



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

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Date Mailed: August 14, 2018
MAHS Docket No.: 18-006006
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 July 26, 2018, from Detroit, Michigan. The Petitioner was represented by her Attorney, Shiraz Khan. The Petitioner also appeared. The Department of Health and Human Services (Department) was represented by Valarie Foley.

ISSUE

Did the Department properly close/deny the Petitioner's Healthy Michigan Plan (HMP) medical assistance (MA) benefits?

FINDINGS OF FACT

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

1. The Petitioner was an ongoing recipient of HMP. The Petitioner was █████ years of age at the time of the redetermination. (Exhibit A.)
2. The Petitioner completed a Redetermination for MA HMP for May 2018 and filed her redetermination online on April 9, 2018. (Exhibit A.)
3. The Department issued a Health Care Coverage Determination Notice (HCCDN) on May 31, 2018, closing the Petitioner's HMP effective July 1, 2018, for the reason that her countable income exceeded the income limit for her group size. (Exhibit C.)
4. The Petitioner receives fluctuating income for spousal support. (Exhibits B.)

5. The Department determined Petitioner's unearned income from spousal support to be \$ [REDACTED] by averaging spousal support income for the months of February, March and April 2018. The total Household Countable Income was \$ [REDACTED] and the group size was a MA group of one member. (Exhibit C.)
6. The Department used the following income for the prior three months to determine the Petitioner's income: February 2018, \$ [REDACTED] March 2018, \$ [REDACTED] April 2018, \$ [REDACTED] (Exhibit B; see also Exhibit E.)
7. The income limit for HMP for a household of one person is \$16,146.20 in May 2018. (Exhibit C.)
8. The Petitioner at the time of the hearing had not filed a federal income tax return for 2017.
9. The Department denied/closed the Petitioner's HMP benefits due to excess income.
10. The Petitioner's attorney requested a timely hearing on June 11, 2018.

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's attorney requested a hearing disputing the Department's decision to close Petitioner's MA benefit case. Petitioner was an ongoing MA recipient under the HMP program. Petitioner completed a redetermination, and her MA eligibility was reviewed by the Department. On May 31, 2018, the Department advised Petitioner her MA benefit case was closing effective July 1, 2018, ongoing.

In this case, the Department closed the Petitioner's Healthy Michigan Plan (HMP) medical benefits due to Petitioner's income exceeding the HMP income limit for a group size of one member. The Petitioner receives spousal support, which is her sole source

of income. In addition, no income tax return was provided at the hearing, and the Petitioner testified that she had not filed a tax return for 2017 at the time of the hearing.

Spousal support is a payment from a spouse or former spouse because of a legally enforceable obligation for financial support. It includes maintenance and alimony payments.

Direct spousal support is a payment received by the spouse or ex-spouse as a result of a legally binding obligation.

Bridges counts the total amount as unearned income, except any portion that is court-ordered or legally obligated directly to a creditor or service provider. BEM 503 (July 2017), pp. 31, 32.

The Healthy Michigan Plan does not have an asset test and the applicant/recipient must have Modified Adjusted Gross income at or below 133 percent of the Federal Poverty Level. BEM 137 (April 2018) p. 5.

The Department concluded that Petitioner was not eligible for HMP because her income exceeded the applicable income limit for her group size. HMP uses a Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (April 2018), p. 1. An individual is eligible for HMP if his/her household's income does not exceed 133% of the Federal Poverty Level (FPL) applicable to the individual's group size. BEM 137, p. 1. An individual's group size for MAGI-related purposes requires consideration of the client's tax filing status. In this case, Petitioner did not file taxes and does not appear to have dependents. Therefore, for HMP purposes, she has a household size of one. BEM 211 (January 2016), pp. 1-2.

133% of the annual FPL in 2018 for a household with one member is \$16,146.20. See <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's annual income cannot exceed \$16,146.20. To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. BEM 500 (July 2017), p. 3. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500, p. 3. Income is verified via electronic federal data sources in compliance with MAGI methodology. MREM, § 1. 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. This figure is multiplied by the number of paychecks the client expects in 2018 to estimate income for the year. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>.

In this case the Petitioner receives only unearned income received from spousal support from her ex-husband. The Department noted that the spousal support income fluctuated and thus, determined that the appropriate way to calculate the income was to average the income for a 3-month period similar to the treatment of child support

income, which is also averaged. In addition, Department policy requires when determining or prospecting income the income should be the best estimate of the person's income. When the amount of income from a source changes from month to month, estimate the amount that will be received/available in the future month. BEM 503, (July 2017) pp. 3-4.

To that end, the Department took the actual spousal support received for the months of February 2018 through April 2018 and averaged the income. The income when averaged was correctly determined to be \$ [REDACTED] monthly, which when multiplied by 12 months totals \$ [REDACTED]. Spousal support used was that reported to the Department by the County Friend of the Court. Although Petitioner's Attorney suggested that the amounts were not correct, the Petitioner testified that the amounts used by the Department sounded correct. See Findings of Fact, paragraphs 5 and 6; and see also Exhibit E, p. 3, which confirms the February 2018 amount as determined by the Department.

In addition, the Petitioner's attorney offered a Uniform Spousal Support Order issued by the [REDACTED] County 6th Judicial Circuit Court in the amount of \$ [REDACTED] monthly, effective November 11, 2018. (Exhibit D.) This information was provided to the Department by Petitioner on June 11, 2018, after the Department sent its HCCDN advising the Petitioner that her HMP was closing. As explained at the hearing, even using the court ordered amount of \$ [REDACTED] the annual income for Petitioner totals \$ [REDACTED] which is still over the HMP income limit of \$16,146.20. The Petitioner's attorney also contended that the income was for arrears, but could not say what part of the monthly income was due to payments for spousal support arrears and did not referenced any law that would deem spousal support received due to arrears to be treated differently than income received.

For MAGI-related MA programs, the Department allows a 5% disregard in the amount equal to 5% of the FPL level for the applicable family size. BEM 500 (July 2017), p. 5. It is not a flat 5% disregard from the income. BEM 500, p. 5. The 5% disregard is applied to the highest income threshold. BEM 500, p. 5. The 5% disregard shall be applied only if required to make someone eligible for MA benefits. BEM 500, p. 5.

5% of the FPL for a group size of one is \$807.31. Petitioner's yearly income of \$ [REDACTED] reduced by \$ [REDACTED] is \$ [REDACTED]. Applying the 5% disregard using the court ordered support annual amount results in Petitioner's income remaining above the income limit under the HMP program for a group size of one. Therefore, it must be concluded that the Department acted in accordance with policy when it closed Petitioner's MA benefit case.

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 acted in accordance with Department policy when it closed the Petitioner's HMP MA benefits due to her income exceeding the HMP limit.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

LMF/jaf



Lynn M. Ferris
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) 763-0155; 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

Latasha McKinney-Newell
MDHHS-Wayne-19-Hearings

Petitioner

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