



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: January 8, 2019
MAHS Docket No.: 18-011021
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 December 13, 2018, from Detroit, Michigan. The Petitioner was represented by herself. [REDACTED], appeared and served as an Arabic Translator. The Department of Health and Human Services (Department) was represented by Richkelle Curney, Hearing Facilitator.

ISSUE

Did the Department properly deny the Medical Assistance (MA) case?

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 applied for MA for her family, a group of seven (7) persons, on September 10, 2018.
2. The Department issued a Verification Checklist (VCL) on September 10, 2018, with a September 20, 2018, due date. The VCL request that the Petitioner's husband "provide his business taxes, (not your personal) reflecting your gross sales. Also, there are two checking accounts: one with Huntington Bank [REDACTED] and one with Bank of America [REDACTED]. [REDACTED], if you know longer receive \$[REDACTED] from family contribution, please provide proof. There is also a Nissan Quest showing as in your possession. Please provide proof and also provide anything else requested on this correspondence." (Exhibit C.)

3. On September 16, 2018, the Petitioner provided the Department a Profit and Loss Statement for Bersha, Inc. and an Individual U.S. Income Tax Return for Petitioner and her husband. (Exhibit B.) On September 17, 2018, the Petitioner provided the Department copies of [REDACTED] Huntington Bank account statement with an average balance of \$[REDACTED] and a [REDACTED] Bank of America bank statement for the month of August 2018. The daily ledger balance showed the lowest balance was \$[REDACTED] for the business account on August 17, 2018. (Exhibit D.) The Department also received the car title requested on September 18, 2018.
4. On September 18, 2018, prior to the VFL due date, the Department issued a Health Care Coverage Determination Notice (HCCDN) that determined that the group assets exceeded the \$3,000 asset limit. The Notice advised that the group was eligible for MA subject to a spend-down. The Notice also stated that the Department “was not allowed to allow all the expenses the IRS gives the you we’re only eligible for insurance, supplies transportation and telephone you still need to provide proof of fuel for new hire was not an expense unless you can show proof of that expense”. (Exhibit B.)
5. The Department also found in the September 18, 2018, HCCDN that “the group income exceeds the income limit for the ACA”. The annual income used to determine Petitioner’s eligibility as listed on the notice was shown as \$[REDACTED] (Exhibit A.)
6. The Petitioner’s husband owns a company, [REDACTED] and provided the Department a Profit and Loss Statement on September 26, 2018. (Exhibit A.)
7. The Department hearing summary also states “I requested for client to send business taxes on September 20, 2018 and he submitted proof. No proof of the business taxes submitted by client on September 20, 2018 to the Department were provided with the hearing packet.”
8. The Petitioner requested a timely hearing on October 22, 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, the Department denied the Petitioner's application for MA based upon having assets which exceeded the asset limit for MA of \$3,000. (Exhibit C.) In addition, the Department considered the Petitioner's husband self-employed and analyzed and determined income from his business on that basis.

Department policy found in BEM 502 governs determining income from self-employment, allowable expenses and what types of entities are self-employment. In general, individuals who own their own businesses are self-employed. This includes but is not limited to selling good, farming, providing direct services, and operating a facility that provides services. BEM 502 specifically states:

Note: S-Corporations and Limited Liability Companies (LLCs) are not self-employment. BEM 502, (October 2017), p. 1.

In this case, based upon the 2017 U.S. Individual Income Tax Return provided to the Department filed by Petitioner and her spouse, the return indicates on page 2 that the company owned by Petitioner's husband is an S-Corporation and is **not** self-employment based upon the above note cited above. (Exhibit B.) To the extent the Departments' denial of the MA application was based upon income exceeding the HMP limit for a group of seven (7) and treated the income of [REDACTED] as self-employment, the Department was incorrect. It clearly must be inferred from the HCCDN dated September 18, 2018, issued in this case, that the Department incorrectly treated the income from [REDACTED] as self-employment income and was incorrect as well regarding what expenses are allowable for self-employment. Thus, the income determination based upon self-employment is incorrect.

In addition, the 1040 U.S. Individual Tax Return for 2017 shows total adjusted gross income of \$[REDACTED] (Exhibit B.) The income limit shown on the HCCDN for the Petitioner's household for a group of seven (7) person between age of 19-64 is \$50,619.80; and thus, the Petitioner's income is below the income limit the Healthy Michigan Plan (HMP) which is based on Modified Gross Income (MAGI). BEM 137 (April 2018), p. 1; BEM 211 (January 2016), pp. 1-9. The Department in the Health Care Notice denying the application used income of \$[REDACTED] and did not explain how that amount was derived. In its Hearing Summary, the Department stated client provided information that reflects earnings of \$[REDACTED] and more for June-August, personal taxes reflect wages of \$[REDACTED] which is considered earned income and rental, real estate, royalties, dividends, etc. of \$[REDACTED] which is unearned income, for a combined total of \$[REDACTED]. The [REDACTED] profit and loss statement also includes expenses which were not considered by the Department stating merely that the Department cannot include expenses that the IRS allows with no further explanation. (Exhibit A.)

BEM 400 is the Department policy utilized to determine assets, how they are valued and the asset limits for various department programs, including Medical Assistance. BEM

400 provides that business account exclusion for G2C, G2U, and SSI-Related MA. The policy states **Exclude** a savings, share, checking or draft account used solely for the expenses of a business. BEM 400, (October 2018), p. 23. The Department did not explain how it determined excess assets. Two bank accounts were requested to be verified: the Petitioner's personal account and the business account. The Petitioner's account had only \$[REDACTED] ending balance for the month of August; and thus, the lowest amount for the month was under \$[REDACTED]. The only account with funds that would have possibly exceeded the asset limit was the [REDACTED] account which is excluded from being counted as an asset. The Department presented no evidence that the account was not exclusively used for the business and a cursory review of the account information appears that it was. Finally, there is **no asset test** for MAGI-related Medicaid categories. BEM 400, (October 1, 2018), p. 3.

Based upon the information provided by the Department to support the denial of the Petitioner's application for MA and the documentary evidence admitted as part of the case record, it is determined that the Department did not meet its burden of proof to demonstrate the asset limit was exceeded or to support its determination that the group income was \$[REDACTED] as shown on the notice. (Exhibit C.)

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 acted in accordance with Department policy when it denied the Petitioner's MA application.

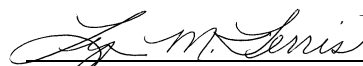
DECISION AND ORDER

Accordingly, the Department's 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. The Department shall re-register the Petitioner's September 10, 2018, application for MA and re-process the application and determine eligibility.
2. The Department shall provide the Petitioner written notice of its determination regarding the September 10, 2018, application.

LMF/



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

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

Petitioner

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