



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: March 27, 2019  
MAHS Docket No.: 18-012806  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Alice C. Elkin**

**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 commenced on February 25, 2019 and continued and completed on March 18, 2019, from Detroit, Michigan. Petitioner appeared and represented himself. His wife, [REDACTED], appeared as his witness. The Department of Health and Human Services (Department) was represented by Brenda Drewnicki, Hearings Facilitator.

**ISSUE**

Did the Department properly deny Petitioner's February 27, 2018 application for Medicaid (MA) and request for retroactive MA coverage to November 2017 due to excess assets?

Did the Department properly process Petitioner's October 22, 2018 MA application and request for retroactive coverage to July 2018?

**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 lives with his wife in [REDACTED] County. They have no minor children.
2. Petitioner receives monthly Retirement, Survivors and Disability Insurance (RSDI) income based on a disability and is a Medicare recipient.

3. Petitioner's wife is employed at [REDACTED] (Employer 1) and [REDACTED] (Employer 2).
4. On February 27, 2018, Petitioner applied for MA and requested retroactive coverage to November 2017.
5. The Department denied Petitioner's application, finding that his countable assets exceeded program limits.
6. Petitioner requested a hearing disputing the denial of his February 27, 2018 MA application, and a hearing was held on October 22, 2018.
7. On October 26, 2018, Administrative Law Judge (ALJ) Ellen McLemore issued a Hearing Decision finding that the Department had improperly denied Petitioner's February 27, 2018 application and ordered the Department to reprocess the application (Exhibit A, pp 11A-15A).
8. The Department reprocessed the application and concluded that Petitioner's cash assets in his [REDACTED] bank accounts ending [REDACTED] and [REDACTED] resulted in Petitioner having excess assets (Exhibit A, pp. 25A-44A).
9. On November 15, 2018, the Department sent Petitioner a Health Care Coverage Determination Notice notifying him that it had reprocessed his February 27, 2018 MA application and concluded that he was not eligible for MA from November 2017 through February 2018 because the value of his countable assets was higher than allowed for the program (Exhibit A, pp. 45A-48A).
10. On October 22, 2018, Petitioner applied for FAP and for MA, with retroactive coverage to July 2018, for himself and his wife.
11. Petitioner's [REDACTED] July 2018 bank statement showed a balance of [REDACTED] in account ending -[REDACTED] (Exhibit A, pp. 70A-72A).
12. The Department determined that Petitioner's wife had employment income from Employer 1 totaling [REDACTED] for August 2018; [REDACTED] for September 2018; [REDACTED] for October 2018 and [REDACTED] for November 2018 ongoing and from Employer 2 totaling [REDACTED] for August 2018; [REDACTED] for September 2018; [REDACTED] for October 2018; and [REDACTED] for November 2018 ongoing (Exhibit A, pp. 9-10).
13. On November 19, 2018, the Department sent Petitioner a Health Care Coverage Determination Notice. The Notice notified him that (1) his wife was eligible for MA for July 2018 but ineligible thereafter because she had excess income, (2) he was not eligible for MA for July 2018 because the value of his assets exceeded the limit for MA eligibility, (3) he was eligible for full coverage MA for August 2018 and September 2018, for MA coverage with a [REDACTED] monthly deductible for October

2018, and for MA coverage with a [REDACTED] monthly deductible for November 2018 ongoing (Exhibit B, pp. 60A-65A).

14. On November 7, 2018, the Department sent Petitioner a Notice of Case Action notifying him that his October 22, 2018 application for FAP was denied due to excess assets (Exhibit F, pp. 1A-4A).
15. On November 30, 2018, the Department received Petitioner's request for hearing disputing the Department's actions concerning his MA and FAP applications.

### **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 Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

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.

#### Denial of February 27, 2018 MA Application

The Department testified that, in reprocessing Petitioner's February 27, 2018 application in compliance with ALJ McLemore's October 26, 2018 Hearing Decision, it concluded that Petitioner was ineligible for MA for February 2018 ongoing and for the retroactive months of November 2017 to January 2018 due to excess assets.

Petitioner, who receives RSDI income and confirmed that he is a Medicare recipient, may be eligible for MA under an SSI-related MA category, which is available to aged, disabled or blind individuals. BEM 105 (April 2017), p. 1. For purposes of determining eligibility for SSI-related MA, an individual and the individual's spouse who lives with him are in the same asset group. BEM 211 (January 2016), p. 8. In order to be eligible

for SSI-related MA, a married individual may not have assets with values exceeding [REDACTED]. BEM 400 (January 2018), p. 8; BEM 211, p. 8. Asset eligibility exists when the asset group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400, p. 7.

Here, Petitioner had joint accounts with his wife at [REDACTED] with cash values that exceeded [REDACTED] for November 2017 through February 2018 (Exhibit A, pp. 25A-44A). Thus, the Department properly concluded that Petitioner was not asset eligible for MA during that period.

Department policy provides that a client whose countable assets exceed the asset limit is nevertheless asset eligible for SSI-related MA when an undue hardship exists, but the assumption is that denying MA will **not** cause undue hardship unless there is medical evidence to the contrary. BEM 402 (January 2018), p. 10. An undue hardship exists when the client's physician states that (i) necessary medical care is not being provided and (ii) the client needs treatment for an emergency condition, which is any condition for which a delay in treatment may result in the person's death or permanent impairment of the person's health. BEM 402, p. 11. The evidence at the hearing did not establish a basis for undue hardship in this matter.

There was also a discussion on the record as to the availability of a policy exception to establish MA eligibility. BEM 100 (October 2018), p. 8, provides that a policy exception is based on unique and rare circumstances in a specific case to avoid extreme and unusual hardship to a client. Policy exceptions are an internal process that must come from a Department employee, not from a client, attorney or family member. BEM 100, p. 11. Policy exceptions do **not** determine eligibility and a denial does **not** grant hearing rights. BEM 100, p. 11. Therefore, there is no right to a hearing on the issue of whether a policy exception should be sought or granted.

#### October 22, 2018 MA Application

On October 22, 2018, Petitioner reapplied for MA for himself and applied for MA for his wife. The Department sent Petitioner a November 19, 2018 Health Care Coverage Determination Notice notifying him that (1) his wife was eligible for MA in July 2018 but ineligible for ongoing MA because she had excess income, (2) he was not eligible for MA for July 2018 because the value of his assets exceeded the limit for MA eligibility, and (3) he was eligible for full coverage MA for August 2018 and September 2018, for MA coverage with a [REDACTED] monthly deductible for October 2018, and for MA coverage with a [REDACTED] monthly deductible for November 2018 ongoing (Exhibit B, pp. 60A-65A).

#### Petitioner's Wife's MA

MA is available (i) under SSI-related categories to individuals who are aged (65 or older), blind or disabled, (ii) to individuals who are under age 19, parents or caretakers of children, or pregnant or recently pregnant women, and (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage. BEM 105 (April 2017), p. 1; BEM 137 (October 2016), p. 1. Because Petitioner's wife was not blind, disabled,

over age 65, under age 19, pregnant, or the parent of minor children, she was potentially eligible for MA under only the HMP program. BEM 105 (April 2017), pp. 1-4.

HMP is a Modified Adjusted Gross Income (MAGI)-related MA category that provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income at or below 133% of the federal poverty level (FPL) under the MAGI methodology; (iii) do not qualify for or are not enrolled in Medicare; (iv) do not qualify for or are not enrolled in other MA programs; (v) are not pregnant at the time of application; and (vi) are residents of the State of Michigan.

An individual is income-eligible for HMP if her household's income does not exceed 133% of the federal poverty level (FPL) applicable to the individual's group size. BEM 137, p. 1. An individual's group size for MAGI purposes requires consideration of the client's tax filing status or, if not a tax filer, the individual's household. Because Petitioner and his wife live together and have no dependents who live with them, they have a household size of two for purposes of determining eligibility for HMP. BEM 211 (January 2016), pp. 1-2. For a two-person group, 133% of the 2018 FPL for HMP eligibility was \$21,891.80, or \$1,824.32 monthly in 2018.

<https://www.healthcare.gov/glossary/federal-poverty-level-FPL/>. A 5% disregard, which may be applied to make someone MA eligible, raises the applicable FPL limit by 5%. BEM 500, p. 5. This would raise the income limit for HMP eligibility to \$22,714.80, or \$1,892.90 monthly.

To determine financial eligibility for MAGI-related MA programs, income must be calculated in accordance with MAGI under federal tax law. BEM 500 (July 2017), pp. 3-4. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500, p. 4. In order to determine earned income in accordance with MAGI, a client's adjusted gross income (AGI) is added to any tax-exempt foreign income, tax-exempt Social Security benefits, and tax-exempt interest. AGI is found on IRS tax form 1040 at line 37, form 1040 EZ at line 4, and form 1040A at line 21. Alternatively, it is calculated by taking the "federal taxable wages" for each income earner in the household as shown on the paystub or, if not shown on the paystub, by using gross income before taxes reduced by any money the employer takes out for health coverage, child care, or retirement savings. This figure is multiplied by the number of paychecks the client expects in the year to estimate income for the year. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>

Here, Petitioner's wife's income from Employer 1 alone, determined in accordance with MAGI policy, without consideration of her income from Employer 2 or Petitioner's RSDI income, results in excess monthly income for HMP eligibility. Thus, the Department acted in accordance with Department policy when it concluded that Petitioner's wife was not eligible for MA under the HMP program for any of the retro months or for October 2018 ongoing even though the Department approved her for HMP for July 2018.

### Petitioner's MA

The evidence at the hearing established that Petitioner received RSDI based on a disability, was a Medicare recipient, and had no minor children. Therefore, he was eligible for MA under only an SSI-related MA category.

The Department concluded that Petitioner was ineligible for SSI-related MA for July 2018 due to excess assets and presented evidence that the value of Petitioner's checking accounts in July 2018 exceeded [REDACTED] (Exhibit B, pp. 68A-72A). Petitioner did not present any evidence to counter this evidence. Thus, the Department properly denied Petitioner MA coverage for July 2018.

The Department concluded that Petitioner was eligible for SSI-related MA for August 2018 ongoing subject to a monthly deductible. The determination of Petitioner's income-eligibility for SSI-related MA requires consideration of Petitioner's income based on his fiscal group size. Because he is married, Petitioner has a fiscal group size of two for SSI-related MA purposes. BEM 211, p. 8. A two-person group with monthly net income less than [REDACTED] is eligible for SSI-related full-coverage MA under the AD-Care program. BEM 163 (July 2017), pp. 1, 2; RFT 242 (April 2018), p. 1. An individual with excess income for AD-Care eligibility may be eligible for MA with a monthly deductible under a Group 2 SSI-related program. BEM 545 (October 2018), p. 1.

In determining income eligibility for SSI-related MA, the Department must use amounts actually received in a past month. BEM 530 (July 2017), pp. 2-3. Petitioner received [REDACTED] in monthly RSDI income in 2018 and his wife received employment income from Employer 1 and Employer 2 totaling [REDACTED] in August 2018 and [REDACTED] in September 2018 ([REDACTED] in August 2018 and [REDACTED] in September 2018 from Employer 1 plus [REDACTED] in August 2018 and [REDACTED] in September 2018 from Employer 2). After deductions for the [REDACTED] unearned income general exclusion for the RSDI income, a [REDACTED] plus ½ disregard for the earned income from Employer 1 and Employer 2, and health insurance premiums totaling [REDACTED], Petitioner had total countable income of [REDACTED] in August 2018 and [REDACTED] in September 2018. See BEM 541 (January 2018), p. 3 (MA income deductions for SSI-related adults); BEM 544 (July 2016), p. 1 (Group 2 MA needs deductions). Petitioner had excess income for AD-Care coverage. However, his countable income, reduced by the [REDACTED] protected income limit applicable to a two-person MA group living in [REDACTED] County, results in Petitioner's MA eligibility subject to a deductible of [REDACTED] for August 2018 and [REDACTED] in September 2018, consistent with the Department's testimony. See RFT 200 (April 2017), p. 3 (shelter areas); RFT 240 (December 2013), p. 1 (monthly protected income levels).

The Department explained that Petitioner met his deductible for August 2018 and September 2018 when old bills were applied to the deductible those months and was eligible for MA coverage for any remaining expenses incurred those months. When old bills equal or exceeds the Group 2 MA recipient's excess income (the deductible amount) in a past or processing month, income eligibility exists for the entire month. BEM 545 (October 2018), pp. 1, 2. If the total of the old bills equal or exceed the

group's excess income (deductible) in the past or processing month, the old bills may be applied to a future month, but if the remaining old bills total less than the excess income, the group has or continues to have a deductible. BEM 545, p. 6.

Here, the Department identified all of the old bills that were applied towards the August 2018 and September 2018 deductible. Department policy provides that individuals must be given the most advantageous use of old bills (also known as incurred expenses) and may request coverage for the current month, up to six future months (if eligible based on old bills) and for any prior months. BEM 545, p. 2. However, income eligibility is determined in calendar month order, starting with the oldest calendar month, and old bills must be used in chronological order by date of service. BEM 545, p. 21.

The old bills the Department used towards Petitioner's deductible for August 2018 and September 2018 had dates of service from [REDACTED] (Exhibit D). The remaining old bills, with dates of service from [REDACTED], would apply towards the October 2018 deductible.

Petitioner noted that there were several other old bills identified in Exhibit D, with dates of service dating back to [REDACTED] (Exhibit D, pp. 20-27), and argued that those old bills should be applied to his deductibles for October 2018 ongoing. Medical expenses for Petitioner and his wife can be used as old bills if, among other things, they were not previously used to establish MA income eligibility. BEM 545, p. 20-21. The Department explained that Petitioner had previously been an MA recipient with a deductible and the expenses prior to January 2018 had been used to establish his MA income eligibility. Therefore, the bills prior to January 2018 could not be used as "old bills" to establish income eligibility for his current MA case.

With respect to Petitioner's deductible for October 2018 and November 2018 ongoing, the Department presented SSI-related MA budgets showing the information used to calculate Petitioner's deductibles. Both budgets showed unearned income of [REDACTED], Petitioner's gross monthly RSDI income. In October 2018, the processing month, Petitioner's wife received [REDACTED] from Employer 1 and, based on receiving biweekly pay on October 5 and October 19, would not receive any further pay from Employer 1 for October. She received [REDACTED] on October 9, 2018 from Employer 2 and, because she received payment every other biweekly pay period from Employer 2, she would be expected to receive another paycheck from Employer 2 in October 2018. The Department appears to have averaged Petitioner's pay from Employer 2 over 90 day pay period preceding the application date and, based on average Employer 2 pay of [REDACTED], anticipated that Petitioner's wife would receive a total of [REDACTED] from Employer 2 for October 2018. Thus, her October 2018 income from Employer 1 and Employer 2 was expected to be [REDACTED].

In prospecting Petitioner's wife's income for November 2018 ongoing, the Department explained that, because Petitioner's wife's income fluctuated, it considered her average monthly income from both employers over the 90-day countable pay period from July

25, 2018 to October 22, 2018. Based on averaging the monthly income during this period, the Department concluded that Petitioner's wife's monthly income for November 2018 ongoing was [REDACTED] from Employer 1 and [REDACTED] from Employer 2 for a monthly total of [REDACTED].

When Petitioner's RSDI income and his wife's income for October 2018 and November 2018 ongoing, as prospected by the Department, is reduced by the [REDACTED] unearned income general exclusion for the RSDI income, a [REDACTED] plus ½ disregard for the earned income from Employer 1 and Employer 2, and health insurance premiums totaling [REDACTED], Petitioner had total countable income of [REDACTED] in October 2018 and [REDACTED] in November 2018. See BEM 541, p. 3; BEM 544, p. 1. Using this countable income, reduced by the [REDACTED] protected income limit applicable to a two-person MA group living in [REDACTED] County, results in a deductible of [REDACTED] for October 2018 and [REDACTED] in November 2018, consistent with the Department's findings.

Petitioner argued at the hearing that the Department's figures did not accurately reflect his wife's income. Department policy for prospecting income for non-MA benefits, such as Food Assistance Program (FAP) benefits, allows the Department to use the average of employment income from the past 60 or 90 days when prospectively budgeting fluctuating income. BAM 505 (October 201&0, p. 6. However, for prospecting fluctuating income for Group 2 MA purposes in a processing or future month, Department policy provides the following guidelines:

- For fluctuating earned income, use the expected hourly wage and hours to be worked, as well as the payday schedule, to estimate earnings.
- Paystubs showing year-to-date earnings and frequency of pay are usually as good as multiple paystubs to verify income.
- A certain number of paystubs is not required to verify income. If even one paystub reflects the hours and wages indicated on the application, that is sufficient information.
- If a person reports a pay rate change and/or an increase or decrease in the number of hours they usually work, use the new amount even if the change is not reflected on any paystubs.
- If you have an opportunity to talk with the client, that may help establish the best estimate of future income.

BEM 530, pp. 3-4.

Because the Department did not apply the policy for prospecting income for MA, the Department failed to show that it acted in accordance with Department policy in determining Petitioner's deductible for October 2018 and November 2018 ongoing.

#### Denial of FAP Application

In a November 7, 2018 Notice of Case Action, the Department denied Petitioner's October 22, 2018 FAP application, finding that he had excess assets. In his November

30, 2018 hearing request, Petitioner disputed the Department's actions concerning his FAP application.

At the hearing, the Department acknowledged that the application was denied in error. Upon realizing its error, the Department reprocessed the FAP application, and on December 7, 2018, the Department sent Petitioner a Notice of Case Action notifying him that he was approved for FAP benefits of █████ for the partial month from the █████ application date to █████; █████ for November 2018; and █████ for December 2018 ongoing (Exhibit G, pp. 5A-10A). Therefore, the Department remedied the issue presented in Petitioner's November 30, 2018 hearing request. Because the Department resolved the FAP issue presented in Petitioner's November 30, 2018 hearing request, the hearing request with respect to FAP is dismissed. Because Petitioner disputed the Department's subsequent calculation of his FAP benefits at the hearing, he was advised to request a hearing on that issue so that the Department could properly prepare to respond.

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 (1) properly denied Petitioner's February 27, 2018 MA application, (2) properly determined Petitioner's wife's MA eligibility and Petitioner's MA eligibility for July 2018 through September 2018 but did not act in accordance with Department policy when it calculated Petitioner's MA deductible for October 2018 and November 2018 ongoing and (3) resolved Petitioner's FAP issue prior to hearing.

### **DECISION AND ORDER**

Petitioner's hearing request concerning FAP was resolved prior to hearing and is **DISMISSED**.

The Department's MA decision is **REVERSED** with respect to the calculation of Petitioner's MA deductible for October 2018 and November 2018 ongoing.

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. Reprocess Petitioner's MA eligibility for October 2018 and November 2018 ongoing;
2. Provide Petitioner with any MA benefit he is eligible to receive from October 2018 ongoing; and

3. Notify Petitioner in writing of its decision.



AE/tm

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**Alice C. Elkin**

Administrative Law Judge  
for Robert Gordon, 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) 763-0155; 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**

Vivian Worden  
21885 Dunham Road  
Clinton Twp., MI  
48036

**Petitioner**

[REDACTED]

cc: FAP: M. Holden; D. Sweeney  
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