation as self-employment income. See Exhibit A, p. 15. The Department, though, acknowledged that this method in which it calculated the income from the S-Corporation was done in error. S-Corporations and Limited Liability Companies (LLCs) are not self-employment. BEM 502 (January 2017), p. 1. For Medicaid only, money received from an S-Corp or LLC, is unearned income. BEM 503 (January 2017), p. 29. In fact, the Department provided an e-mail from its policy unit dated March 30, 2017, that confirmed the income from the S-Corporation needs to be budgeted as unearned income. Exhibit C, pp. 1-2.

Based on the foregoing information and evidence, it is determined that the Department improperly budgeted Petitioner and his spouse's MAGI income. There was no dispute that Petitioner and his spouse's employment wages (earned income) from the S-Corporation is countable income for MAGI related MA programs. However, the issue surrounding this case was the method in which the Department budgeted the S-Corporation income. The evidence established that the Department budgeted the S-Corporation as self-employment income; however, policy states that the S-Corporation should have been budgeted as unearned income. See BEM 502, p. 1 and BEM 503, p. 29. The Department acknowledged this error. As such, the undersigned finds that the Department improperly closed the HMP benefits because it failed to establish that it properly calculated Petitioner and her spouse's MAGI income.

Accordingly, the Department must redetermine Petitioner and his spouse's eligibility for MAGI related MA program such as HMP effective March 1, 2017, in accordance with Department policy.

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 Petitioner and his spouse's HMP coverage effective March 1, 2017.

Accordingly, the Department's MA 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 and his spouse's eligibility for HMP coverage effective March 1, 2017;
2. Redetermine Petitioner and his spouse's income eligibility for MAGI related MA program such as HMP effective March 1, 2017, including budgeting the income received from the S-Corporation as unearned income, in accordance with Department policy;
3. Provide Petitioner and his spouse with MA coverage they are eligible to receive but did not from March 1, 2017, ongoing; and
4. Notify Petitioner of its decision.

EF/tm



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

[REDACTED]

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[REDACTED]

CC: [REDACTED]
[REDACTED]