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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: January 17, 2020
MOAHR Docket No.: 19-012567
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 January 8, 2020, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Valarie Foley, hearing facilitator.

ISSUE

The issue is whether MDHHS properly determined Medicaid eligibility for Petitioner's children.

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 October 2019, Petitioner was a member of a household which included his spouse and three children.
2. As of October 2019, Petitioner's children were ongoing recipients of Medicaid subject to a monthly deductible.
3. On [REDACTED] 2019, Petitioner, under the belief that his children did not have Medicaid, submitted to MDHHS an application requesting Medicaid.

4. On October 28, 2019, MDHHS mailed Petitioner a verification Checklist requesting proof of a checking account. Petitioner's due date to return verification was November 7, 2019. Exhibit A, p.5.
5. On November 8, 2019, MDHHS terminated Petitioner's children's Medicaid, effective December 2019, due to Petitioner's alleged failure to verify a checking account.
6. On November 20, 2019, Petitioner requested a hearing to dispute the termination of his children's Medicaid eligibility.

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 his children's Medicaid eligibility. Exhibit A, pp. 3-4. A Health Coverage Determination Notice stated that MDHHS terminated Petitioner's children's Medicaid eligibility beginning December 2019 due to Petitioner's failure to verify a checking account.

The Medicaid program includes 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 (HMP) is based on Modified Adjusted Gross Income (MAGI) methodology. *Id.*

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

MA categories are also split into categories of Group 1 and Group 2. *Id.*, p. 1. For Group 1, a group's net income must be at or below a certain income level for eligibility. *Id.* For Group 2 categories, eligibility is possible even when net income exceeds the income limit for a Group 1 category; this is possible because incurred medical expenses

are used when determining eligibility. BEM 105 (April 2017), p. 1. Group 2 categories are considered a limited benefit because a deductible is possible. *Id.*

Petitioner testified, without rebuttal from MDHHS, that his children for which Medicaid was sought were all minors. As minors, Petitioner children were potentially eligible for Group 1 Medicaid (i.e. Medicaid without a deductible) under MiChild. If not eligible for MiChild, Petitioner's children are potentially eligible for Medicaid under the category of Group 2- Under Age 21 (G2U). BEM 132. The analysis will first consider whether MDHHS properly evaluated Petitioner's children's eligibility under MiChild.

MiChild is a MAGI-related Medicaid Expansion program for children who are under 19 years of age and who have no other health coverage. BEM 130 (July 2016) p. 1. MiChild income eligibility for children 1 through 18 years of age ranges from 160-212% of the federal poverty limit (FPL). *Id.* There is no asset test for MiChild. *Id.*, p. 2.

Though the notice sent to Petitioner dated November 8, 2019, stated that Petitioner's children were not eligible for Medicaid due to a failure to verify assets, that is likely not accurate concerning eligibility under MiChild. As noted above, MiChild has no asset test. Thus, MDHHS has no need to verify Petitioner's assets to determine his children's MiChild eligibility. Other documents from MDHHS' database provided more insight into the reason that Petitioner's children were not eligible for Medicaid under MiChild. Exhibit A, pp. 13-16. The documents stated that MiChild was denied due to excess income.

Unfortunately, an analysis of whether MDHHS properly terminated Petitioner's children's MiChild eligibility cannot be undertaken. MDHHS presented no evidence of Petitioner's income or a budget explaining how a determination was made. Given the limited evidence, it cannot be found that Petitioner's children are eligible for Medicaid. As MDHHS has the burden of proof to establish a proper action, it can be found that MDHHS failed to establish that Petitioner's children were ineligible for Medicaid under MiChild. MDHHS will be ordered to again determine Petitioner's children Medicaid eligibility under MiChild.

In addition to denying Medicaid to Petitioner's children under MiChild, MDHHS terminated the ongoing deductible Medicaid case. The analysis will proceed to consider whether MDHHS properly terminated Petitioner's children's eligibility under G2U. Presumably, the basis for MDHHS denying G2U eligibility was Petitioner's failure to verify a checking account.

For G2U, MDHHS is to consider a client's cash assets. BEM 400 (July 2019) p. 1. Such assets include a checking account. *Id.* MDHHS is to verify assets whenever a change is reported. *Id.*, p. 62.

Unlike eligibility under MiChild, assets are relevant to G2U eligibility. Thus, MDHHS was authorized to request verification of Petitioner's assets.

Clients must obtain required verification, but MDHHS must assist if they need and request help. BAM 130 (April 2017) p. 3. If neither the client nor MDHHS can obtain verification despite a reasonable effort, MDHHS is to use the best available information. *Id.* If no evidence is available, MDHHS is use its best judgment. *Id.*

MDHHS presented an asset detection report for Petitioner. Exhibit A, p. 9. MDHHS utilizes such reports to uncover assets not reported by clients. BEM 400 (July 2019) p. 1. The report listed a joint checking account for Petitioner at [REDACTED] Bank. After running the report, MDHHS mailed Petitioner a VCL on October 28, 2019, requesting verification of the checking account. Exhibit A, p. 5

Petitioner testified that he no longer had access to the checking account for which verification was requested. Petitioner testified he was previously on the account as a person with power of attorney over the joint account holder: Petitioner's mother. Petitioner also testified that his name was taken off the account; therefore, he has no access to account information. Petitioner credibly testified, without rebuttal, that he told MDHHS, before MDHHS closed his children's Medicaid case, that he was unable to obtain verifications because he is no longer listed on the account. Petitioner's testimony was credible.

Because Petitioner was no longer on the account for which MDHHS sought verification, it is not known what documentation that Petitioner could have returned to MDHHS to verify that he was not on the account. MDHHS gave no example of a verification that Petitioner could have returned. Perhaps MDHHS could have assisted Petitioner by sending a request for account information directly to [REDACTED] Bank, but no such attempt was made. Alternatively, MDHHS could have accepted Petitioner's statement, barring evidence contradicting it. Under the circumstances, Petitioner provided reasonable efforts to obtain verification and MDHHS either failed to assist Petitioner or accept his statements as the best available information. Under either scenario, MDHHS improperly terminated Petitioner's children's G2U 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 children's Medicaid eligibility. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Redetermine Petitioner's children's Medicaid eligibility, effective December 2019, subject to the following findings:
 - a. MDHHS failed to establish that Petitioner's had excess income for MiChild;
 - b. MDHHS either failed to assist Petitioner or accept his statements as the best available information of verification for a [REDACTED] bank checking account; and
- (2) Issue notice in accordance with policy of Petitioner's children's redetermined Medicaid eligibility.

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

CG/cg



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

Via Email:

MDHHS-Wayne-19-Hearings
D. Smith
EQAD
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

