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GOVERNOR

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

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DIRECTOR

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Date Mailed: August 11, 2021
MOAHR Docket No.: 21-001713
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 May 25, 2021. Conni Morrisette, the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Caroline Owczarzak, Eligibility Specialist (ES), and Kaylie Polk, (ES).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-43.

ISSUE

Did the Department properly determine Petitioner's eligibility for Freedom to Work Medicaid (MA-FTW)?

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 ██████████ 2020, Petitioner applied for MA. In part, Petitioner reported that her hours had been reduced and the average hours per week varies. (Exhibit A, pp. 5-17)
2. The Department did not request any verifications to update Petitioner's income. (ES Testimony)

3. The Department utilized four paychecks from August and September that had previously been submitted to budget Petitioner's earned income for the initial determination. (Exhibit A, pp. 18-25; ES Testimony)
4. On January 22, 2021, a Notice of Case Action was issued approving Petitioner for MA-FTW with no premium for December 1, 2020 to February 28, 2021 and a premium of [REDACTED] per month effective March 1, 2021 and ongoing. (Exhibit A, pp. 26-28)
5. On February 19, 2021, Petitioner called inquiring about the FTW premium and indicated the Department had not correctly budgeted her income. Petitioner stated her hours fluctuate. The ES indicated the Department would budget income for 90 days rather than 30 days. (Exhibit A, p. 2; ES Testimony)
6. On February 19, 2021, an Employment Verification was received along with paycheck stubs for the months requested. (Exhibit A, pp. 29-38)
7. The Department again budgeted income using 30 days rather than 90 days. Exhibit A, p. 1; ES Testimony)
8. On [REDACTED], 2021, Petitioner filed a hearing request contesting the Department's determination regarding MA-FTW. (Exhibit A, p. 3)
9. A new budget was determined utilizing December 2020 through February 2021 earned income, which decreased the premium to [REDACTED] effective April 1, 2021. (Exhibit A, pp. 2 and 39; ES Testimony)

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.

FTW is available to a client with disabilities, age 16 through 64, who has earned income. BEM 174, January 1, 2020, p. 1.

Regarding income eligibility and premiums, the BEM 174 policy states:

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.

PREMIUM PAYMENT

There are no premiums for individuals with MAGI (Modified Adjusted Gross Income) income less than 138 percent of the federal poverty level (FPL).

- A premium of 2.5 percent of their income will be charged for an individual with MAGI income between 138 percent of the FPL and \$75,000 annually.
- A premium of 100 percent of the average FTW participant cost will be assessed for an enrolled individual with MAGI income over \$75,000.

Bridges will automatically notify the premium coordinator when premiums for an FTW participant start/change/end. The premium coordinator has final determination over actual premium begin or amount change dates, as well as premium exclusions.

Nonpayment of premium is automatically sent to Bridges and mass update will close the Freedom to Work category.

Note: An ex parte review (see glossary) is required before Medicaid closures when there is an actual or anticipated change, unless the change would result in closure due to ineligibility for all Medicaid. When possible, an ex parte review should begin at least 90 days before the anticipated change is expected to result in case closure. The review includes consideration of all MA categories; see BAM 115 and 220.

Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130, January 1, 2021, p. 1.

In this case, on the [REDACTED], 2020 assistance application Petitioner reported that her hours had been reduced and her average hours per week varies. (Exhibit A, p. 10) However, the Department did not request any verifications to update Petitioner's income. (ES Testimony)

Rather, the Department utilized four paychecks from August and September that had previously been submitted to budget Petitioner's earned income for the initial determination. (Exhibit A, pp. 18-25; ES Testimony) On January 22, 2021, a Notice of Case Action was issued approving Petitioner for MA-FTW with no premium for December 1, 2020 to February 28, 2021 and a premium of [REDACTED] per month effective March 1, 2021 and ongoing. (Exhibit A, pp. 26-28)

On February 19, 2021, Petitioner called inquiring about the FTW premium and indicated the Department had not correctly budgeted her income. Petitioner stated her hours fluctuate. The ES indicated the Department would budget income for 90 days rather than 30 days. (Exhibit A, p. 2; ES Testimony) On February 19, 2021, the Department requested and received an Employment Verification along with paycheck stubs for the months requested. (Exhibit A, pp. 29-38) However, the Department again budgeted income using 30 days rather than 90 days. Exhibit A, p. 2; ES Testimony)

On [REDACTED], 2021, Petitioner filed a hearing request contesting the Department's determination regarding MA-FTW. (Exhibit A, p. 3) Subsequently, a new budget was determined utilizing December 2020 through February 2021 earned income, which decreased the premium to \$[REDACTED] effective April 1, 2021. (Exhibit A, pp. 2 and 39; ES Testimony)

Overall, the evidence does not establish that the Department determined Petitioner's eligibility for MA-FTW in accordance with Department policy. On the [REDACTED] 2020 assistance application, Petitioner reported a change in her earned income. The Department did not request verification of Petitioner's current earned income before the initial eligibility determination was made. Accordingly, the January 22, 2021 determination cannot be upheld.

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 determined Petitioner's eligibility for MA-FTW.

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. Redetermine Petitioner's eligibility for MA for the [REDACTED], 2020 application in accordance with Department policy.
2. Issue written notice of the determination in accordance with Department policy.



Colleen Lack
Administrative Law Judge

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