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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

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DIRECTOR

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Date Mailed: September 12, 2019
MOAHR Docket No.: 19-006949
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 August 14, 2019, from ██████████ 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 Kristin Crain, specialist, and Kamila Dunlap, supervisor.

ISSUE

The issue is whether MDHHS properly terminated Spouse's Medicaid eligibility under Healthy Michigan Plan (HMP).

FINDINGS OF FACT

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

1. As of March 2019, Spouse was an ongoing recipient of Medicaid under the HMP category.
2. As of March 2019, Spouse was married, between the ages of 19 to 64 years, and not determined as disabled by a federal or state agency.
3. As of March 2019, Petitioner received \$1,717.50/month in Retirement, Survivors and Disability Insurance (RSDI). Spouse received self-employment income.

4. On an unspecified date, Spouse submitted to MDHHS his 2018 tax return which listed a Schedule C, Line 31, income amount of \$[REDACTED] for self-employment income. Spouse's annual gross self-employment income was listed as \$[REDACTED].
5. On March 29, 2019, MDHHS determined Spouse was not eligible for Medicaid under HMP effective May 2019 due to excess income. Exhibit A, pp. 3-6.
6. On June 26, 2019, Petitioner requested a hearing to dispute the termination of Spouse's Medicaid eligibility under HMP.

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).

Petitioner requested a hearing to dispute a termination of Spouse's Medicaid eligibility under HMP. MDHHS presented a Health Care Coverage Determination Notice dated March 29, 2019, stating that Spouse was no longer eligible for HMP due to excess income.

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.

MAGI for purposes of Medicaid eligibility is a methodology which state agencies and the federally facilitated marketplace (FFM) must use to determine financial eligibility. BEM 500 (July 2017), pp. 3-4. It is based on Internal Revenue Service (IRS) rules and relies on federal tax information to determine adjusted gross income. *Id.*, p. 4. It eliminates asset tests and special deductions or disregards. *Id.* Every individual is evaluated for eligibility based on MAGI rules. The MAGI rules are aligned with the income rules that will be applied for determination of eligibility for premium tax credits and cost-sharing reductions through exchanges. *Id.*

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).

HMP income limits are based on 133% of the federal poverty level. RFT 246 (April 2014). The 2019 FPL for a two-person group in Michigan is \$16,910.¹ Thus, Spouse's HMP limit would be \$22,490.30.

MDHHS determined Petitioner's HMP eligibility based on a group size of two persons. As of the disputed eligibility month, Spouse and Petitioner were married and had no other household members. The circumstances suggest that Spouse's HMP eligibility be based on a two-person group (see BEM 211). Thus, the HMP determination should factor Petitioner's and Spouse's income.

As of the disputed benefit month, Petitioner received \$1,717.50/month in RSDI. Multiplying Petitioner's monthly RSDI by 12 results in a gross annual RSDI of \$20,610.

MDHHS factored Spouse's gross self-employment to be \$[REDACTED]/month. MDHHS testimony indicated that \$[REDACTED] reflected the monthly average of Spouse's gross self-employment from Petitioner's and Spouse's 2018 tax return. Exhibit 1, p. 7.

For MAGI-related eligibility, MDHHS is to use net income as declared on the federal tax return. BEM 502 (July 2017), p. 3. MDHHS testimony acknowledged that line 31 of Schedule C reflects net self-employment income. MDHHS' acknowledgement is consistent with Schedule C, line 31, which the IRS states is "Net profit (or loss)"². Not coincidentally, Schedule C is an acceptable verification of self-employment income. BEM 503 (July 2017), p. 8.

Based on the evidence, MDHHS improperly determined Spouse's HMP eligibility by relying on Spouse's gross self-employment income. The error entitles Spouse to a redetermination of HMP eligibility using Spouse's net self-employment income.

If MDHHS were to redetermine Spouse's HMP eligibility based on an annual RSDI of \$20,610 for Petitioner and Spouse's net self-employment income from Schedule C, line 31 (\$2,196.50), the income total would be \$[REDACTED]. The income would place Spouse slightly above the income limit but not necessarily render Spouse ineligible for HMP benefits.

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

² <https://www.irs.gov/pub/irs-pdf/f1040sc.pdf>

MDHHS is to apply a 5% disregard equal to the amount of the FPL if required to make someone eligible for Medicaid. Applying a 5% disregard to the FPL functionally raises the HMP income limit to 138% of the FPL. Application of the disregard results in an updated income limit of \$ [REDACTED]. Thus, Spouse appears to be eligible for HMP though MDHHS will have to make that benefit determination.

Spouse contended that MDHHS is required to determine his HMP eligibility based on his and Petitioner's modified adjusted gross income level. Spouse also contended that adding Petitioner's monthly RSDI and his monthly net self-employment is an improper method of determining MAGI-related income. This decision does not fully reject Spouse's contentions, but as Spouse appears eligible for HMP under the methods set forth in MDHHS policies, Spouse's contentions should be moot. If MDHHS denies Spouse's HMP eligibility after a recalculation of income, Spouse may request another hearing and raise his contentions concerning HMP income-eligibility at that time.

DECISION AND ORDER

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

- (1) Redetermine Spouse's HMP eligibility subject to the following findings:
 - a. MDHHS is to use Spouse's net self-employment income of \$ [REDACTED]/year;
 - b. MDHHS is to apply a 5% disregard to the group's income if required to make Spouse eligible; and
- (2) Issue benefits, if any, and written notice accordingly.

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

CG/jaf



Christian Gardocki

Administrative Law Judge

for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS (via electronic mail)

Lori Duda
MDHHS-Oakland-II-Hearings

BSC4
D Smith
EQAD

Petitioner (via first class mail)

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