



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: December 8, 2017  
MAHS Docket No.: 17-012682  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Aaron McClintic

**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 November 8, 2017, from Lansing, Michigan. Petitioner was represented by Nancy Ricotta from MORC. Petitioner, [REDACTED], and [REDACTED] also appeared and testified for Petitioner. The Department of Health and Human Services (Department) was represented by Cami Johnson, ES. Department Exhibit 1, pp. 1-191 was received and admitted.

**ISSUE**

Did the Department properly deny Petitioner's Medical Assistance (MA) application?

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED], 2016, Petitioner applied for Medicaid.
2. On June 26, 2017, a Health Care Coverage Determination Notice was sent to Petitioner indicating that Petitioner was found Not Disabled by the Medical Review Team because he was engaged in substantial gainful activity. (Ex. 1, pp. 160-162) This Notice also found that Petitioner's annualized income was \$18,768 and therefore he was not eligible for HMP.
3. On September 22, 2017, Petitioner requested hearing contesting the denial of MA.

4. Petitioner previously received Freedom to Work Medicaid and his case closed due to missed premium payments.

### **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

### **DEPARTMENT POLICY**

#### **MA Only**

This is an SSI-related Group 1 MA category.

FTW is available to a client with disabilities age 16 through 64 who has earned income.

Eligibility begins the first day of the calendar month in which all eligibility criteria are met. All eligibility factors must be met in the calendar month being tested.

**Note:** SSI recipients whose SSI eligibility has ended due to financial factors are among those who should be considered for this program.

### **NON- FINANCIAL ELIGIBILITY FACTORS**

1. The client must be disabled according to the disability standards of the Social Security Administration, except employment, earnings, and substantial gainful activity (SGA) cannot be considered in the disability determination.

**Note:** FTW clients requiring a disability determination from Disability Determination Service (DDS) must be clearly indicated on the medical packet by checking the other Program box and writing “Freedom to Work” or “FTW” on the cover sheet.

2. The client must be employed. FTW coverage is retained when a participant is relocated due to employment.

**Note:** A client may have temporary breaks in employment up to 24 months if the break is the result of an involuntary layoff or is determined to be medically necessary and retain FTW eligibility. Use client statements to verify.

3. The MA eligibility factors in the following items must be met:
  - BEM 220, Residence.
  - BEM 221, Identity.
  - BEM 223, Social Security Numbers.
  - BEM 225, Citizenship/Alien Status.
  - BEM 257, Third Party Resource Liability.
  - BEM 265, Institutional Status.
  - BEM 270, Pursuit of Benefits.

## FINANCIAL ELIGIBILITY FACTORS

### Groups

A client eligible under the FTW category is a fiscal and asset group of one.

### Assets

#### Initial Eligibility

The asset limit for the initial eligibility determination is set to the Medicare Savings Program asset limit for an individual in that calendar year.

#### Ongoing Eligibility

Once eligibility for FTW is established, countable assets cannot exceed the asset limit for FTW in BEM 400.

Accumulated assets that are excluded (not countable) while the participant is enrolled in the FTW program will continue to be excluded if the beneficiary loses eligibility for the FTW program and

has a determination of eligibility in another SSI-related Medicaid category.

**Example:** Additions made to a 401(k) account while the participant is working and in the FTW program are excluded from the ongoing FTW asset test and from the eligibility determination for any SSI related MA category such as AD Care, if eligibility for the FTW program is lost.

See BEM 400 for jointly owned assets.

## **Divestment**

Do not apply policy in BEM 405.

## **Income Eligibility**

### **Initial and Ongoing Eligibility**

Initial income eligibility exists when the client's countable income does not exceed 250 percent of the Federal Poverty Level (FPL). Ongoing eligibility exists when the client's unearned income does not exceed 250 percent of the FPL.

Determine countable earned and unearned income according to SSI-related MA policies in BEM 500, 501, 502, 503, 504, and 530. Determine income deductions using BEM 540 (for children) or 541 (for adults). Unemployment compensation benefits are not countable income for FTW. BEM 174

In this case, the Medical Review Team found Petitioner NOT disabled because his employment earnings were above the substantial gainful activity threshold. Petitioner should have been considered for Freedom To Work Medicaid and a determination regarding whether he was disabled should have been made regardless of whether his employment earnings were over the substantial gainful activity amount. The Department failed to follow BEM 174 in determining Petitioner's potential eligibility for FTW Medicaid. It should be noted that Petitioner was previously eligible for FTW Medicaid but his case closed due to allegedly failing to make premium payments. Issues were raised at hearing by Petitioner's representative about whether Petitioner's case should have closed because he attempted to make premium payments but there was no jurisdiction to address those issues because the closure happened more than 90 days prior to the request for hearing. BAM 600

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 denied Petitioner's MA application because his employment earnings were over the SGA threshold.

**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 and Reprocess Petitioner's [REDACTED] 2016, application for Medicaid.
2. Consider potential eligibility for MA-FTW
3. Award MA-FTW if Petitioner is found eligible.

AM/md



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**Aaron McClintic**

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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Oakland (District 4) County, DHHS

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**Petitioner**



**Authorized Hearing Rep.**

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