



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: April 30, 2021
MOAHR Docket No.: 21-001643
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION

On March 22, 2021, Petitioner, [REDACTED], requested a hearing to dispute the Department's decision to find Petitioner and her spouse, [REDACTED], ineligible for Medical Assistance (MA). As a result, a hearing was scheduled to be held on April 29, 2021, pursuant to MCL 400.9; 42 CFR 431.200 to 431.250; and Mich Admin Code, R 792.11002. Petitioner appeared at the hearing and represented herself. Respondent, Department of Health and Human Services (Department), had Kimberly Polasek, Eligibility Specialist, Brooke Bradshaw, Eligibility Specialist, and Rose Ward, Assistance Payments Supervisor, appear as its representatives. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 24-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUE

Whether the Department properly found Petitioner and her spouse ineligible for MA?

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 and her spouse applied for health insurance through the marketplace, and they were denied because their income was too low. The marketplace instructed Petitioner and her spouse to apply for MA.
2. On [REDACTED] 2021, Petitioner and her spouse applied for MA.

3. Petitioner had a household size of two, both Petitioner and her spouse were aged 19-64, neither Petitioner nor her spouse were disabled, neither Petitioner nor her spouse were pregnant, and neither Petitioner nor her spouse were the caretaker of a dependent.
4. Petitioner's spouse receives monthly gross income of \$1,667.00 from social security RSDI.
5. Petitioner receives monthly gross income of \$2,534.00 for attendant care services. Petitioner's son was in an automobile accident, and Petitioner provides attendant care services for him. Petitioner's son's automobile insurance pays Petitioner for providing attendant care services for him. Petitioner does not report her income from attendant care services as taxable income because she believes that it is not taxable, based on her conversations with the IRS.
6. The Department budgeted Petitioner's household income based on the information it obtained for Petitioner and her spouse. The Department determined that Petitioner's household income was \$50,412.00 per year. The Department included Petitioner's income from attendant care services as countable income.
7. The Department determined that Petitioner's household income of \$50,412.00 per year exceeded the program limit, so the Department found Petitioner and her spouse ineligible for MA.
8. On March 10, 2021, the Department issued a notice of case action to notify Petitioner that she and her spouse were ineligible for MA.
9. On March 22, 2021, Petitioner requested a hearing.

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 administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Health care coverage for adults is available through various programs, including the Healthy Michigan Plan. In order for an individual to be eligible for health care coverage

under the Healthy Michigan Plan, the individual must be age 19 to 64 and the individual's household income must not exceed 133% of the Federal Poverty Limit (FPL). BEM 137 (June 1, 2020), p. 1. However, a 5% disregard is available to make those individuals eligible who would otherwise not be eligible. BEM 500 (July 1, 2020), p. 5. The 5% disregard increases the income limit by an amount equal to 5% of the FPL for the group size. *Id.* at 5.

The household size is determined based on tax filer and tax dependent rules. BEM 211 (July 1, 2019), p. 1. For tax filers, the household size includes the tax filer, the tax filer's spouse, and all dependents claimed. *Id.* at 1-2. Here, Petitioner has a household size of two because Petitioner is married and lives with her spouse.

The FPL for a household size of two in 2021 is \$17,420.00, so 133% of the FPL is \$23,168.60, and 133% with a 5% disregard is \$24,039.60. Thus, the income limit for Petitioner to be eligible for health care coverage under the Healthy Michigan Plan is \$24,039.60 per year. Income eligibility is based on modified adjusted gross income (MAGI) for Healthy Michigan. BEM 137, p. 1 and 7 CFR 435.603. MAGI is defined as adjusted gross income increased by (1) excluded foreign income, (2) tax exempt interest, and (3) the amount of social security benefits excluded from gross income. 26 USC 36B(d)(2)(B). Adjusted gross income is that which is commonly used for Federal income taxes, and it is defined as gross income minus deductions for business expenses, losses on the sale or exchange of property, retirement contributions, and others. 26 USC 62. Here, Petitioner's household income was composed of Petitioner's income for attendant care services and Petitioner's spouse's social security RSDI.

The issue is whether Petitioner's income for attendant care services is countable. If it is, then Petitioner's countable household income is \$50,412.00 per year, and Petitioner and her spouse are ineligible for health care coverage under the Healthy Michigan Plan. If it is not, then Petitioner's countable household income is \$20,004.00, and Petitioner and her spouse are eligible for health care coverage under the Healthy Michigan Plan.

Petitioner asserted that her income is not countable because it is not taxable. Petitioner is correct that her income would not be countable if it were not taxable. However, Petitioner did not provide any reliable authority to support her position that her income for attendant care services is not taxable. Petitioner testified that she had conversations with the IRS, and the IRS advised her that her income was not taxable, but Petitioner did not cite any policy, regulation, or law that supported her position.

Under Section 104 of the Tax Code, income from compensation for injuries or sickness is not taxable. 26 USC 104. Specifically, the compensation an injured person receives on account of personal injuries is not taxable. In this case, Petitioner was not injured, and Petitioner did not receive compensation on account of her own personal injuries. Thus, the income Petitioner received for providing attendant care services cannot be considered "compensation for injuries or sickness" as it is used in Section 104. Therefore, Petitioner's income for attendant care services is not considered non-taxable under Section 104.

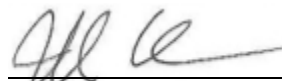
Since Petitioner did not cite any policy, regulation, or law that supported her position that her income for attendant care services is not taxable, and since her income is not non-taxable under Section 104 of the Tax Code, I must find that Petitioner has not established by a preponderance of the evidence that her income is not taxable and should not be countable. Therefore, I must find that the Department properly determined that Petitioner and her spouse were ineligible for health care coverage under the Healthy Michigan Plan.

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 acted in accordance with its policies and the applicable law when it found Petitioner and her spouse ineligible for MA.

IT IS ORDERED the Department's decision is **AFFIRMED**.

JK/cc



Jeffrey Kemm
Administrative Law Judge
for Elizabeth Hertel, 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 Email:

MDHHS-Newaygo-Hearings
BSC3-HearingDecisions
EQADHearings
C. George
MOAHR

Petitioner- Via USPS:

