



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: October 26, 2017
MAHS Docket No.: 17-010960
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 September 27, 2017 from Detroit, Michigan. The Petitioner appeared for the hearing with his friend, [REDACTED] and represented himself. The Department of Health and Human Services (Department) was represented by Carly Ostlund, Assistance Payments Supervisor and Jessica Feller, Eligibility Specialist.

ISSUE

1. Did the Department properly close Petitioner's Medical Assistance (MA) case under the Healthy Michigan Plan (HMP)?
2. Did the Department properly determine Petitioner's co-pay amount and/or the amount of contributions under the 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. Petitioner was an ongoing recipient of MA benefits under the HMP.
2. In connection with a Food Assistance Program (FAP) redetermination, Petitioner submitted paystubs verifying his employment income. (Exhibit A, pp. 4-14)
3. The Department processed the paystubs submitted and applied them to Petitioner's MA case.
4. The Department determined that Petitioner was responsible for a monthly contribution towards the cost of his health care coverage.

5. On June 13, 2017 Petitioner received a MI Health Account Statement which indicated that he owed \$337 in contributions for the next three months (July 2017, August 2017, and September 2017), with the first \$112.33 payment due on July 15, 2017. The bottom of the MI Health Account Statement directed him to call a Beneficiary Help Line (1-800 number) for questions. The statement further indicates that Petitioner's account is overdue and a failure to pay the overdue balances owed could result in tax refund consequences. (Exhibit 1, pp. 1-3)
6. On July 21, 2017 the Department sent Petitioner a Health Care Coverage Determination Notice (Notice) advising him that effective September 1, 2017 he was ineligible for MA under the HMP category because his countable income exceeds the income limit for his group size. (Exhibit A, pp. 18-21)
7. On or around August 9, 2017 Petitioner requested a hearing disputing the Department's actions with respect to his HMP case, specifically, the closure of his HMP case due to excess income and the amount of his monthly HMP cost-sharing contributions. (Exhibit A, pp. 3)
8. On September 11, 2017 Petitioner received a MI Health Account Statement which indicated that he owed \$337 in contributions for the next three months (October 2017, November 2017, and December 2017), with the first \$112.33 payment due on October 15, 2017. The bottom of the MI Health Account Statement directed him to call a Beneficiary Help Line (1-800 number) for questions. (Exhibit 1, pp. 3-6)
9. The September 11, 2017 MI Health Account Statement further indicates that Petitioner's account is overdue and a failure to pay the overdue balances owed could result in tax refund consequences. Additionally, Petitioner was informed that he was not being charged new co-pays or contributions at this time because he has met his cost sharing limit, but he still owes all past due amounts. (Exhibit 1, pp. 3-6)
10. Petitioner confirmed: that he is [REDACTED] years old; that he is not disabled; that he is not enrolled in Medicare; that he is the parent of a minor child but the child does not live with him; that he does not does not claim any dependents on his tax return and that he is not claimed as a dependent on another individual's tax return. Petitioner's household size for MA purposes is one.

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 requested a hearing disputing the Department's actions with respect to his MA case. Petitioner raised two concerns at the hearing: the closure of his MA case effective September 1, 2017; and the amount of the monthly contributions imposed towards his HMP coverage. Petitioner's concerns will be addressed separately below.

MA HMP Case Closure

MA is available (i) to individuals who are aged (65 or older), blind or disabled under 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, which provides health care coverage for a category of eligibility authorized under the Patient Protection and Affordable Care Act and Michigan Public Act 107 of 2013 effective April 1, 2014. BEM 105 (January 2016), p. 1; BEM 137 (January 2016), p. 1.

HMP is a 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 Modified Adjusted Gross Income (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, p. 1.

Petitioner, who is under age 64, not disabled, and not the caretaker of any minor children is potentially only eligible for MA under the HMP category. An individual is eligible for HMP if his 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. The evidence showed that Petitioner's household size for MAGI purposes is one. 133% of the annual FPL in 2017 for a household with one member is \$16,039.80. <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's annual MAGI cannot exceed \$16,039.80, as he is a current MA beneficiary.

At the hearing, the Department testified that after receiving updated paystubs from Petitioner in connection with his FAP redetermination, it applied the updated pay information and determined that he had excess income for MA under the HMP category.

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."

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).

The Department testified that in calculating Petitioner's annual income, it considered his earnings from employment, specifically, \$665.38 paid on June 30, 2017 and \$736.92 paid on July 14, 2017, concluding that he had monthly MA income of \$1,402.30 and which when taken annually, results in income in excess of the \$16,039.80 income limit. (Exhibit A, pp. 15-16). Upon review, the paystubs submitted show that \$117.01 is withheld from Petitioner's biweekly paycheck as a wage garnishment which Petitioner testified consisted of child support payments that he is responsible for. Although Petitioner's child support is withheld from his biweekly wages, the amount withheld is still countable for MAGI purposes, as only income received from child support is not countable.

However, the paystub from July 14, 2017 shows that an additional \$30 is deducted from Petitioner's biweekly pay for an IRA which the Department did not consider as a deduction to gross income as required under MAGI policy. (Exhibit A, p. 16). The Department should not have considered gross pay of \$736.92, but rather \$706.92. Based on the paystubs presented for review, Petitioner's monthly MAGI earnings are \$1,372.30 and although the annual amount is still greater than 133% of the FPL for his group size of one, policy provides that if an individual's group's income is within 5% of the FPL for the applicable group size, a disregard is applied, making the person eligible for MA. MREM, § 7.2. There was no evidence presented that the \$30 IRA contribution was not expected to continue with subsequent paystubs. Therefore, upon further review and based on the evidence presented, Petitioner is income eligible for HMP when the 5% disregard is applied, as his income is below 138% of the FPL or the \$16,643 income limit.

As such, the Department did not act in accordance with Department policy when it closed Petitioner's MA case under the HMP effective September 1, 2017 because his income exceeded the income limit.

HMP Cost-Sharing Obligation

In the present case, Petitioner requested a hearing to dispute the monthly cost-sharing obligations or contributions assessed under his HMP case. Petitioner testified that he was notified through a MI Health Account Statement of his \$112 monthly premium contributions.

Pursuant to 42 CFR 431.201, MA applicants and beneficiaries have a right to a Medicaid hearing as a result of an action, which is defined as a reduction, suspension, termination or denial of Medicaid eligibility or covered service. 42 CFR 438.400(a)(1) provides that a State plan such as Medicaid in this case, is required to “provide an opportunity for a fair hearing to any person whose claim for assistance is denied or not acted upon promptly.” Medicaid managed care organizations (MCOs) which service HMP beneficiaries are required to “establish internal grievance procedures under which Medicaid enrollees, or providers acting on their behalf, may challenge the denial of coverage of, or payment for, medical assistance.” 42 CFR 438.400(a)(3).

Additionally, an MCO must give an HMP beneficiary timely and adequate written notice of an adverse benefit determination. An adverse benefit determination can include “[t]he denial of an enrollee's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other enrollee financial liabilities.” 42 CFR 438.400(b)(7); 42 CFR 438.404 (a). The adverse benefit determination notice must explain: the adverse benefit determination the MCO has made or intends to make; the reasons for the determination; and the enrollee's right to request an appeal of the MCO's adverse benefit determination, including information on exhausting the MCO's one level appeal (described at 42 CFR 438.402(b)) and the right to request a State fair hearing consistent with 42 CFR 438.402(c). See 42 CFR 438.404(b)(1)-(6). The MCO must timely respond to a beneficiary's appeal of an adverse benefit determination and resolve each appeal by providing a written notice of resolution which includes the results of the resolution process and the right to request a State fair hearing. 42 CFR 438.408(a), (b)(1)-(2), (d), and (e). Generally, an enrollee may request a State fair hearing only after receiving the notice of resolution that the MCO is upholding the adverse benefit determination and exhausting the MCO appeals process; however, if the MCO fails to adhere to the notice and timing requirements in 42 CFR 438.408, the HMP enrollee is deemed to have exhausted the MCO appeals process and the enrollee may initiate a State fair hearing. 42 CFR 438.408(f)(1)(i).

At the hearing, Petitioner denied receiving any notices to appeal his cost-sharing obligation from his MCO. Petitioner testified that he did not receive an Adverse Benefit Determination or a Notice of Resolution to challenge or dispute the amount of the contribution. The evidence established that Petitioner is deemed to have exhausted the MCO appeals process and is entitled to a State fair hearing regarding the amount of his cost-sharing obligations, which will be addressed below.

It was undisputed that Petitioner was an ongoing recipient of MA benefits under the Healthy Michigan Plan (HMP) category. The HMP has beneficiary cost-sharing obligations which can include copays and additional monthly contributions based on a beneficiary's income level. HMP managed care members are required to satisfy cost-sharing contributions

through a MI Health Account. The cost sharing requirements will be monitored through the MI Health Account by the health plan. These requirements begin after the beneficiary has been enrolled in a health plan for six months. BEM 137, pp. 1-2.

Additionally, HMP beneficiaries at 100% to 133% of the FPL are required to pay a monthly contribution into a MI Health Account. Michigan Department of Community Health (DCH) – Medical Services Administration (MSA) Bulletin No. MSA 14-11, February 27, 2014, p. 4. Available at http://www.michigan.gov/documents/mdch/blank_page_448984_7.pdf. The contribution will be based on 2% of the HMP beneficiary's annual income. MSA Bulletin No. 14-11, p. 4.

At the hearing, Petitioner provided for review two MI Health Account Statements dated June 13, 2017 and September 11, 2017 detailing the amounts of his monthly contributions and the due dates for which he was required to make contribution payments (Exhibit 1). According to the MI Health Account Statements, Petitioner was determined to be responsible for monthly contribution payments of \$112.33 monthly beginning July 2017. The Statements also suggest that Petitioner was responsible for monthly contributions prior to July 2017, as the statement reflected a last balance of \$259, in addition to the payments that were due starting July 2017. (Exhibit 1). However, because Petitioner did not present any additional MI Health Account Statements, the issue presented for the hearing is limited to the contributions effective July 1, 2017.

The Department did not present any evidence in support of its determination that based on Petitioner's annual and monthly MAGI, he was responsible for \$112.33 in contribution payments and provided no explanation for how Petitioner's cost-sharing contributions were determined. Although it is likely that Petitioner will be responsible for a cost-sharing contribution monthly, the Department failed to establish that it properly calculated/determined the amount of his monthly cost-sharing contributions under the HMP. There was no evidence presented supporting a monthly cost-sharing contribution of \$112.33.

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 case effective September 1, 2017 based on excess income and the Department did not act in accordance with Department policy when it calculated the amount of Petitioner's HMP cost-sharing contribution.

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. Reinstate Petitioner's MA case under the HMP for September 1, 2017, ongoing;
2. Provide Petitioner with MA coverage under the HMP for September 1, 2017, ongoing, and supplement Petitioner and his provider(s) for any missed MA benefits from September 1, 2017, ongoing;
3. Redetermine and recalculate Petitioner's HMP cost-sharing obligation/contributions effective July 1, 2017, ongoing;
4. After recalculating the HMP cost-sharing obligation/contributions, adjust Petitioner's MI Health Account to reflect the correct contribution amount and to the extent required by policy, provide Petitioner with retroactive and/or supplemental benefits; and
5. Notify Petitioner in writing of any adjustments made to his MI Health Account.



ZB/tlf

Zainab A. Baydoun
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

Via Email:

MDHHS-Marquette-Hearings
BSC1 Hearing Decisions
EQAD
M. Best
MAHS

Petitioner – Via First-Class Mail:

