



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
DETROIT

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: October 10, 2017  
MAHS Docket No.: 17-009615  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

### **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, an in-person hearing was held on October 4, 2017, from Sterling Heights, Michigan. [REDACTED], Petitioner's sister, appeared as Petitioner's Authorized Hearing Representative (AHR). [REDACTED], Petitioner's sister, and [REDACTED], Petitioner's brother-in-law, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], hearing facilitator.

### **ISSUE**

The issue is whether MDHHS properly determined Petitioner's eligibility for Medical Assistance (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 was an ongoing recipient of Medicaid.
2. On April 12, 2017, MDHHS determined Petitioner was eligible for Medicaid subject to an \$[REDACTED]/month deductible, without factoring Petitioner's eligibility for Disabled Adult Child, 503 Individuals, or Freedom-to-Work categories.
3. On July 19, 2017, Petitioner requested a hearing to dispute Petitioner's eligibility of MA from May 2017.

## CONCLUSIONS OF LAW

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. MDHHS (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute MA eligibility from May 2017. MDHHS presented a Health Care Coverage Determination Notice (Exhibit 1, pp. 1-4) dated April 12, 2017. The notice informed Petitioner of an approval of Medicaid subject to an \$█/month deductible. Petitioner's AHR contended Petitioner was eligible for Medicaid without a deductible.

The Medicaid program comprise several sub-programs or categories. BEM 105 (April 2017), p. 1. Persons may qualify under more than one MA category. Federal law gives them the right to the most beneficial category. *Id.*, p. 2. The most beneficial category is the one that results in eligibility, the least amount of excess income or the lowest cost share. *Id.*

To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.*, p. 1. Medicaid eligibility for children under 19, parents or caretakers of children, pregnant or recently pregnant women, former foster children, MOMS, MICHild, Flint Water Group and Healthy Michigan Plan is based on Modified Adjusted Gross Income (MAGI) methodology. *Id.*

The presented notice of eligibility listed various MA categories that were considered. Specific categories included MA based on being under █ years of age, pregnancy, caretaker status, or former foster child. Petitioner's AHR did not allege that any of the listed categories were applicable to Petitioner. Petitioner's AHR did contend multiple unlisted categories were applicable.

[DAC is] a SSI-related Group 1 category. BEM 158 (October 2014), p. 1. 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:

- (1) Is age 18 or older; and
- (2) Received SSI; and
- (3) 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
- (4) Is currently receiving DAC RSDI benefits under section 202(d) of the Act; and
- (5) Would be eligible for SSI without such RSDI benefits.

*Id.*

MDHHS presented a memorandum (Exhibit A, p. 5) dated June 30, 2017. The memo was from the DHS-DAC Determination unit and stated Petitioner was not eligible for the DAC category because Petitioner's SSI eligibility ended before July 1, 1987.

Petitioner's AHR did not dispute that Petitioner's SSI eligibility ended before July 1987. The testimony is supportive in rejecting Petitioner's DAC eligibility. A finding that Petitioner is not eligible for Medicaid through DAC cannot follow due to a procedural failure by MDHHS.

[For all programs,] upon certification of eligibility results, Bridges automatically notifies the client in writing of positive and negative actions by generating the appropriate notice of case action. BAM 220 (April 2017), p. 2. A notice of case action must specify the following:

- The action(s) being taken by the department.
- The reason(s) for the action
- The specific manual item which cites the legal base for an action or the regulation or law itself
- An explanation of the right to request a hearing.
- The conditions under which benefits are continued if a hearing is requested.

*Id.*

The failure of MDHHS to list DAC as a category on the written notice is indicative that MDHHS failed to consider Petitioner's DAC eligibility before denying Petitioner's eligibility. Further support for MDHHS' failure to consider Petitioner's DAC eligibility before issuing written notice was that the memorandum evaluating Petitioner's DAC eligibility was dated after written notice was issued.

Consideration was given to the possibility that MDHHS sufficiently informed Petitioner of a denial of DAC eligibility after issuing notice on April 12, 2017. MDHHS testimony conceded that a written notice denying MA eligibility based on DAC was not issued after April 12, 2017.

Consideration was also given to finding that Petitioner's AHR's concession that Petitioner's SSI eligibility ended before July 1987 renders notice of denial to be trivial. This consideration was rejected because due process is not a trivial oversight.

MDHHS policy will not be interpreted as requiring notice of denial for every MA category for every client. It is interpreted to require notice of reasonably applicable MA categories. DAC is deemed to be reasonably applicable to Petitioner's circumstances that notice of DAC eligibility should have been listed on the notice of denial. The failure by MDHHS to issue notice of DAC eligibility justifies ordering MDHHS to issue proper notice of DAC eligibility.

Petitioner's AHR also contended that the "Pickle Amendment" (see Exhibit 1, pp. 1-3) was relevant to Petitioner's MA eligibility. Petitioner's AHR's contention is suggestive of Petitioner's MA eligibility through another MA category that MDHHS also apparently did not consider.

[503 individuals...] is an SSI-related Group 1 MA category. BEM 155 (July 2013), p. 1. MA is available to former SSI recipients who receive RSDI benefits and would now be eligible for SSI if RSDI cost-of-living increases paid since SSI eligibility ended were excluded. *Id.* The reason for SSI ineligibility does not matter. *Id.* Nationally, this MA category is referred to as Medicaid under the Pickle Amendment. *Id.* [For 503 eligibility,] the person must:

- Currently receive RSDI benefits, and
- Have stopped receiving SSI benefits after April 1977, and
- Have been entitled to RSDI benefits in the last month he [or she] was eligible for and received SSI.

*Id.*, p. 2.

Income eligibility exists [for 503 Individuals] when net income does not exceed the special protected income level in RFT 245. *Id.* Income eligibility cannot be established with a patient-pay amount or by meeting a deductible. *Id.*

Petitioner presented evidence suggesting that Petitioner is eligible for Medicaid through the 503 Individual category. The evidence will not be factored because an administrative hearing is not the forum for determining eligibility; it is an appropriate forum for determining whether MDHHS properly determined eligibility.

No presented evidence indicated that MDHHS factored Petitioner's eligibility for Medicaid under 503 Individuals. Thus, MDHHS will be ordered to determine (and send proper notice) of Petitioner's 503 Individuals eligibility.

Presented testimony also alleged that Petitioner was nominally employed and potentially eligible for Medicaid through Freedom-to-Work (FTW). As the presented notice of denial also did not specifically cite FTW as a considered category, MDHHS will be ordered to determine eligibility (and send proper notice) of a third MA category.

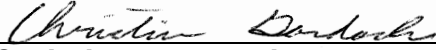
### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly failed to determine Petitioner's eligibility for Medicaid under all reasonably applicable MA categories. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

1. Determine Petitioner's Medicaid eligibility, effective May 2017, for DAC, 503 Individuals, and Freedom-to-Work;
2. Issue proper notice for each category; and
3. Supplement Petitioner for any benefits not properly issued.

The actions taken by MDHHS are **REVERSED**.

CG/

  
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**Christian Gardocki**  
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]

**Authorized Hearing Rep.**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Petitioner**

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