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March 17, 2015

Docket # 14-2381  
Hearing Date: February 12, 2015



## **ADMINISTRATIVE HEARING DECISION**

The Administrative Hearing that you requested has been decided against you. During the course of the proceeding, the following issue(s) and Agency regulation(s) were the matters before the hearing:

### **RULES AND REGULATIONS PERTAINING TO THE RHODE ISLAND HEALTH BENEFITS EXCHANGE (RIHBE)**

#### **SECTION 3.0 Qualified Health Plan Eligibility and Enrollment**

### **EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS) MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)**

#### **SECTION 1307 "MAGI" Income Eligibility Determinations**

#### **SECTION 1307.01 Scope and Purpose**

#### **SECTION 1307.06 Determination of Household Income**

The facts of your case, the Agency regulations, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You (the Appellant), DHS representatives: Sandra Cipriano, Nancy DelPrete, Vincent Guglielmino, and Health Source RI (HSRI) Agency representatives Noah Zimmerman, and Lindsay Lang.

Present at the hearing were: You (the Appellant), DHS representative Sandra Cipriano, and HSRI representative Noah Zimmerman.

**ISSUE: Should the family's SSDI (Social Security Disability Insurance) benefits be considered countable income in the MAGI calculation when determining insurance coverage eligibility?**

**RIHBE AND MCAR RULES AND REGULATIONS:**

Please see the attached APPENDIX for pertinent excerpts from: the Rules and Regulations Pertaining to the Rhode Island Health Benefits Exchange, and from the Medicaid Code of Administrative Rules

**APPEAL RIGHTS:**

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

**DISCUSSION OF THE EVIDENCE:****The HSRI representative testified:**

- The appellant had applied for health insurance coverage through HSRI and was given a Blue Cross plan with tax credits.
- She had been paying somewhere around \$86.00 per month for that plan through November (2014).
- She received a notice in November and that notice told her she was being terminated from the Blue Cross plan, and although the notice didn't say why, our understanding is that it appeared to be a termination due to eligibility.
- In our system when the income goes below a certain level on a family's account, we do a recalculation to see if they might be eligible for state assisted insurance such as Medicaid.
- They would have recalculated because either we received a change of income from them (the appellant and spouse), or we find out from other sources there was a change in income.
- We then do a recalculation and determine what the new eligibility is.
- In this case, we found that she qualified for Medicaid, so the system would automatically enroll her for Medicaid and then she would be off the Blue Cross Plan.
- There is now a question as to whether HSRI incorrectly calculated her eligibility at that point, or previous to that point.
- There was a question about whether social security disability income, which the appellant's husband receives, counts as taxable income.

- If it does count, it would be included in the eligibility assessment, and if that income plus the appellant's income rose above a certain level, then you (the appellant) would qualify for a qualified health program (QHP) such as Blue Cross or United.
- If social security disability income does not count as taxable income its likely your income would not reach that threshold, and you'd be eligible again for Medicaid, which is what you are currently enrolled in.
- As it stands now, the outstanding question-and I don't believe the HSRI policy speaks directly to this-is whether social security disability income counts into our calculation in determining your eligibility for either Medicaid or a QHP.
- We agree that if they initially calculated the income correctly and nothing has changed, that she was correctly on Blue Cross, then, now she is incorrectly on Medicaid.
- If she is correctly assessed at this time, we agree that they then assessed her incorrectly prior.
- If that is the case, I'm not clear how the process works, and how that could be rectified.

**The DHS representative testified:**

- My understanding is that taxable income is not necessarily the same as countable income for our purposes.
- I'm not 100% sure, but I believe social security benefits, which are the RSDI benefits received by her husband-are countable, whereas SSI benefits are not.

**The appellant testified:**

- I signed up for health insurance through HSRI at the end of January 2014.
- I first had insurance assistance from the social worker at my doctor's office who helped me by setting up the account, and by printing out a few of the HMO choices.
- I then applied on line and put in my husband's income information.
- I don't know if it (the system) asked specifically for SSDI information, but I do know I entered his income and information.
- He (appellant's spouse) was collecting around \$1600 plus, per month, which is what she entered on the computer application.

- Around September/October, possibly early November of 2014 she received a notice asking for proof of her husband's income.
- She downloaded that on line, the same way she had put the information in originally.
- Then, she received the November 17th (2014) notice saying she was no longer eligible.
- When she contacted them (HSRI) to determine why she was not eligible after one year of having it; she was told that her husband's income was not now counted because it is not taxable.
- So, going by her income, she does not make enough.
- At that time, she signed up for the Medicaid, and asked how to get reimbursed for this money she spent on the plan from January through November. She was told to file an appeal.
- She's looking for the monies she paid into the health insurance, which include the premiums and the copays.
- The premiums were about \$86.00 and change per month, and she has copies of the monies she put out for services.
- She was getting tax credits monthly as well.

#### **FINDINGS OF FACT:**

- The appellant had been receiving and paying for a qualified health plan (QHP) since January 2014.
- The initial calculation for eligibility considered her husband's SSDI benefits as countable income.
- The appellant received a November 17, 2014 notice informing her that the QHP coverage would end on November 30, 2014.
- She was subsequently determined Medicaid eligible.
- The HSRI representative informed the appellant that her husband's SSDI benefits should not have been considered countable income previously, and that she was Medicaid eligible when that income was omitted from the calculation.

- She is currently receiving Medicaid coverage.
- A hearing was held on February 12, 2015.
- The record of hearing was held open until March 5, 2015 for additional evidence.
- Additional evidence was submitted by the appellant and HSRI. The record of hearing held open period was extended to March 13, 2015 in order to allow the appellant to respond to any evidence submitted by the HSRI representative.
- No additional response was received.

## **CONCLUSION:**

**The issue to be decided is whether the family's SSDI benefits should be considered countable income in the MAGI calculation when determining insurance coverage eligibility.**

As of January 1, 2014 the new eligibility system designed to make determinations for all forms of affordable health coverage-became operational. Under the Affordable Care Act (ACA), in order to simplify and streamline the application and determination process, the standard of Modified Adjusted Gross Income (MAGI) was implemented. The standard of MAGI incorporates adjusted gross income which includes wages, salaries and income from a broad array of other sources adjusted by deductions. However, MAGI-based Medicaid eligibility digresses from the taxable and non-taxable income considerations used for federal tax purposes, in several areas. Exploration of the Medicaid Code of Administrative Rules (MACR) identify differences specifically with regards to Social Security income benefits, some of which are considered tax exempt for federal tax purposes, and **all** of which are considered countable for MAGI purposes. SSI, the needs based income supplement program is not considered in the income considerations.

There is no dispute that the appellant applied for, and received medical coverage through Health Source Rhode Island (HSRI) beginning in January 2014. Under the new MAGI determinations, the appellant was found eligible for a qualified health plan (QHP) for which she paid premiums throughout the year, and for which she received tax credits throughout the year.

In November 2014 the appellant received a notice informing her that she would be terminated from the QHP. At that time, she was informed by an HSRI representative that her husband's RSDI benefits were not countable income for purposes of eligibility, and as a result, she now qualified for Medicaid for which there would be no premiums. The appellant now argues that for ten months she had been paying for a product which she should not have paid for. The appellant requested reimbursement for past premiums and copays which she contends would not have been incurred on the Medicaid coverage. Post hearing, she also requested consideration for advanced

premium tax credits (APTC's) for which she now owed the IRS due to the tax reconciliation which takes place at the end of the year.

At hearing, the HSRI representative was unclear as to whether or not the SSDI benefits should have been accounted for during the initial assessment; or whether, if all other conditions remained the same, the appellant might have been wrongly assessed during the recent recalculation in which the benefits were not counted. Post hearing the representative forwarded a statement in which he clarified his position stating that HSRI believes that the initial assessment was correct and the more recent information from the HSRI customer representative is incorrect, in that the SSDI benefits should be included in an eligibility calculation. He further supported this assertion by including a copy of a "guidance" print out obtained on line, which indicated that social security benefits include SSDI, and that non-taxable Social Security benefits are included in the calculation to determine whether an individual is eligible for Medicaid. The DHS representative was not "100%" sure that the benefits should have been accounted for, but was reasonably certain that SSI benefits would not be considered in the calculation, but SSDI benefits would.

In summary, the appellant was assessed using MAGI-based Medicaid eligibility rules in January 2014. At that time, her husband's Social Security Disability Insurance (SSDI) was considered countable income. After receiving benefits for ten months, she was given conflicting information from the HSRI representative who informed her that the SSDI income previously counted should not have been utilized in the MAGI calculation. As a result, the appellant now wanted compensation for those months. Despite some confusion amongst the HSRI and DHS representatives with regards to policy, regulations clearly support that the Social Security Disability benefits are considered countable income when calculating MAGI eligibility. Initially, in January 2014, the Agency correctly used the benefits reported towards that determination. According to the appellant they were not utilized in the recalculation in December 2014. In the event the current recalculation was determined without consideration of those benefits, the current eligibility would be incorrect. The appellant would then be responsible to correct that omission which might have allowed her Medicaid coverage for the past four to five months. Regardless, the Agency's initial use of SSDI benefits in the MAGI calculation was correct. The appellant's request for relief is denied.

After a careful review of the Agency's regulations, as well as the evidence and testimony given, the Appeals Officer finds that the appellant's request for relief is denied.



Karen Walsh  
Appeals Officer

**APPENDIX**

## RULES AND REGULATIONS PERTAINING TO THE RHODE ISLAND HEALTH BENEFITS EXCHANGE

### SECTION 3.0 QUALIFIED HEALTH PLAN ELIGIBILITY AND ENROLLMENT

- 3.1 **In General.** Section 1311 of the ACA establishes exchanges to facilitate the purchase of qualified health plans. Section 1311 and its implementing regulations, 45 C.F.R. §155.305 and 45 C.F.R. §155.400, respectively, establish eligibility requirements and requirements for enrollment in a Qualified Health Plan.
- 3.2 **Eligibility for Enrollment in a QHP Through the Exchange.** The Exchange shall determine an applicant eligible for enrollment in a Qualified Health Plan if he or she meets the following requirements:
- (a) *Citizenship, status as a national, or lawful presence.* Is a citizen, or national of the United States, or is a non-citizen who is lawfully present in the United States and is reasonably expected to be a citizen, national or a non-citizen who is lawfully present for the entire period for which enrollment is sought.
  - (b) *Incarceration.* Is not incarcerated, other than incarceration pending the disposition of charges.
  - (c) *Residency.* Meets the applicable residency standards as defined in 45 C.F.R. §155.305 (a)(3).

### RIEOHHS MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)

#### 1307 "MAGI" Income Eligibility Determinations

##### 1307.01. Scope and Purpose

To implement the federal Affordable Care Act (ACA), Rhode Island took the option under the law to establish its own new web-based eligibility system with the capacity to determine whether an individual or family qualifies for affordable health care coverage paid for by Medicaid or in whole or in part by federal tax credits or other subsidies. The Executive Office of Health and Human Services (EOHHS), the Medicaid Single State Agency, and the recently established Rhode Island Health Benefits Exchange, known as HealthSourceRI (HSRI), are using this new eligibility system to make determinations for all forms of affordable coverage available under the ACA, including Medicaid.

One of the principal goals of the ACA is to improve access to affordable coverage by simplifying and streamlining the application and eligibility determination process. Toward this end, the Act established a distinct income standard – Modified Adjusted Gross Income or MAGI – to determine eligibility for affordable coverage across payers (e.g., Medicaid, tax credits, state subsidies, employers) and populations (families, pregnant women, children, adults without children). Effective January 1, 2014, the MAGI standard will be used to determine eligibility for all new applicants for Medicaid coverage in the Medicaid Affordable Care Coverage (MACC) groups identified in section 1301 of the Medicaid Code of Administrative Rules (MCAR). The process for applying for Medicaid affordable coverage using the new eligibility system is located in MCAR section 1303.

The purpose of this rule is to: describe the MAGI and explain how it will be applied; and establish the role and responsibilities of the Medicaid agency and consumers when determining MAGI-related eligibility.

### **1307.06 Determination of Household Income**

To be eligible for Medicaid using the MAGI standards, an applicant's current monthly household income must meet the standard applicable to the applicant's MACC group when converted to the federal poverty level as shown below:

#### ***MACC Groups FPL Eligibility Threshold***

Adults 133%

Children and Young Adults 261%

Families 133%

Pregnant Women 253%

When calculating whether an applicant is income-eligible for Medicaid under one of these coverage

groups, the following factors must be considered: the members of the applicant's household that must be included; types of countable income; current income and reasonably predicted changes; and

conversion of monthly income to the federal poverty level (FPL) standards.

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01. Countable household income --There are several differences in the way certain types of income are treated when using the MAGI for Medicaid eligibility just as there are with the rules of household construction. The subsection below identifies all forms of countable income included when determining MAGI-based Medicaid eligibility, including those that are specific to Medicaid eligibility only.

(01) Adjusted Gross Income (AGI). Adjusted gross income is gross income adjusted by "above-the-line" deductions. AGI includes wages and salaries and income from a broad array of other sources, such as unemployment benefits, alimony, taxable interest, and capital gains. "Above-the-line" deductions are the adjustments people can make to their gross income. These include alimony payments, interest on student loans, and other items that appear on page one of Form 1040. However, they do not include charitable contributions, mortgage interest and other "below-the-line" deductions.

(02) Social Security benefits. All Social Security income benefits are considered countable income when using the MAGI to determine eligibility for affordable coverage. This includes Social Security benefits that considered both taxable and non-taxable income for federal tax purposes.

(03) Interest Income. Income received from bank accounts, money market accounts, certificates of deposit, and deposited insurance dividends are considered countable taxable income. Additionally, interest on some bonds issued by and used to finance state and local government operations is also counted for the MAGI even though treated as taxexempt for federal tax purposes.

(04) Foreign earned income. Foreign earned income is countable for the MAGI. This includes

all income received from sources within a foreign country or countries earned for services when either performed by: a U.S. citizen and a bona fide resident of a foreign country for an uninterrupted period of time that includes an entire tax year; or a U.S. citizen or resident who, during any period of 12 consecutive months, is present in a foreign country for at least 330 full days during that period.

(05) Medicaid specific adjustments to income. Special Medicaid adjustments are as follows:

Lump sum payments (i.e., gifts, prizes, income and property tax refunds) are counted only in the month received.

Educational scholarships, awards or fellowships used for education purposes are excluded from consideration as income.

Certain types of income for American Indian/Alaska Native individuals are excluded.

Treatment of other sources of income for Medicaid eligibility are summarized in the table that follows:

***MAGI-Based Medicaid Eligibility Rules  
Income Source Treatment of Income on and after  
January 1, 2014***

Self-employment income Counted with deductions for most expenses, depreciation, and business losses

Salary deferrals (flexible spending, cafeteria and 401(k) plans Not counted

Child support received Not counted

Alimony paid Deducted from income

Veterans' benefits Not counted

Workers' compensation Not counted

Gifts and inheritances Not counted

TANF and SSI Not counted

02. Household members included in MAGI calculation -- In general, the MAGI income of all individuals in an applicant's household must be counted toward household income with the following two exceptions:

(01) Exception for the income of children. Unless a child is "expected to be required" to file a tax return, a child's income is not counted toward household income. The child's income does not count as part of household income when evaluating both the child's eligibility and the eligibility of other household members. This treatment of children's income also applies to adult children -- not just those under age 19 -- if they are tax dependents.

(02) Exception for the income of most other dependents. The income of dependents who are not children or spouses is included as countable in the household income of the person who is claiming them (i.e., the claiming tax filer) only if they "are expected to be required" to file a tax return. The exception for most other tax dependents does not apply to spouses who are claimed as a tax dependent.

These exceptions are based on whether or not a person is "expected" to be required to file a tax return; it does not matter whether they eventually do so or not.

03. Use of current income & accounting for reasonably predicted changes -- For new Medicaid applicants, the Medicaid agency must use a household's current monthly income and household size when evaluating eligibility. A prorated portion of reasonably predictable changes in income, if there is a basis for anticipating the changes, such as a signed contract for employment, a clear history of predictable fluctuations in income, or other indications of future changes in income may be considered in determining eligibility. Future changes in income and

household size must be verified in accordance with the verification and reasonable compatibility requirements are delineated in MCAR section 1308.

04. Comparing household income to the Federal Poverty Level (FPL) -- To determine income eligibility for Medicaid based on the MAGI calculation, the Medicaid agency must compare a household's current monthly income to the FPL guidelines for the appropriate household size. The Medicaid agency must use the most recently published FPL level in effect in the month during which an applicant applies for coverage. If an applicant's FPL level is within five (5) percentage points over the FPL for the coverage group for which they would be eligible, a disregard of five (5) percentage points of the FPL shall be added to the highest income eligibility standard listed above for that coverage group.

## NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.

This hearing decision constitutes a final order pursuant to RI General Laws §42-35-12. An appellant may seek judicial review to the extent it is available by law. 45 CFR 155.520 grants appellants who disagree with the decision of a State Exchange appeals entity, the ability to appeal to the U.S. Department of Health And Human Services (HHS) appeals entity within thirty (30) days of the mailing date of this decision. The act of filing an appeal with HHS does not prevent or delay the enforcement of this final order.

You can file an appeal with HHS at <https://www.healthcare.gov/downloads/marketplace-appeal-request-form-a.pdf> or by calling 1-800-318-2596.