



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

██████████
██████████
██████████ MI ██████████

Date Mailed: August 6, 2019
MOAHR Docket No.: 19-006488
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 31, 2019, from ██████████ Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Valarie Foley, hearing facilitator.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's eligibility for 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 Medicaid with a benefit period certified through May 2019.
2. On an unspecified date, Petitioner submitted a Redetermination form to MDHHS. Petitioner reported a household which included his spouse, a ██████-year-old daughter, and two minor children. Petitioner also reported employment income with ██████████ (hereinafter, "Employer"). As of the submission date, Petitioner, his spouse, and his ██████-year-old daughter were not disabled, not recipients of Medicare, between the ages of 18-64 years, and not pregnant

3. On an unspecified date in May 2019, Petitioner submitted to MDHHS proof of the following employment income from Employer.

<u>Pay date</u>	<u>Gross amount</u>	<u>Overtime hours in check</u>
April 4, 2019	\$ [REDACTED]	0
April 11, 2019	\$ [REDACTED]	12
April 18, 2019	\$ [REDACTED]	3
April 25, 2019	\$ [REDACTED]	9

Exhibit A, pp. 13-16.

4. On May 17, 2019, and June 11, 2019, MDHHS terminated Medicaid benefits, effective June 2019, for Petitioner, Petitioner's spouse, and Petitioner's adult daughter. Medicaid under Healthy Michigan Plan (HMP) was denied for each member due to excess income.
5. On an unspecified date, MDHHS approved Medicaid for Petitioner's two minor children.
6. On June 14, 2019, Petitioner requested a hearing to dispute the termination of Medicaid for himself, his spouse, and [REDACTED] year-old daughter. Exhibit A, pp. 1-2.

CONCLUSIONS OF LAW

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute closure of Medicaid benefits for himself, his spouse, and his [REDACTED] year-old daughter. MDHHS presented a Health Care Coverage Determination Notice dated May 17, 2019, stating that all three persons were denied Medicaid beginning June 2019 under various Medicaid categories.

Medicaid is also known as Medical Assistance (MA). BEM 105 (April 2017), p. 1. The Medicaid program includes several sub-programs or categories. *Id.* To receive MA under a Supplemental Security Income (SSI)-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Medicaid eligibility for children under 19, parents or caretakers of children, pregnant or recently pregnant women, former foster children, MOMS, MICHild and Healthy Michigan Plan (HMP) is based on Modified Adjusted Gross Income (MAGI) methodology. *Id.*

Persons may qualify under more than one MA category. *Id.*, p. 2. Federal law gives them the right to the most beneficial category. *Id.* The most beneficial category is the one that results in eligibility, the least amount of excess income or the lowest cost share. *Id.*

MDHHS indicated that Petitioner's family's Medicaid eligibility through June 2019 was under the Transitional Medicaid (TMA) category. Individuals may receive TMA for up to 12 months when ineligibility for Low-Income Family relates to income from employment of a caretaker relative. BEM 111 (April 2018), p. 1. Presumably, Petitioner's family's Medicaid eligibility under TMA ended following a period of 12 months. For continued Medicaid eligibility without a deductible, Petitioner family would have to be eligible under a different Medicaid category.

As of the hearing date, Petitioner, his spouse, and his ■■■■■ year-old daughter were not disabled, not recipients of Medicare, between the ages of 18-64 years, and not pregnant. Under the circumstances, the Medicaid category with the highest income limit for which each person could be eligible is Healthy Michigan Plan (HMP). The notice of termination stated that each person for which Medicaid was denied was denied HMP due to excess income.

HMP is a health care program administered by the Michigan Department of Community Health, Medical Services Administration. The program is authorized under the Affordable Care Act of 2010 as codified under 1902(a)(10)(A)(i)(VIII) of the Social Security Act and in compliance with the Michigan Public Act 107 of 2013.

An HMP income-determination begins with determining the proper group size. It was not disputed that Petitioner was a member of a five-person household. MDHHS testimony indicated that HMP eligibility was based on a group size of four.¹ Petitioner testified that he and his wife file taxes jointly and that all three of his children in the household are claimed as tax dependents. Under Petitioner's circumstances, all five persons would be in the group when determining each person's HMP eligibility (see BEM 211 (February 2019, pp. 1-3). Due to inexplicably using a four-person group, MDHHS will have to recalculate Petitioner's group's HMP eligibility using a proper group size. The second consideration in evaluating a denial of HMP based on excess income is to determine whether MDHHS properly calculated the group's income.

For individuals who have been determined financially-eligible for MA using the MAGI-based methods set forth in this section, a State may elect in its State plan to base financial eligibility either on current monthly household income and family size or income based on projected annual household income and family size for the remainder of the current calendar year. 42 CFR 435.603 (h)(2). In determining current monthly or projected annual household income and family size under paragraphs (h)(1) or (h)(2) of this section, the agency may adopt a reasonable method to include a prorated portion of

¹ MDHHS could not state which of Petitioner's five household members was excluded from the group or why a member was excluded.

reasonably predictable future income, to account for a reasonably predictable increase or decrease in future income, or both, as evidenced by a signed contract for employment, a clear history of predictable fluctuations in income, or other clear indicia of such future changes in income. 42 CFR 435.603 (h)(3).

MDHHS testimony indicated that Petitioner's countable income was calculated to be \$[REDACTED] month. MDHHS could not explain how Petitioner's income was calculated other than stating that Petitioner's gross employment income pays from April 2019 were factored. If Petitioner's four weeks of pays from April 2019 (\$[REDACTED]0, and \$[REDACTED]) were added together, the total would be \$[REDACTED]. As MDHHS calculated a higher income, MDHHS likely used a multiplier. If Petitioner's four weeks of income were multiplied by 13 (to account for a 52-week year) and then divided by 12 (to determine a monthly income), the result is \$[REDACTED] (dropping cents) which is close to the calculated income of \$[REDACTED].

Notably, MDHHS' calculations appear to assume that Petitioner's payments for overtime would continue. Petitioner credibly testified that his employer normally limits overtime to five hours per week and that two of his checks were outliers and unrepresentative of his income. Based on Petitioner's testimony, his checks dated April 11, 2019, (which included 12 hours of overtime) and April 25, 2019, (which included nine hours of overtime) would be unrepresentative and not indicative of future income.

The evidence did not establish whether Petitioner previously reported to MDHHS that two of his four submitted checks were unrepresentative of future income. For purposes of this decision, it will be accepted that Petitioner did not make such a reporting.

At the time of HMP determination, MDHHS could not have reasonably been expected to know that two of Petitioner's checks were unrepresentative of future income. In other words, MDHHS did not have "clear indicia of... future changes in income". *Id.* Typically, MDHHS cannot be faulted for failing to factor a future change in income without evidence of such income. In the present case, MDHHS will have to redetermine Petitioner's HMP eligibility due to erroneously factoring group size. The redetermination of HMP eligibility should additionally factor Petitioner's reported change during the hearing concerning income.

Notably, the redetermination of group size and income may be the difference in approval and denial of HMP. HMP income limits are based on 133% of the federal poverty level. RFT 246 (April 2014), p. 1.² The 2019 federal poverty level is \$30,170 for a five-person group.³ For Petitioner's group to be eligible for HMP, countable income would have to fall at or below \$40,126.10. MDHHS' calculation of \$[REDACTED] month in income results in an annual income of \$[REDACTED] and places Petitioner's group slightly above the income limit.

² The MAGI-income limit is functionally 138% of the federal poverty level because federal regulations apply a 5% disregard if an individual is at the highest income limit for coverage. 42 C.F.R. §435.603(d)(4)

³ <https://aspe.hhs.gov/2019-poverty-guidelines>

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly calculated Petitioner's family's HMP eligibility. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

(1) Redetermine Petitioner's group's HMP eligibility effective June 2019 subject to the following findings:

- a. Petitioner and his spouse file taxes jointly and claim all three children in the household as tax dependents;
- b. Petitioner reported that he does not typically work overtime more than five hours per week and that checks dated April 11, 2019, and April 25, 2019, are not representative of future income; and

(2) Issue benefits accordingly included issuance of an updated notice.

The actions taken by MDHHS are **REVERSED**.

CG/jaf



Christian Gardocki

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 First Class Mail
Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Via Electronic Mail
DHHS

Susan Noel
MDHHS-Wayne-19-Hearings

BSC4
D Smith
EQAD