RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[redacted]

Date Mailed: March 2, 2017
MAHS Docket No.: 17-001158
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; 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 23, 2017, from Detroit, Michigan. The Petitioner, [redacted] represented her husband, [redacted] as his Authorized Hearing Representative (AHR). The Department of Health and Human Services (Department) was represented by Quale Williams, Hearing Facilitator.

ISSUE

1. Did the Department properly process the Petitioner's Healthy Michigan Plan (HMP) closure?

2. Did the Department properly process the Petitioner's MA G2C Medical Assistance (MA) coverage imposing a deductible?

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 on [redacted] 2016. On the MA application, the Petitioner's spouse, [redacted], was not listed as disabled.

2. At the time of the application on [redacted] 2016, the Petitioner was the only group member with income.

3. The Petitioner is employed and confirmed that her monthly gross income as determined by the Department to be $[redacted] was correct. Exhibit D.

4. The Department issued a Health Care Coverage Determination Notice (HCCDN) on November 10, 2016, finding Petitioner's spouse eligible for full coverage MA, HMP. Exhibit B and Exhibit E.

5. On December 5, 2016, the Department issued an HCCDN finding [redacted] was eligible for GP2 MA subject to a spenddown (deductible) of $4,059 effective January 1, 2017, ongoing. Exhibit G.

6. On January 9, 2017, the Department issued an HCCDN finding that Petitioner's spouse, [redacted] is not eligible for HMP due to excess income and not eligible for MA due to not being aged, blind or disabled. Exhibit F.

7. The Petitioner's spouse, [redacted] was determined to be disabled by the Social Security Administration (SSA) as of August 2016 by Notice to him in November 2016. The Department was not provided the Notice from SSA by Petitioner.

8. Beginning February 2017, the Petitioner's spouse receives $1,881 in Retirement, Survivors and Disability Insurance (RSDI). Exhibit C.

9. The Petitioner requested a timely hearing on [redacted] 2017, protesting 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, the Department initially processed the Petitioner's MA application for [redacted] 2016, and found the Petitioner's spouse, [redacted], eligible for HMP. Thereafter, the Department issued another HCCDN on December 5, 2016, finding the Petitioner's spouse eligible for a $4,059 spenddown (deductible) ongoing. At the time of

the application, the Petitioner's spouse had applied for SSA disability but did not advise the Department on the application that he was claiming disability.

On January 9, 2017, the Department issued an HCCDN advising the Petitioner that her spouse was no longer eligible for HMP due to group income exceeding the limit. The Notice was effective February 1, 2017. The Petitioner is employed and agreed that her monthly gross income was $[redacted]

Medical Assistance is available (i) to individuals who are aged (65 or older), blind or disabled under Supplemental Security Income (SSI)-related categories, (ii) to individuals who are under age 19, parents or caretakers of children, or pregnant or recently pregnant women, and (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage. BEM 105 (January 2016), p. 1.

Healthy Michigan Plan is a Modified Adjusted Gross Income (MAGI)-related MA category that provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income at or below 133% of the federal poverty level (FPL) under the MAGI methodology; (iii) do not qualify for or are not enrolled in Medicare; (iv) do not qualify for or are not enrolled in other MA programs; (v) are not pregnant at the time of application; and (vi) are residents of the State of Michigan. BEM 137 (January 2016), p. 1.

Petitioner's husband, [redacted] who is under age 64, was not enrolled in Medicare and not the caretaker of any minor children, is potentially eligible for MA under the HMP. An individual is eligible for HMP if the Petitioner's household's income does not exceed 133% of the FPL applicable to the individual's group size. A determination of group size under the MAGI methodology requires consideration of the client's tax status and dependents. In this case, the evidence showed that Petitioner's household size for MAGI purposes is, although listed as one, based upon the Petitioner's testimony should have been three based upon her tax filing. In 2016, 133% of the annual FPL for a household with one member is $26,812.80. https://aspe.hhs.gov/poverty-guidelines . Therefore, to be income eligible for HMP, Petitioner's annual income cannot exceed $26,812.80.

To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500 (January 2016), p. 3. Income is verified via electronic federal data sources in compliance with MAGI methodology. MREM, § 1. In determining an individual's eligibility for MAGI-related MA, 42 CFR 435.603(h)(2) provides that for current beneficiaries and "for individuals who have been determined financially-eligible for Medicaid using the MAGI-based methods . . ., a State may elect in its State plan to base financial eligibility either on current monthly household income . . . or income based on projected annual household income . . . for the remainder of the current calendar year."

At the hearing, the Department stated that it relied on the information contained in the verification of income Petitioner provided; both the Department and the Petitioner agreed that the Department's determination of monthly gross income of $[redacted] was correct to determine Petitioner's annual projected income. (Exhibit D). Specifically, the Department stated that it considered monthly gross income of $[redacted] based upon the Employment Budget Summary indicating that amount. Exhibit I. Using this monthly amount, the Petitioner's monthly income when multiplied by 12 results in annual income of $[redacted].

Effective January 1, 2014, when determining financial eligibility of current beneficiaries for MAGI-related MA, the State of Michigan has elected to base eligibility on projected annual household income and family size for the **remaining months of the current calendar year**. The State has also elected to use reasonable methods to include a prorated portion of a reasonably predictable increase in future income and/or family size and to account for a reasonably predictable decrease in future income and/or family size. (See Medicaid State Plan Amendment TN No: MI-13-0110-MM3 https://www.michigan.gov/documents/mdch/SPA_13_0110_MM3_MAGI-Based_Income_Meth_446554_7.pdf and http://www.michigan.gov/mdhhs/0,5885,7-339-73970_5080-108153--,00.html).

Based upon the above election, the Department's approval of [redacted] for November 2016 and December 2016 would have been correct as the two months income would have been $[redacted] Thereafter, the Department was correct when it closed the Petitioner's HMP due to excess income as the HMP income limit for a group of three persons is $26,812.80. Exhibit E. Based upon the $[redacted] monthly gross income for Petitioner's spouse the annual income of $[redacted] ($[redacted] X 12 = $[redacted]).

Finally, the Department issued a HCCDN dated December 5, 2016, which determined the Petitioner's spouse eligible for Group 2 MA and imposed a $4,059 monthly deductible. This MA Group 2 caretaker coverage was based upon a child or caretaker relative in the home. The MA Group 2 C coverage was effective January 1, 2017, ongoing. Exhibit G.

Thereafter, the Department issued a HCCDN dated January 9, 2017, effective February 1, 2017, which found Petitioner's spouse, [redacted], **not eligible under any category,** including HMP, Group 2 C caretaker of a child under 19 or a relative; and finally, the Department determined that the Petitioner was not blind, aged (age 65) or disabled. Exhibit F. It is this HCCDN which prompted the request for hearing.

The Department also did not demonstrate that it conducted an Ex Parte review of [redacted] MA case prior to closure as required by Department policy which provides:

MA Only

An ex parte review (see glossary) must begin at least 90 days (when possible) prior to the close of any Medicaid Type of Assistance.

- When the ex parte review shows that a recipient does have eligibility for Medicaid under another category, change the coverage.

- When the ex parte review shows that a recipient may have continuing eligibility under another category, but there is not enough information in the case record to determine continued eligibility, send a verification checklist (including disability determination forms as needed) to proceed with the ex parte review. If the client fails to provide requested verification or if a review of the information provided establishes that the recipient is not eligible under any MA category, send timely notice of Medicaid case closure.

- When the ex parte review suggests there is no potential eligibility under another MA category, send timely notice of Medicaid case closure.

When it is determined that a recipient will no longer meet the eligibility criteria for FIP-related Medicaid, because of an actual or anticipated change, determine whether the recipient has indicated or demonstrated a disability (see glossary) as part of the ex parte review (see glossary).

- If the ex parte review reveals the recipient has already been determined disabled for purposes of qualifying for a disability-based Medicaid eligibility category, by the SSA or the department, and the determination is still valid, continue the recipient's Medicaid eligibility under the disability-based Medicaid category for which the recipient is otherwise eligible.

- If, during the ex parte review it is determined a recipient has indicated or demonstrated a disability, request from the recipient additional information needed to proceed with a disability determination. Pending the determination, continue the recipient's Medicaid. BAM 220 (January 1, 2017), pp. 17-18.

After a review of the evidence presented it is determined that the Department did not meet its burden of proof to demonstrate the basis for its closure of MA for February 1, 2017, and the fact that it provided no MA coverage for January 2017. The Department's Eligibility Summary did not even contain any reference to the Group 2 C coverage with a $4,059 deductible afforded to [redacted] in the December 5, 2016, HCCDN effective January 1, 2017, ongoing. The Eligibility Summary review, notes that the Petitioner's HMP closed January 1, 2017, and indicates no MA coverage for January 2017 and February 2017. Exhibit B. The Department did not explain this lapse in coverage.

A review of the Magi Eligibility Determination evidence also notes a minor child in the household, but Petitioner's spouse was found ineligible for that MA category Group 2 C and MA based upon disability, even though the Department's review of the State Online Query (SOLQ) confirmed the Petitioner to be disabled. Based upon these unexplained oversights and unexplained discrepancies, the Department did not meet its burden to establish that it properly closed the Petitioner's MA effective February 1, 2017, as well as provided no evidence to support the fact that the Eligibility Summary showed no medical coverage for January 1, 2017, even though the Department found Petitioner's spouse eligible for a deductible.

DECISION AND ORDER

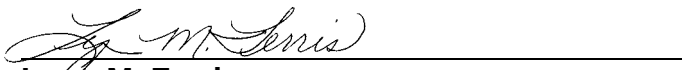
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed the Petitioner's MA effective February 2, 2017, and afforded Petitioner no MA coverage for January 1, 2017.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to closure of HMP effective January 1, 2017, and **REVERSED IN PART** with respect to the closure of the Petitioner's MA for all categories effective February 1, 2016.

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 reinstate the Petitioner's MA case for January 1, 2017, in accordance with the Department's Notice of Case Action dated December 5, 2016, imposing a $4,069 deductible and shall review the Petitioner's MA coverage to determine if more beneficial coverage is available in another MA category.

2. The Department shall provide the Petitioner written Notice of its determination.



LMF/jaf

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) 335-6088; 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

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