



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: September 4, 2018  
MAHS Docket No.: 18-006778  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

**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 August 8, 2018, from Detroit, Michigan. Petitioner appeared and was unrepresented. ██████████ Petitioner's spouse, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Richkelle Curney, hearing facilitator.

**ISSUE**

The issue is whether MDHHS properly determined Petitioner's group's eligibility for Medical Assistance (MA).

**FINDINGS OF FACT**

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. At all relevant times, Petitioner was a 50% stockholder in a gas station. Petitioner's stock value of the gas station exceeded \$25,000.
2. Petitioner, her spouse, and three children were ongoing Medicaid recipients through the category of Transitional MA (TMA).
3. On an unspecified date, Petitioner submitted to MDHHS shareholder tax returns for the businesses owned by Petitioner. (Exhibit A, pp. 4-7)

4. On June 20, 2018, MDHHS determined that Petitioner's family were ineligible for MA benefits, effective June 2018, due to excess assets and/or failure to verify income. (Exhibit A, pp. 8-11)
5. As of June 20, 2018, Petitioner submitted all requested information to MDHHS.

### **CONCLUSIONS OF LAW**

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

HMP is a health care program administered by the Michigan Department of Community Health, Medical Services Administration. The program is authorized under the Affordable Care Act of 2010 as codified under 1902(a)(10)(A)(i)(VIII) of the Social Security Act and in compliance with the Michigan Public Act 107 of 2013. HMP policies are found in the Medicaid Provider Manual and Modified Adjusted Gross Income Related Eligibility Manual (MAGIM).

Petitioner requested a hearing to dispute a termination of Medicaid for herself, spouse, and three children. In their Hearing Summary (Exhibit A, p. 1), MDHHS contended that Petitioner's family's Medicaid eligibility was properly terminated due to excess assets. MDHHS credibly stated that Petitioner received Medicaid through TMA.

Medicaid is also known as Medical Assistance (MA). The Medicaid program comprise several sub-programs or categories. To receive MA under a Supplemental Security Income (SSI)-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Medicaid eligibility for children under 19, parents or caretakers of children, pregnant or recently pregnant women, former foster children, MOMS, MICHild and Healthy Michigan Plan is based on Modified Adjusted Gross Income (MAGI) methodology. BEM 105 (April 2017), p. 1.

Persons may qualify under more than one MA category. Federal law gives them the right to the most beneficial category. The most beneficial category is the one that results in eligibility, the least amount of excess income or the lowest cost share. *Id.*, p. 2.

MDHHS policy unequivocally states there is no asset test for MAGI-related categories. BEM 400 (May 2018), p. 3; BEM 137 (April 2018), p. 5. Thus, MDHHS could not have properly terminated Petitioner's family's TMA eligibility if TMA is a MAGI-related category.

MA policy is very conflicted on whether TMA eligibility is a MAGI-related category or not. For example, TMA is referred to a non-MAGI category. BEM 105 (April 2017) p. 4; as a non-MAGI category, this suggests that TMA is subject to an asset test. MDHHS' asset policy states that assets are factored for various programs and MA categories, though TMA is not among the listed categories requiring an asset test. BEM 400 (May 2018), p. 1; this suggests that TMA is not subject to an asset test. Rather than trying to discern whether TMA is subject to an asset test, for purposes of this decision, it will be assumed that TMA requires an asset test.

MDHHS determined that Petitioner had over \$ [REDACTED] in assets.<sup>1</sup> Petitioner testimony acknowledged that her shareholder equity share of assets in a gas station exceeded \$25,000. The asset limit for SSI-related categories, G2U, and G2C is \$3,000.<sup>2</sup> BEM 400 (May 2018), p. 7. Thus, Petitioner's family is ineligible for Medicaid through SSI-related MA categories, G2U, and G2C.

Before Petitioner's family is terminated from Medicaid. MDHHS must perform an ex-parte review. BEM 210 (January 2018) p. 2. An ex-parte review requires determining Petitioner's family's Medicaid eligibility for all Medicaid categories, including MAGI-related categories which have no asset test. HMP is a MAGI-related category with no asset test.

The termination notice (Exhibit A, pp. 8-11) stated that Petitioner failed to verify income information. A failure to verify income suggests that MDHHS did not undertake an ex-parte review because of an alleged procedural failure by Petitioner. Had MDHHS performed an ex-parte review of all MA categories, then the notice would have stated that Petitioner was ineligible for Medicaid based on a non-procedural reason (e.g. excess income, residency...). Given the reason for ineligibility on the written notice, consideration will be given to whether MDHHS properly denied Medicaid eligibility due to Petitioner's failure to provide income information.

For MA benefits, verifications are due the same date as the redetermination/review interview. When an interview is not required, verifications are due the date the packet is due. Bridges allows clients a full 10 calendar days from the date the verification is requested (date of request is not counted) to provide all documents and information. (BAM 210 (January 2018), p. 8).

MDHHS' Hearing Summary acknowledged that Petitioner's tax returns were requested by Verification Checklist and subsequently received by MDHHS. A finding that Petitioner submitted income information to MDHHS is further bolstered by the written notice which

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<sup>1</sup> MDHHS may have over-counted Petitioner's assets. Petitioner's tax returns appeared to list the same amount of liabilities as equity (see Exhibit A, p. 5). The issue is not particularly relevant due to Petitioner's concession that she had an equity value which exceeded \$25,000.

<sup>2</sup> For SSI-related MA categories, the \$3,000 asset limit applies to married individuals.

listed an annual income for Petitioner and her spouse (see Exhibit A, pp. 8-9).<sup>3</sup> MDHHS provided inadequate supporting evidence that Petitioner failed to provide MDHHS with income information. Given the evidence, MDHHS failed to establish that Petitioner failed to submit redetermination verifications.

In summary, MDHHS failed to establish a basis for terminating Petitioner's family from Medicaid due to a failure to properly consider all potential Medicaid categories. Though Petitioner's assets may have disqualified her family from some categories, not all categories were considered in the ex-parte review. The proper remedy for Petitioner is a reinstatement of Medicaid. It should be noted that reinstatement is not a guarantee of ongoing Medicaid eligibility. Following completion of reinstatement, MDHHS is free to redetermine Petitioner's family's Medicaid eligibility.


### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's family's Medicaid eligibility. It is ordered that MDHHS:

- (1) Reinstate Petitioner's family's Medicaid eligibility, effective June 2018; and
- (2) Initiate a redetermination of Petitioner's Medicaid eligibility subject to the findings that MDHHS failed to establish Petitioner had excess assets for all Medicaid categories and that Petitioner failed to verify information.

The actions taken by MDHHS are **REVERSED**.

CG/

  
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**Christian Gardocki**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

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<sup>3</sup> The notice of Medicaid termination actually listed Petitioner's income as \$ [REDACTED]. Consideration was not given to whether Petitioner had excess income because there was not a written notice alleging such a basis for terminating Medicaid.

**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**

Tara Roland 82-17  
MDHHS-Wayne-17-Hearings

**Petitioner**

[REDACTED]  
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[REDACTED] MI [REDACTED]

BSC4  
D Smith  
EQAD  
C Gardocki  
MAHS