



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR



Date Mailed: July 27, 2017  
MAHS Docket No.: 17-007283  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Gary Heisler

### **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; 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 20, 2017, from Lansing, Michigan. Petitioner was represented by her niece and guardian [REDACTED] [REDACTED]. The Department was represented by Eligibility Specialist [REDACTED] [REDACTED].

### **ISSUE**

Did the Department properly determine Petitioner's 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 born [REDACTED]. Petitioner's family reports she was disabled from age 3.
2. On September 20, 1961, Petitioner's father died. Petitioner was [REDACTED] years old.
3. On January 1, 1965, Petitioner began receiving Disabled Adult Child benefits from the Social Security Administration. (Department Exhibit A page 6)
4. In 1974, the Supplemental Security Income (SSI) program was established.
5. On [REDACTED], Petitioner's mother died.
6. On February 24, 2017, the Department updated Petitioner's Social Security Administration income during redetermination of her ongoing Medical Assistance

(MA) under the AD Care category. Petitioner was determined over the income limit and only eligible for Medical Assistance (MA) as a deductible.

7. On March 1, 2017, Petitioner's case was sent to Disabled Adult Child (DAC) screening to determine if she was eligible for Medical Assistance (MA) under that category.
8. On May 11, 2017, a memorandum was issued by MDHHS – DAC – Screening. It was determined that Petitioner was not eligible for Medical Assistance (MA) as a DAC because she had never received Supplemental Security Income (SSI) benefits.
9. On May 12, 2017, Petitioner was sent a Benefit Notice (DHS-176) which stated she was not eligible for DAC MA because she never received SSI benefits.
10. On May 23, 2017, [REDACTED] submitted a hearing request.

### **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.

Bridges Eligibility Manual (BEM) 158 Disabled Adult Children (10-1-2014) governs Michigan's determination of Medicaid eligibility as a Disabled Adult Child (DAC). The distinction of this Medicaid category is that DAC related Retirement, Survivor, Disability Income (RSDI) is not counted toward the income limit for Medicaid eligibility. BEM 158 provides the following:

#### **DEPARTMENT POLICY**

##### **MA Only**

This is an SSI-related Group 1 MA category.

MA is available to a person receiving disabled adult children's (DAC) (also called Childhood Disability Beneficiaries' or CDBs') RSDI benefits under section 202(d) of the Social Security Act if he or she:

Is age 18 or older; and

Received SSI; and

Ceased to be eligible for SSI on or after July 1, 1987, because he became entitled to DAC RSDI benefits under section 202(d) of the Act or an increase in such RSDI benefits; and

Is currently receiving DAC RSDI benefits under section 202(d) of the Act; and

**Note:** To receive DAC RSDI a person must have a disability or blindness that began before age 22.

Would be eligible for SSI without such RSDI benefits.

Petitioner's position is that she is a Disabled Adult Child (DAC) because she receives DAC benefits from the Social Security Administration. She meets three of the five eligibility requirements for SSI related Medicaid under the DAC category. Petitioner argues she does not meet two of the requirements because she was never eligible for Supplemental Security Income (SSI) benefits as a child, because she became an adult before the SSI program was established. Petitioner questions these requirements based on an assertion that she should be "grandfathered" in as being eligible for DAC Medicaid because she is eligible for DAC benefits from the Social Security Administration.

The legal base for BEM 158 is the Social Security Act, Section 1634(c). Title XVI of the Social Security Act is titled Supplemental Security Income for the Aged, Blind and Disabled. Section 1634 is titled Determination of Medicaid Eligibility. Section 1634(c) provides in full:

(c) If any individual who has attained the age of 18 and is receiving benefits under this title on the basis of blindness or a disability which began before he or she attained the age of 22—

(1) becomes entitled, on or after the effective date of this subsection, to child's insurance benefits which are payable under section 202(d) on the basis of such disability or to an increase in the amount of the child's insurance benefits which are so payable, and

(2) ceases to be eligible for benefits under this title because of such child's insurance benefits or because of the increase in such child's insurance benefits, such individual shall be treated for purposes of title XIX as receiving benefits under this title so long as he or she would be eligible for benefits under this title in the absence of such child's insurance benefits or such increase.

The plain language of the statute is "becomes entitled, *on or after* the effective date of this subsection". In other words, anyone who was 1) disabled before age 22 and 2)

becomes entitled to DAC RSDI benefits from the Social Security Administration under section 202(d) on or after 1974, is eligible for Medicaid. These requirements are used as criteria for an exclusion of DAC related RSDI benefits from use in determining income eligibility for SSI related Medicaid. The fact that Petitioner is not eligible for the exclusion does not make her ineligible for Medicaid.

Petitioner is already a Medicare recipient due to being disabled. Petitioner is categorically eligible for SSI related Medicaid due to being disabled. There is an income limit for all SSI related Medicaid categories including DAC category. Petitioner's income, including her DAC related RSDI, puts her over the income limit for full coverage SSI related Medicaid. However, she is still eligible for SSI related Medicaid if her medical expenses not paid by Medicare, exceed the deductible calculated from her income.

Nothing in the Social Security Act reveals an intent by the legislature to include any type of "grandfathering" for events which occurred prior to establishment of the Supplemental Security Income (SSI) program. Nothing in the Social Security Act reveals an inconsistency with Michigan's Department of Health and Human Services' policies. Petitioner's arguments center on dissatisfaction with the Department's current policy. Petitioner's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

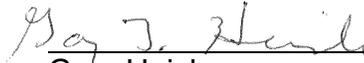
Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940); *Auto-Owners Ins Co v Elchuk*, 103 Mich App 542, 303 NW2d 35 (1981); *Delke v Scheuren*, 185 Mich App 326, 460 NW2d 324 (1990), and *Turner v Ford Motor Company*, unpublished opinion per curium of the Court of Appeals issued March 20, 2001 (Docket No. 223082).

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 Petitioner's Medical Assistance (MA) eligibility.

**DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED**.

GH/nr



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Gary Heisler  
Administrative Law Judge  
for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**DHHS**

[REDACTED]

**Petitioner**

[REDACTED]

**Authorized Hearing Rep.**

[REDACTED]