



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: October 26, 2017  
MAHS Docket No.: 17-010360  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun**

**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 27, 2017, from Detroit, Michigan. The Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Kathleen Scorpio-Butina, Hearing Facilitator.

**ISSUE**

Did the Department properly process Petitioner's State Emergency Relief (SER) benefits?

Did the Department properly calculate the amount of Petitioner's Medical Assistance (MA) deductible?

**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 is not an ongoing recipient of SER benefits and did not submit an application for SER benefits prior to her hearing request.
2. Petitioner was previously an ongoing recipient of MA benefits. On an unverified date, Petitioner's MA case closed.
3. On or around [REDACTED], 2017 Petitioner reapplied for MA benefits.

4. On August 3, 2017 the Department sent Petitioner a Health Care Coverage Determination Notice advising her that effective July 1, 2017 she was eligible for MA with a monthly deductible of \$686. (Exhibit B, pp. 2-5)
5. Petitioner was approved for MA under the Group 2 Aged Blind Disabled (G2S) category. (Exhibit A)
6. On August 7, 2017 Petitioner requested a hearing disputing the Department's actions with respect to her MA deductible and the SER program. (Exhibit B, pp. 17-18)

### **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).

#### **SER**

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

A request for hearing must be received in the Department local office within 90 days of the date of the written notice of case action. MAHS may grant a hearing about a denial of an application and/or supplemental payments; reduction in the amount of program benefits or service; suspension or termination of program benefits or service; restrictions under which benefits or services are provided or delay of any action beyond the standards of promptness. BAM 600 (April 2017), pp.4-6.

In the present case, Petitioner requested a hearing and checked the box indicating she disputed the Department's actions with respect to the SER program. At the hearing, Petitioner confirmed that prior to her hearing request, she had neither submitted an application for SER benefits nor had she been an active and ongoing recipient of SER benefits with the Department. Petitioner stated that she checked the SER box in error. Thus, Petitioner failed to establish that the Department had taken any negative action on her SER case prior to the hearing request. Therefore, because the Department had neither determined Petitioner's eligibility for SER benefits nor had the Department taken any negative action with respect to Petitioner's SER benefits prior to her hearing request, Petitioner's hearing request with respect to SER is **DISMISSED** for lack of jurisdiction.

## MA

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.

In this case, Petitioner requested a hearing disputing the Department's actions with respect to her MA case, specifically, the calculation of her deductible. At the hearing, the Department testified that Petitioner previously had an active MA case and that her case was set to close effective July 1, 2017. Petitioner reapplied for MA and was approved under the G2S category with a monthly deductible of \$686 effective July 1, 2017.

Petitioner, who has no minor children, is enrolled in Medicare and receives RSDI, is eligible for SSI-related MA, which is MA for individuals who are blind, disabled or over age 65. BEM 105 (October 2016), p. 1. Individuals are eligible for Group 1 coverage, with no deductible, if their income falls below the income limit, and eligible for Group 2 coverage, with a deductible that must be satisfied before MA is activated, when their income exceeds the income limit. BEM 105, p. 1. Ad-Care coverage is a SSI-related Group 1 MA category which must be considered before determining Group 2 MA eligibility. BEM 163 (July 2013), p. 1. Eligibility for Ad-Care is based on the client meeting nonfinancial and financial eligibility criteria. BEM 163, pp. 1-2. The eligibility requirements for Group 2 MA and Group 1 MA Ad-Care are the same, other than income. BEM 166 (July 2013), pp. 1-2.

Income eligibility for the Ad-Care program is dependent on MA fiscal group size and net income which cannot exceed the income limit in RFT 242. BEM 163, p.2. Petitioner has a MA fiscal group of one. BEM 211 (January 2016), p. 5. Effective April 1, 2017, a MA fiscal group with one member is income-eligible for full-coverage MA under the Ad-Care program if the group's net income is at or below \$1,005, which is 100 percent of the Federal Poverty Level, plus the \$20 disregard. RFT 242 (April 2017), p. 1.

The Department is to determine countable income according to SSI-related MA policies in BEM 500 and 530 *except* as explained in the countable RSDI section of BEM 163. The Department will also apply the deductions in BEM 540 (for children) or 541 (for adults) to countable income to determine net income. BEM 163, p. 2. The Department testified that in calculating Petitioner's countable income, it relied on the RSDI Award Letter provided and considered unearned income in the amount of \$1,114 for Petitioner's gross monthly RSDI benefits. (Exhibit B. p. 8-9)

After further review of Department policy and based on the evidence presented at the hearing, because Petitioner's countable income exceeds the net income limit for the Ad-Care program, the Department acted in accordance with Department policy when it

determined that Petitioner was ineligible for full coverage MA benefits under the Ad-Care program without a deductible and determined that she would be eligible for MA under the Group 2 Aged Blind Disabled (G2S) program with a monthly deductible.

Additionally, deductible is a process which allows a client with excess income to become eligible for Group 2 MA if sufficient allowable medical expenses are incurred. BEM 545 (January 2016), p. 10. Individuals are eligible for Group 2 MA coverage when net income (countable income minus allowable income deductions) does not exceed the applicable Group 2 MA protected income levels (PIL), which is based on shelter area and fiscal group size. BEM 105, pp. 1-2; BEM 166, pp. 1-2; BEM 544 (July 2013), p. 1; RFT 240 (December 2013), p. 1. The PIL is a set allowance for non-medical need items such as shelter, food and incidental expenses. BEM 544, p. 1. The monthly PIL for an MA group of one living in Macomb County is \$408 per month. RFT 200 (December 2013), pp. 1-2; RFT 240, p. 1. Thus, if Petitioner's net monthly income is in excess of the \$408, she may become eligible for assistance under the deductible program, with the deductible being equal to the amount that her monthly income exceeds \$408. BEM 545, p. 1.

The Department produced a SSI-Related MA budget showing how the deductible in Petitioner's case was calculated. (Exhibit B, p. 14). The Department testified that it determined Petitioner had unearned income in the total amount of \$1,114, which as referenced above properly consisted of her gross monthly RSDI benefits. The budget shows that the Department properly subtracted the \$20 unearned income general exclusion to determine that Petitioner had net income for MA purposes of \$1,094.

Although Petitioner is responsible for monthly Medicare Part B premiums in the amount of \$125 and Medicare Part D premiums in the amount of \$33.50, the Department failed to include them as an insurance premium deduction to net income on the deductible budget. There was no evidence presented that Petitioner was entitled to any other deductions to income BEM 530, pp. 1-4; BEM 541, pp. 2-3.

Therefore, because the Department failed to consider Petitioner's responsibility for monthly insurance premiums, the Department did not properly calculate Petitioner's MA deductible to be \$686 effective July 1, 2017.

Petitioner raised additional concerns at the hearing regarding the Department's failure to process medical expenses incurred for a period prior to July 2017. (Exhibit 1). Although the Department testified that from April 2017 to July 2017 Petitioner had full coverage MA benefits under the Ad-Care category without a monthly deductible, the eligibility summary presented for review does not support the Department's testimony, as no coverage is showing for those months. (Exhibit A). Petitioner is advised that she is entitled to submit a retroactive application for MA benefits for the Department to determine her MA eligibility for the three months prior to her [REDACTED] 2017 application.

There was also some evidence presented that Petitioner submitted medical expenses to the Department to be applied to her monthly deductible for July 2017, ongoing. The

Department testified that Petitioner submitted the expenses on August 29, 2017, September 8, 2017, September 11, 2017, September 18, 2017, and September 21, 2017, after her request for hearing. Thus, should Petitioner dispute the processing or alleged failure to process those expenses in accordance with BEM 545, Petitioner is required to submit a new hearing request, as that is determined to be a subsequent action taken after the current hearing request.

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 calculated the amount of Petitioner's MA deductible.

### **DECISION AND ORDER**

Accordingly, the hearing request with respect to SER is **DISMISSED** and the Department's MA 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. Recalculate Petitioner's MA deductible for July 1, 2017, ongoing;
2. Process Petitioner's medical expenses incurred and apply them towards her MA deductible for the applicable period;
3. Provide Petitioner with MA coverage that she was entitled to receive but did not from July 1, 2017, ongoing, and
4. Notify Petitioner of its decision in writing

ZB/tlf



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**Zainab A. Baydoun**  
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

**Via Email:**

MDHHS-Macomb-20-Hearings  
BSC4 Hearing Decisions  
EQAD  
M. Best  
MAHS

**Petitioner – Via First-Class Mail:**

