



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 11, 2018  
MAHS Docket No.: 18-007770  
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, a telephone hearing was held on September 6, 2018, from Detroit, Michigan. Petitioner appeared and was unrepresented. ██████████ Petitioner's spouse (hereinafter, "Spouse"), testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Edna Vazquez, supervisor, and Cristal Echevarria, specialist.

**ISSUES**

The first issue is whether MDHHS properly terminated Petitioner's Medical Assistance (MA) eligibility.

The second issue is whether MDHHS properly terminated Spouse's MA eligibility.

**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 Spouse were ongoing MA recipients.
2. At all relevant times, Petitioner and Spouse were non-pregnant, between 19-64 years of age, and not caretakers to minor children.
3. On an unspecified date, Spouse reported to MDHHS being disabled.

4. On May 11, 2018, MDHHS received a Semi-Annual Contact Report from Petitioner. Exhibit A, pp. 1-2. Petitioner reported a recent start of employment income on the Semi-Annual Income Report. Petitioner also submitted four weekly pay stubs (Exhibit A, pp. 2-6) listing gross income totaling over \$ [REDACTED]
5. With the new employment, Petitioner's income was approximately \$ [REDACTED] per year.
6. On May 18, 2018, MDHHS terminated Petitioner's and Spouse's MA eligibility effective June 2018. The determination was based on excess income for Healthy Michigan Plan (HMP) and ineligibility for other MA categories.
7. On July 27, 2018, Petitioner requested a hearing to dispute the termination of MA benefits.

### **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 MA benefits for himself and Spouse. MDHHS credibly stated that Petitioner's and Spouse's MA eligibility was based on HMP. A Health Care Coverage Determination Notice (HCCDN) (Exhibit A, pp. 13-16) dated May 18, 2018, stated that Petitioner's and Spouse's HMP eligibility was ending due to excess income.

HMP is a MAGI-related MA program. BEM 137 (April 2018), p. 1. MAGI-based income means income calculated using the same financial methodologies used to determine modified adjusted gross income as defined in section 36B(d)(2)(B) of the Internal Revenue Code. 42 CFR 435.603(e). Federal regulations require MDHHS to determine a person's financial eligibility for HMP based on a person's "household income". 42 CFR

435.603(c). Household income is the sum of MAGI-based income for each household member. 42 CFR 435.603(d).

For individuals who have been determined financially-eligible for MA 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. 42 CFR 435.603 (h)(2). 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, as evidenced by a signed contract for employment, a clear history of predictable fluctuations in income, or other clear indicia of such future changes in income. 42 CFR 435.603 (h)(3).

The HCCDN stated that a gross annual income for Petitioner of \$██████ was factored in terminating Petitioner's and Spouse's MA eligibility (see Exhibit A, p. 14). MDHHS testimony stated that HMP eligibility was actually based on a monthly income of approximately \$██████ (see Exhibit A, p. 12). Petitioner responded that his work was seasonal and that his actual annual income was approximately \$██████ per year. For purposes of this decision, Petitioner's testimony will be accepted as his actual income.

HMP income limits are based on 133% of the federal poverty level. RFT 246 (April 2014), p. 1. For Petitioner's group size (2 persons), the income limit is \$21,891.80.<sup>1</sup> Petitioner's income exceeds HMP limits. Thus, Petitioner and Spouse are ineligible for HMP due to excess income. Ineligibility for HMP still allows consideration of other MA categories.

The Medicaid program comprise several sub-programs or categories. BEM 105 (April 2017), p. 1. 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. *Id.* Persons may qualify under more than one MA category. *Id.*, p. 2.

An ex parte review is required before Medicaid closures when there is an actual or anticipated change, unless the change would result in closure due to ineligibility for all Medicaid. BAM 210 (January 2018) p. 2. When possible, an ex parte review should begin at least 90 calendar days before the anticipated change is expected to result in case closure. *Id.* The review includes consideration of all MA categories. *Id.*

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<sup>1</sup> See <https://aspe.hhs.gov/poverty-guidelines>

Petitioner is a non-disabled and non-pregnant individual who is not a caretaker to minor children. Thus, Petitioner appears ineligible for all MA categories other than HMP. Given the evidence, Petitioner's MA eligibility properly ended due to Petitioner's apparent ineligibility for all MA categories.

Spouse testified that she is a disabled individual. Spouse testified that she does not receive disability benefits from the Social Security Administration only due to her lack of work history and her spouse's income. Spouse's testimony was not verified, though MDHHS acknowledged that she reported being disabled.

Spouse's reported disability renders Spouse potentially eligible for AD-Care (see BEM 163) or a deductible through the G2S program (see BEM 166). The evidence was not sufficient to determine if Spouse was disabled, but the evidence was sufficient to determine that MDHHS should have evaluated Spouse for a disability before sending notice that Spouse was not disabled. The failure to consider Spouse's potential disability is reversible error justifying a reinstatement of MA benefits until such time that MDHHS performs an ex-parte review.

### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly terminated Petitioner's MA benefits, effective June 2018. Concerning Petitioner's MA eligibility, the actions taken by MDHHS are **AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Spouse's MA eligibility. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Reinstate Spouse's MA eligibility, effective June 2018, subject to the finding that MDHHS failed to perform an ex-parte review for Spouse's MA eligibility based on a reported claim of disability; and
- (2) Initiate a supplement of any benefits improperly not issued.

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

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**Christian Gardocki**

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**

Cindy Tomczak  
MDHHS-Berrien-Hearings

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

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D Smith  
EQAD  
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MAHS