



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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[REDACTED]

Date Mailed: February 14, 2020
MOAHR Docket No.: 19-013850
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 February 10, 2020, from Detroit, Michigan. Petitioner was represented by his Authorized Hearing Representative (AHR), [REDACTED]. The Department of Health and Human Services (Department) was represented by Samantha Johnson, Eligibility Specialist.

ISSUE

Did the Department properly close Petitioner's Medical Assistance (MA) benefit 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. Petitioner was an ongoing MA recipient under the Healthy Michigan Plan (HMP) program.
2. On November 7, 2019, Petitioner's AHR completed a redetermination related to Petitioner's MA benefit case (Exhibit A, pp. 1-8).
3. Petitioner had Retirement, Survivors and Disability Insurance (RSDI) benefits in the gross monthly amount of \$1,177 (Exhibit A, p. 9).
4. Petitioner had income in the form of per capita distributions from Indian gaming revenue (Exhibit A, p. 10).

5. On November 19, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice informing him that his MA benefit case was closing effective January 1, 2020 (Exhibit A, pp. 14-17).
6. On [REDACTED], 2019, Petitioner's AHR submitted a request for hearing disputing the Department's actions.

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, Petitioner was an ongoing MA recipient under the HMP program. On November 7, 2019, Petitioner's AHR completed a redetermination related to Petitioner's MA benefit case. Petitioner's AHR reported that Petitioner was now receiving RSDI income. As a result, the Department redetermined Petitioner's MA eligibility. The Department determined Petitioner was not eligible for MA benefits.

The Department concluded that Petitioner was not eligible for HMP because his household income exceeded the applicable income limit for his group size. HMP uses a Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (October 2016), p. 1. An individual is eligible for HMP if their household's income does not exceed 133% of the Federal Poverty Level (FPL) applicable to the individual's group size. BEM 137, p. 1. Additionally, for MAGI-related MA programs, the Department allows a 5 percent disregard in the amount equal to five percent of the FPL level for the applicable family size. BEM 500 (July 2017), p. 5. It is not a flat 5 percent disregard from the income. BEM 500, p. 5. The 5 percent disregard is applied to the highest income threshold. BEM 500, p. 5. The 5 percent disregard shall be applied only if required to make someone eligible for MA benefits. BEM 500, p. 5.

An individual's group size for MAGI-related purposes requires consideration of the client's tax filing status. In this case, Petitioner was not married and did not claim any dependents. Therefore, for HMP purposes, Petitioner has a household size of one. BEM 211 (January 2016), pp. 1-2.

138% of the annual FPL in 2019 for a household with one member is \$17,236.20. See <https://aspe.hhs.gov/poverty-guidelines>. The monthly income limit for a group size of three is \$1,436.35. Therefore, to be income eligible for HMP, Petitioner's income cannot exceed \$17,236.20 annually or \$1,436.35 monthly. To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. BEM 500 (July 2017), p. 3. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500, p. 3. Income is verified via electronic federal data sources in compliance with MAGI methodology. MREM, § 1.

In order to determine income in accordance with MAGI, a client's adjusted gross income (AGI) is added to any tax-exempt foreign income, Social Security benefits, and tax-exempt interest. AGI is found on IRS tax form 1040 at line 37, form 1040 EZ at line 4, and form 1040A at line 21. Alternatively, it is calculated by taking the "federal taxable wages" for each income earner in the household as shown on the paystub or, if not shown on the paystub, by using gross income before taxes reduced by any money the employer takes out for health coverage, childcare, or retirement savings. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>. For MAGI MA benefits, if an individual receives RSDI benefits and is a tax filer, all RSDI income is countable. BEM 503 (January 2019), p. 29.

Effective November 1, 2017, when determining eligibility for ongoing recipients of MAGI related MA, the State of Michigan has elected to base financial eligibility on currently monthly income and family size. See:

https://www.michigan.gov/documents/mdhhs/MAGI-Based_Income_Methodologies_SPA_17-0100_-_Submission_615009_7.pdf

The Department presented verification that Petitioner's gross monthly RSDI benefit amount is \$1,177. Per policy, the entire benefit amount is countable. Petitioner's per capita gaming revenue income is also countable, as it is not included as one of the American Indian income exceptions under federal policy. 42 CFR 435.603(e). The Department presented verification of Petitioner's quarterly per capita distribution. Per the verification provided, Petitioner's last distribution was \$1,028.29. The Department divided the figure over the quarter, resulting in a monthly income of \$342.76. The Department calculated Petitioner's combined household income to be \$1,519.76, which exceeded the income limit for a group size of one.

At the hearing, Petitioner's AHR testified that Petitioner's gaming revenue fluctuates significantly. Petitioner's AHR stated that the quarterly payment can be as low as \$400. Petitioner's AHR also stated that the \$1,028.29 figure was unusually high.

The Department was correct that the State of Michigan has chosen to base eligibility for ongoing recipients on current income. However, the State MA Plan also states that Michigan has elected to account for a reasonably predictable decrease in future income and/or family size. Specifically, the State MA Plan states, "if an applicant is aware of a reasonably predictable decrease in income (i.e. a seasonal worker) they can fill out the

projected annual income field on Michigan's application. Additionally, a beneficiary that experiences any changes in their income or family size can report it to the Department at any time to have his change taken into account. The Department attempts to electronically verify any income reported on an application or through the change process in accordance with the State's verification plan. If verification cannot be completed electronically, paper verification from the applicant/beneficiary is requested." See:

https://www.michigan.gov/documents/mdhhs/MAGI-Based_Income_Methodologies_SPA_17-0100_-_Submission_615009_7.pdf

Although the State of Michigan has elected to use current monthly income, the Department is to take into consideration the special circumstances of those individuals that experience changes in income. Per the State MA Plan, those individuals can elect to have their income projected over the course of a year. Upon review of the quarterly distribution verification, Petitioner's quarterly distributions were much lower in April and July 2019, than in October 2019. Therefore, the Department did not act in accordance with policy when it only considered Petitioner's yearly per capita gaming income. Thus, the Department did not act in accordance with policy when it determined Petitioner's MA eligibility.

DECISION AND ORDER

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 did not act in accordance with Department policy when it closed Petitioner's MA benefit case.

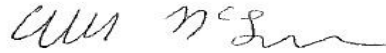
Accordingly, the Department's decision is **REVERSED**.

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. Redetermine Petitioner's MA eligibility as of January 1, 2020, ongoing;
2. If Petitioner is eligible for MA benefits, provide him with coverage he is entitled to receive; and

3. Notify Petitioner's AHR of its decision in writing.

EM/cg



Ellen McLemore

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-Mason-Hearings
D. Smith
EQAD
BSC3- Hearing Decisions
MOAHR

**Authorized Hearing Rep. –
Via First-Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]

**Petitioner –
Via First-Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]