



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
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Date Mailed: September 17, 2021
MOAHR Docket No.: 21-003858
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 September 15, 2021, from Lansing, Michigan. Petitioner [REDACTED] appeared and self-represented at the hearing. Petitioner's mother [REDACTED] appeared as a witness. The Department of Health and Human Services (Department or Respondent) was represented by Mark Logan, Family Independence Manager.

Department's Exhibit A pages 1-27 were admitted as evidence.

ISSUE

Did the Department properly determine that Petitioner had excess income for Freedom to Work (FTW) Medical Assistance (MA) eligibility?

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 receiving Medical Assistance Program benefits based upon SSI eligibility.
2. On [REDACTED], 2021, the Department received an application for Medical Assistance Program benefits based upon Freedom to Work.
3. On July 29, 2021, the Department denied Petitioner's application indicating that Petitioner has excess income for purposes of Medical Assistance eligibility.

4. On August 9, 2021, Petitioner filed a Request for Hearing to contest the Department's negative action.
5. On August 20, 2021, the Michigan Office of Administrative Hearings and Rules received a Hearing Summary and attached documents.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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.

Freedom to Work Medical Assistance is available to some clients. Pertinent policy dictates:

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. BEM 174 (Emphasis Added)

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. (Emphasis Added)

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 page 3

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. (BEM 174, pages 1-2)(Emphasis Added)

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 a 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.

Petitioner continued to receive income from the Social Security Administration based on SSI eligibility until June 2021 when the Social Security determined that she was no longer income eligible.

Petitioner alleges that she is eligible to receive Freedom to Work Medical Assistance because she has non-financial eligibility for SSI benefits based upon disability from the Social Security Administration. Because of COVID-19 protocols, the Social Security Administration kept paying Petitioner SSI benefits until June 2021. Petitioner alleges that she returned the money to Social Security but remains categorically eligible for SSI Medical Assistance because she has cerebral palsy and feels that she should remain eligible for Freedom to Work Medical Assistance with a premium. Petitioner alleges that she receives ██████████ in yearly earned income, which is within the premium amount of 138% of the federal poverty limit and \$75,000. Currently, Petitioner is receiving full Medical Assistance Program benefits because of the COVID-19 Pandemic ESA Memo 2020-12 and will continue to do so until the pandemic protocols end.

The Department argues that the Federal Freedom to Work Medical Assistance maximum income limit per year is 250% of the federal poverty standard or \$32,000.00 for a one-person household in Petitioner's position. Petitioner does not meet the financial criteria for any category of Medical Assistance.

A review of Petitioner's case reveals that the Department budgeted the correct amount of income earned by the Petitioner. Petitioner's protected income level and amounts are set by Medicaid policy and cannot be changed by the Department or this Administrative Law Judge.

This Administrative Law Judge finds:

Even though Petitioner no longer meets the income eligibility standard for SSI, she does meet the categorical eligibility for SSI because she is disabled based upon her

diagnosis of cerebral palsy. Thus, she would retain eligibility under the Right to Work category of Medical Assistance because it appears that Petitioner continues to meet the non-financial criteria for Medical Assistance eligibility (SSI disability). Because she has a higher level of income, she must pay the premium at 2.5% of her income because Petitioner is **an individual with Modified Adjusted Gross Income (MAGI) that falls between 138 percent of the FPL and \$75,000 annually.**

Therefore, this Administrative Law Judge finds the Department has not established by the necessary competent, material and substantial evidence on the record that it acted in accordance with department policy when determined Petitioner has excess income for purposes of Medical Assistance benefit eligibility under the Freedom to Work category with a premium.

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 Department policy when it determined that Petitioner had excess income for Medical Assistance eligibility under every category but Right to Work.

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:

Re-evaluate Petitioner's Medical Assistance case and determine Petitioner's eligibility for Medical Assistance Program benefits under the Freedom to Work category in accordance with Department policy.

LL/ml



Landis Lain
Administrative Law Judge

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 Electronic Mail

MDHHS-Kent-Hearings
BSC3
C. George
EQAD

Petitioner – Via First Class Mail

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