



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR



Date Mailed: May 4, 2018
MAHS Docket No.: 18-002706
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 May 1, 2018, from Lansing, Michigan. Petitioner was present for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED] Hearings Facilitator.

ISSUE

Did the Department properly deny Petitioner's Medical Assistance (MA) - Healthy Michigan Plan (HMP) application dated February 22, 2018?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED], Petitioner applied for MA and Food Assistance Program (FAP) benefits. [Exhibit A, pp. 1-32.]
2. Petitioner is 59-years-old, her household size is one, and her tax composition is one. [Exhibit A, pp. 3 - 4.]
3. Included with Petitioner's application, she submitted two of her pay checks that stated the following:
 - a. Pay date of [REDACTED]; biweekly pay; gross pay of \$ [REDACTED] net pay of \$ [REDACTED] 68.32 hours worked; overtime included in pay; and \$ [REDACTED] contributed towards Petitioner's 401(k) plan; and

- b. Pay date of [REDACTED]; biweekly pay; gross pay of \$ [REDACTED] net pay of \$ [REDACTED] 80 hours worked; overtime included in pay; and \$ [REDACTED] contributed towards Petitioner's 401(k) plan.
[Exhibit A, pp. 43-44.]
4. Based on the submitted pay stubs, the Department processed Petitioner's eligibility for HMP benefits and determined she was not eligible due to excess income. [Exhibit A, p. 70.]
5. On [REDACTED], the Department sent Petitioner a Health Care Coverage Determination Notice (determination notice) notifying her that she was not eligible for HMP benefits effective [REDACTED], due to excess income. The determination notice indicated that Petitioner's annual income was \$ [REDACTED] [Exhibit A, pp. 56-59.]
6. In March 2018, Petitioner filed a hearing request, protesting the Department's action. [Exhibit A, pp. 50-51.]

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 benefits. The Department explained that after processing Petitioner's submitted pay checks with her application, it determined that Petitioner had excess income and thus ineligible for HMP coverage.

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 Healthy Michigan Plan based on the Modified Adjusted Gross Income (MAGI) methodology. BEM 105 (April 2017), 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 (January 2018), 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).

BEM 137, p. 1

The analysis now turns to whether Petitioner's income was at or below 133% of the FPL. The 2017 Poverty Guidelines indicated that the poverty guidelines for persons in family/household size of one is \$12,060. 2017 Poverty Guidelines, *U.S. Department of Health & Human Services*, January 31, 2017, p. 1. Available at: <https://aspe.hhs.gov/2017-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 \$16,039.80 (\$12,060 multiplied by 1.33) or at or below \$1,336.65 per month (\$16,039.80 divided by 12 months) of the FPL for a household size of one.

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 (July 2017), pp. 3-4. Income is verified via electronic federal data sources in compliance with MAGI methodology. MREM, § 1.

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)(1) states for applicants and new enrollees (Petitioner was a new applicant in this instance):

Financial eligibility for Medicaid for applicants, and other individuals not receiving Medicaid benefits at the point at which eligibility for Medicaid is being determined, must be based on current monthly household income and family size.

At the hearing, the Department testified that it calculated Petitioner's monthly budget to be \$ [REDACTED] which was based on the gross pay of the two pay checks she provided with her application. [Exhibit A, pp. 43-44 and 70.] As a result, the Department argued that Petitioner's monthly income of \$ [REDACTED] exceeded the monthly HMP income limit of \$ [REDACTED] for a group size of one. [Exhibit A, p. 70.]

In response, Petitioner testified she occasionally works overtime. She testified her biweekly pay checks are usually a gross pay of \$ [REDACTED] which results in a monthly gross income of \$ [REDACTED]. She testified she contributes \$ [REDACTED] to her 401(k) from each pay check. She testified the Department should exclude from the calculation of her income any federal and state taxes she pays.

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 the tax year to estimate your income. 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 http://laborcenter.berkeley.edu/pdf/2013/MAGI_summary13.pdf.

After a thorough review, it is determined that the Department failed to establish that it properly calculated Petitioner's MAGI income. Specifically, the Department failed to consider if Petitioner had any applicable deductions and pre-tax contributions (i.e., 401k) that should have been subtracted from the gross income as shown on her paystubs. Thus, the Department's determination that Petitioner had excess income for a 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 deduct any pre-tax contributions (i.e., contributions to 401(k)) when determining her income eligibility for MAGI related programs. A federal income tax return or more detailed paystubs/earnings statements which shows the applicable deductions to gross income, pre-tax contributions or federal taxable wages may be a more accurate reflection of Petitioner's MAGI for MA purposes.

It should also be noted that *if* the Department is supposed to deduct her pre-tax contribution, she appears to be close to the HMP income limit and therefore, the 5 percent disregard might become applicable in this case. See BEM 500, p. 5 (For MAGI related Medicaid, the 5 percent disregard is the amount equal to 5 percent of the Federal Poverty Level for the applicable family size; it is not a flat 5 percent disregard

from the income; the 5 percent disregard shall be applied to the highest income threshold; and the 5 percent disregard shall be applied only if required to make someone eligible for Medicaid).

Accordingly, the undersigned finds that the Department failed to satisfy its burden of showing that it properly denied Petitioner's MA application effective [REDACTED]. The Department must reprocess Petitioner's application and determine if she 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 properly denied Petitioner's MA application effective [REDACTED].

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. Initiate re-registration and reprocessing of Petitioner's MA application dated [REDACTED];
2. Reprocess Petitioner eligibility for HMP coverage using accurate income verifications, including whether her contributions to the 401(k) qualify as a pre-tax deduction and if they are deducted from the income determination, in accordance with Department policy;
3. Issue supplements to Petitioner for any MA benefits she was eligible to receive but did not in accordance with Department policy; and
4. Notify Petitioner of its decision.

EF/hb



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]