



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 2, 2018
MAHS Docket No.: 18-005681
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 July 25, 2018, from Detroit, Michigan. Petitioner represented herself. The Department of Health and Human Services (Department) was represented by Pamela Bruce, Family Independence Manager, and Kerry Laituri, Eligibility Specialist.

ISSUE

Did the Department properly close Petitioner's Medicaid (MA) case due to excess income?

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 under the Healthy Michigan Program (HMP) based on a group size of one.
2. Petitioner's 22-year-old daughter and 3-year-old granddaughter live with her.
3. Petitioner is employed. Petitioner is not over age 65 or disabled.
4. In connection with a [REDACTED] 2018 application with State Emergency Relief (SER) assistance, the Department requested updated verification of Petitioner's income (Exhibit A, pp. 61-64).

5. Petitioner timely submitted paystubs (Exhibit A, pp. 65-79)
6. On February 15, 2018, the Department sent Petitioner a Health Care Coverage Determination Notice, notifying her that her MA case would close effective March 1, 2018 because she did not meet any of the criteria for MA eligibility (Exhibit A, pp. 5-8).
7. On [REDACTED], 2018, the Department received Petitioner's request for hearing, disputing the closure of her MA case (Exhibit A, pp. 2-4).

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.

The Department closed Petitioner's MA case under the HMP program after concluding that she had excess income for eligibility.

HMP 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; (vi) are residents of the State of Michigan; and (vii) meet MA citizenship requirements. BEM 137 (January 2018), p. 1.

In this case, the Department concluded that, based on her updated income, Petitioner was not eligible for HMP because her income exceeded the applicable income limit for her group size. An individual is eligible for HMP if her household's income does not exceed 133% of the FPL applicable to the individual's group size. BEM 137, p. 1. An individual's group size for MAGI purposes requires consideration of the client's tax filing status. BEM 211 (January 2016), p. 1.

In this case, the Department testified that in determining Petitioner's eligibility for MAGI-related MA, it concluded that she had a group size of one (Exhibit A, p. 9). In support of its position, the Department pointed out that Petitioner indicated in her July 7, 2017 redetermination that she intended to file a tax return next year but would not claim any dependents (Exhibit A, p. 12). At the hearing, Petitioner contended that she should have a group size of two or three because her daughter and grandchild lived in her home and she was the primary caretaker for her grandchild. However, because Petitioner's daughter is over age 19 and has custody of Petitioner's granddaughter (as reflected in the support order entered into evidence (Exhibit A, pp. 18-20)) and Petitioner had not claimed them as her dependents in any tax filings, the Department properly concluded that Petitioner was the sole member of her group for MAGI-related MA purposes. See BEM 211, p. 2. Although Petitioner testified that she intended to file taxes in 2019 for the 2018 tax year, her statement at the hearing was inconsistent with her statement in the SER application she submitted to the Department in February 2018 which indicates that she did not intend to file taxes next year (Exhibit A, p. 23). Based on the evidence available to the Department at the time it reprocessed Petitioner's MA eligibility, the Department properly considered Petitioner has having a household size of one for MAGI-related MA purposes. BEM 211 (January 2016), pp. 1-2. If Petitioner now contends that her circumstances have changed, she is advised to report such changes to the Department.

For determining HMP eligibility, 133% of the annual FPL in 2018 for a household with one member is \$16,146.20. See <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's annual income cannot exceed \$16,146.20. If Petitioner is deemed a caretaker of her granddaughter, she is eligible for full coverage MAGI-related MA under the Low Income Family (LIF)/Parent/Caretaker Relative (PCR) program if her annual income is below 54% of the federal poverty level, or \$6,555.60. BEM 110 (April 2018), p. 1. A 5% disregard, which may be applied to make someone MA eligible, raises the applicable FPL limit by 5%. BEM 500, p. 5. This would raise the income limit for HMP eligibility to \$16,753.20 and for LIF/PCR to \$7,162.60.

To determine financial eligibility for MAGI-related MA programs, 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. In order to determine earned income in accordance with MAGI, a client's adjusted gross income (AGI) is added to any tax-exempt foreign income, tax-exempt 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, child care, or retirement savings. This figure is multiplied by the number of paychecks the client expects in the year to estimate income for the year. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>

In this case, Petitioner provided several paystubs showing her biweekly pay (Exhibit A, pp. 65-79). The Department testified that it relied on the paystub dated February 2, 2018 showing gross income of \$700.09 and the paystub dated January 19, 2018 showing gross income of \$934.89. Because the paystubs do not show any amounts deducted for health care coverage, child care, or retirement savings, the Department could properly rely on the gross income figures. The average of these two paystubs multiplied by 26, the number of biweekly paychecks an individual receives in a year, results in annual income of \$21,254. This exceeds the HMP income limit (and, consequently, the LIF/PCR income limit). At the hearing, Petitioner pointed out that she received a \$175 bonus in her January 19, 2018 that would not be recurring. Even when this \$175 is removed, reducing Petitioner's gross biweekly income to \$730, her annual income of \$18,979, continues to exceed the HMP income limit, even taking into consideration the 5% disregard that allows for HMP eligibility when the client's annual income is within 5% of the HMP gross income limit. Thus, the Department properly concluded that Petitioner was ineligible for HMP or LIF/PCR.

However, before closing Petitioner's case due to ineligibility for HMP, the Department was required to conduct an ex parte review unless Petitioner was ineligible for any MA coverage. BAM 220 (January 2018), pp. 18-19; BAM 210 (January 2018), p. 2. When the ex parte review shows that an MA recipient is eligible for MA under another category, the Department must change the coverage. BAM 220, p. 19. When the ex parte review shows that a recipient *may* have continuing eligibility under another category, but here is not enough information in the case record to determine continued eligibility, the Department must send a verification checklist to proceed with the ex parte review. If the client fails to provide requested verifications or if a review of the information provided establishes that the recipient is not eligible under any MA category, the Department sends timely notice of MA case closure. BAM 220, p. 19. MA coverage continues until the client no longer meets the eligibility requirements for any other MA category. BAM 220, p. 17.

In this case, Petitioner's daughter and granddaughter live in the home with her, and Petitioner contended that she was her granddaughter's caretaker. A client who has excess income for HMP may be eligible for MA under a Group 2 Caretaker Relative (G2C) program. BEM 135 (October 2015), p. 1. Core relatives who live with a dependent child may be eligible for G2C MA if all eligibility factors are satisfied. BEM 135, p. 1. Core relatives include grandparents. BEM 135, p. 7. Department policy provides that when a grandparent who claims to act as parent for the dependent child and the child's parent both live with the child, the client's statement regarding who acts as parent must be accepted. If both the parent and the grandparent claim to act as parent, the parent is the caretaker relative, but when only the grandparent claims to act as parent, both the grandparent and the parent may be caretaker relatives. BEM 135, p. 2.

In this case, Petitioner claims to be the grandchild's caretaker. It is unclear whether Petitioner's daughter has also claimed to the Department that she is the child's

caretaker. Because the Department failed to consider Petitioner's potential status as her granddaughter's caregiver, and thus whether she was a core relative, it did not satisfy its burden of showing that Petitioner was not eligible for MA under a G2C program.

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 Petitioner's MA without considering her eligibility for MA under the G2C program.

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 HMP effective March 1, 2018;
2. Conduct an ex parte review to assess Petitioner's MA eligibility under G2C;
3. If Petitioner is eligible, provide her with coverage she is eligible to receive; and
4. Notify Petitioner in writing of its decision.



AE/tm

Alice C. Elkin

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) 763-0155; 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

Kimberly Myers
234 West Baraga Ave.
Marquette, MI
49855

Petitioner

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

cc: ME—D. Smith; EQADHShearings
AP Specialist-Marquette County