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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: March 26, 2019
MAHS Docket No.: 19-000658
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; 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, an in-person hearing was held on February 27, 2019, from Pontiac, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], specialist, and [REDACTED], supervisor.

ISSUES

The first issue is whether MDHHS properly determined Petitioner's Medicaid eligibility.

The second issue is whether MDHHS properly determined Petitioner's spouse's Medicaid eligibility.

The third issue is whether MDHHS properly determined Petitioner's spouse's Medicare Savings Program (MSP) 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. As of September 2018, Petitioner was between 19-64 years of age, not disabled, not pregnant, married, and a caretaker to three minor children.
2. As of September 2018, Petitioner's spouse (hereinafter, "Spouse") was between 19-64 years of age, disabled, married, and a caretaker to three minor children.

3. On September 26, 2018, MDHHS, determined that Petitioner, Spouse, and Children were ineligible for Medicaid effective November 2018. Exhibit 1, pp. 5-13.
4. As of October 2018, Petitioner received employment income from two different employers.
5. As of October 2018, Spouse received ongoing monthly RSDI of [REDACTED] month. Exhibit C, pp. 4-5.
6. On an unspecified date, MDHHS determined that Petitioner and Spouse were eligible for Medicaid subject to a monthly deductible of [REDACTED]/month beginning November 2018.
7. On November 10, 2018, Petitioner reported to MDHHS stopped employment with one of her employers. Exhibit A, p. 1.
8. On an unspecified, MDHHS verified that Petitioner was working for only one employer.
9. On November 21, 2018, MDHHS determined that Petitioner and Spouse were eligible for Medicaid for December 2018. Exhibit A, pp. 10-12.
10. As of December 2018, Petitioner received monthly employment income of [REDACTED]/month.
11. Beginning January 2019, Spouse received monthly RSDI of [REDACTED].
12. On an unspecified date, MDHHS determined that Petitioner and Spouse were each eligible for Medicaid subject to a [REDACTED]/month deductible, effective December 2018.
13. On January 18, 2019, Petitioner requested a hearing to dispute the determinations of Medicaid for herself and Spouse. Petitioner also requested a hearing concerning Spouse's MSP's eligibility.

CONCLUSIONS OF LAW

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. 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 a determination of Medicaid for herself. Specifically, Petitioner disputed her Medicaid eligibility after she reported and verified in November 2018 that her employment income decreased. As MDHHS issued Medicaid to Petitioner for December 2018, Petitioner appears to dispute her Medicaid eligibility for January 2019. MDHHS did not present written notice corresponding to its determination but MDHHS testimony credibly indicated that Petitioner was determined eligible for Medicaid subject to a [REDACTED] deductible beginning January 2019.

Medicaid is also known as Medical Assistance (MA). BEM 105 (April 2017), p. 1. The Medicaid program includes several sub-programs or categories. *Id.* To receive MA under a Supplemental Security Income (SSI)-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Medicaid eligibility for children under 19, parents or caretakers of children, pregnant or recently pregnant women, former foster children, MOMS, MICHild and Healthy Michigan Plan is based on Modified Adjusted Gross Income (MAGI) methodology. *Id.*

Persons may qualify under more than one MA category. *Id.*, p. 2. Federal law gives them the right to the most beneficial category. *Id.* The most beneficial category is the one that results in eligibility, the least amount of excess income or the lowest cost share. *Id.*

As of the hearing date, Petitioner was not disabled, not pregnant, and a caretaker to minor children. Petitioner appears ineligible for all SSI-related categories. Petitioner's circumstances render her potentially eligible for Medicaid under MAGI-related categories.

MDHHS contended that Petitioner was ineligible for the MAGI-related category of HMP due to excess income. Among MAGI-related MA categories, HMP is the category with the highest income limit. Though Petitioner is potentially eligible for Medicaid under at least one other Medicaid category (PCR), an income analysis for HMP is sufficient to determine Petitioner's MAGI-related eligibility.¹

HMP is a health care program administered by the Michigan Department of Community Health, Medical Services Administration. The program is authorized under the Affordable Care Act of 2010 as codified under 1902(a)(10)(A)(i)(VIII) of the Social Security Act and in compliance with the Michigan Public Act 107 of 2013. HMP policies are found in the Medicaid Provider Manual and Modified Adjusted Gross Income Related Eligibility Manual (MAGIM).

HMP is based on Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (October 2016), p. 1. Modified adjusted gross income (MAGI) is a methodology for how income is counted and how household composition and family size are determined. MAGIM (May 28, 2014), p. 14. It is based on federal tax rules for determining adjusted

¹ The income limit for PCR is 54% of the federal poverty limit. BEM 211 (February 2019) p. 1. The relatively low-income limit renders Petitioner improbably eligible for Medicaid under this category.

gross income. *Id.* It eliminates asset tests and special deductions or disregards. *Id.* Every individual is evaluated for eligibility based on MAGI rules. *Id.*

For individuals who have been determined financially-eligible for MA using the MAGI-based methods set forth in this section, a State may elect in its State plan to base financial eligibility either on current monthly household income and family size or income based on projected annual household income and family size for the remainder of the current calendar year. 42 CFR 435.603 (h)(2). In determining current monthly or projected annual household income and family size under paragraphs (h)(1) or (h)(2) of this section, the agency may adopt a reasonable method to include a prorated portion of reasonably predictable future income, to account for a reasonably predictable increase or decrease in future income, or both, as evidenced by a signed contract for employment, a clear history of predictable fluctuations in income, or other clear indicia of such future changes in income. 42 CFR 435.603 (h)(3).

MDHHS testified that Petitioner's HMP income determination factored a monthly employment income for Petitioner of [REDACTED]. Petitioner agreed the amount was accurate. Multiplying the monthly income by 12 results in an annual income of [REDACTED].²

Two of Petitioner's children received RSDI. One of Petitioner's children also received employment income. Generally, income is only countable in MAGI determinations for those persons who must file a tax return. The evidence did not establish if any of Petitioner's children were required to file a tax return. For purposes of this decision, it will be assumed that none of Petitioner's children are required to file a tax return, and therefore, their income is not countable in determining MAGI-related MA eligibility.

As of January 2019, Spouse received monthly RSDI of [REDACTED]. Multiplying Spouse's RSDI by 12 results in a countable annual RSDI of [REDACTED]. Adding the income to Petitioner's income results in a total income exceeding [REDACTED].

HMP income limits are based on 133% of the federal poverty level. RFT 246 (April 2014), p. 1. The applicable 2019 federal poverty level is [REDACTED] for a five-person group.³ For Petitioner to be eligible for HMP, countable income would have to fall at or below [REDACTED]. As Petitioner's group's income exceeds the income limit, Petitioner is not eligible for HMP. Thus, MDHHS properly determined Petitioner to be ineligible for HMP due to excess income.

² A HCCDN dated September 26, 2018, stated that Petitioner's annual income was [REDACTED]. The income amount cited in an HCCDN is believed to be based on income information received by the Internal Revenue Service rather than the income budgeted to determine HMP eligibility. It should be noted that the HCCDN statement of Petitioner's income is higher than the amount actually budgeted in January 2019 by MDHHS because Petitioner had two jobs in September 2018.

³ <https://aspe.hhs.gov/2019-poverty-guidelines>

The analysis will proceed to determine Petitioner's eligibility under Group 2 categories. As a caretaker to minor children, Petitioner is potentially eligible for a deductible through G2C.

For Group 2 categories, eligibility is possible even when net income exceeds the income limit for a Group 1 category; this is possible because incurred medical expenses are used when determining eligibility. *Id.* Group 2 categories are considered a limited benefit because a deductible is possible. *Id.*

Clients with a deductible may receive Medicaid if sufficient allowable medical expenses are incurred. BEM 545 (April 2018), p. 11. Each calendar month is a separate deductible period. *Id.* The fiscal group's monthly excess income is called the deductible amount. *Id.* Meeting a deductible means reporting and verifying allowable medical expenses that equal or exceed the deductible amount for the calendar month. *Id.*

Income eligibility for G2C exists when net income does not exceed the Group 2 needs in BEM 544. BEM 135 (October 2015), p. 2. MDHHS is to apply the Medicaid policies in BEM 500, 530 and 536 to determine net income. *Id.* If the net income exceeds Group 2 needs, Medicaid eligibility is still possible. *Id.* See BEM 545. *Id.*

For G2C, MDHHS determines the fiscal group separately for each person requesting Medicaid. BEM 211 (February 2019) p. 5. For Group 2, only the income of the individual, the individual's spouse, and the individual's parents (if the person being considered is a child) are factored. For G2C, Petitioner's fiscal group considers only Petitioner's and Spouse's income.

As discussed in the HMP analysis, Petitioner's monthly employment income is [REDACTED]. For employment income, \$90 is subtracted from the total income. An additional \$20 + 1/3 disregard applies if the person received Medicaid under LIF (low-income family) or Family Independence Program (FIP) benefits in the previous four months; it is assumed that Petitioner did not received Medicaid under LIF or receive FIP as both have very low income limits. Additional disregards are given for dependent care, child support, and guardianship/conservator expenses; no such expenses were alleged. For purposes of G2C, Petitioner's countable income is [REDACTED]

MDHHS then determines the adult's pro-rated income by calculating a prorated divisor which is the sum of 2.9 and number of dependents (4 dependents- 1 for Petitioner's spouse + 3 minor children). Dividing Petitioner's countable income of [REDACTED] by a prorated divisor of 6.9 results in a prorated income for Petitioner of [REDACTED] (dropping cents). MDHHS inexplicably calculated a pro-rated income of [REDACTED] for Petitioner. The discrepancy justifies ordering MDHHS to reconsider Petitioner's income for purposes of G2C eligibility. For purposes of the remaining analysis only, a pro-rated income of [REDACTED] for Petitioner will be accepted.

The same considerations apply to Spouse's monthly RSDI income. MDHHS relied on Spouse's RSDI from 2018 ([REDACTED]) to determine Spouse's eligibility for January 2019;

for purposes of this decision, Spouse's RSDI from 2018 will be accepted as the correct amount of income to budget. Dividing [REDACTED] by 6.9 results in a pro-rated income of [REDACTED] for Spouse which was the same income calculated by MDHHS. Exhibit B, p. 15.

For purposes of G2C eligibility for married couples, 2.9 shares of Petitioner's pro-rated income [REDACTED], 2.9 shares of Spouse's income [REDACTED], and one additional share of Petitioner's pro-rated income are added together. For purposes of G2C, Petitioner's group's total running income is [REDACTED].

MDHHS offers G2C income deductions are for insurance premiums, remedial services and ongoing medical expenses. Evidence of such expenses were not presented and are assumed to be \$0. For purposes of G2C, Petitioner's net countable income is [REDACTED].

The income limit for G2C eligibility for Petitioner's group size and shelter area is [REDACTED] (see RFT 240 (December 2013), p. 1). The amount that Petitioner's net income exceeds the income limit is the amount of deductible. Petitioner's deductible is calculated to be [REDACTED] which was the same deductible calculated by MDHHS. Thus, MDHHS properly determined Petitioner's MA eligibility, other than the calculation of Petitioner's pro-rated income.⁴

Petitioner also requested a hearing to dispute Spouse's Medicaid eligibility. As of January 2019, Spouse was between 19-64 years of age, disabled, married, and a caretaker to minor children. As a Medicare recipient, Spouse, would not be eligible to receive HMP. As a disabled individual, Spouse is potentially eligible for AD-Care. AD-Care is a Group 1 category. BEM 163 outlines the procedures for determining AD-Care eligibility.

Spouse's monthly RSDI of [REDACTED] is countable. No budget credits are given for unearned income leaving Spouse with a countable income of [REDACTED] for AD-Care. As in the G2C analysis, Petitioner's is entitled to a [REDACTED] credit for employment income and her countable income is [REDACTED]. Adding Petitioner's and Spouse's incomes results in a total running countable monthly income of [REDACTED].

MDHHS gives AD-Care budget credits for employment income, guardianship and/or conservator expenses. Cost of living adjustments (COLA) are applicable for the benefit months of January through March only. Subtracting Spouse's COLA ([REDACTED]) from the income total results in a total net income of [REDACTED].

AD-care income limits are 100% of the Federal Poverty Level + \$20. RFT 242 (April 2018) p. 1. The income limit for a two-person AD-Care group is \$1,391.67. *Id.* Spouse's

⁴ Realistically, any error by MDHHS in determining Petitioner's pro-rated income in the G2C budget would likely only result in a slightly lower deductible for Petitioner when corrected, if correction is needed at all. It is plausible that MDHHS actually correctly calculated Petitioner's eligibility but provided an inaccurate figure for Petitioner's income at hearing. It is also possible that the undersigned erred in checking MDHHS' calculation.

group's countable income exceeds the AD-Care income limit; and therefore, Spouse is not eligible for Medicaid through AD-Care. The analysis will proceed to determine Spouse's eligibility for the disability-related Group 2 program of G2S. BEM 541 (January 2019) pp. 1-7.

The G2S budget allows a [REDACTED] disregard for unearned income. Applying the credit to Spouse's RSDI results in countable RSDI of [REDACTED].

The G2S budget credits employment income with [REDACTED] and ½ disregard. Applying the credit to Petitioner's monthly employment income ([REDACTED]) results in a countable income of [REDACTED] (dropping cents). Adding Spouse's and Petitioner's income results in a running countable income of [REDACTED].

The G2S budget also factors ongoing medical expenses (which are applied toward a deductible), insurance premiums, and remedial services. No such expenses were applicable.

A client's deductible is calculated by subtracting the PIL ([REDACTED]) from the MA net income. Subtracting the PIL from the total countable income ([REDACTED]) results in a monthly deductible of [REDACTED].

Spouse is also a caretaker to minor children. thus, Spouse is also potentially eligible for Medicaid subject to a deductible through G2C. The same G2C calculation for Petitioner applies to Spouse. Thus, Spouse is eligible for Medicaid subject to a [REDACTED]/month deductible through G2C. As a lower deductible for Spouse (compared to G2S), this deductible is applicable to Spouse's eligibility. The [REDACTED] deductible was also calculated by MDHHS. Thus, as found above, MDHHS properly calculated Spouse's Medicaid eligibility other than calculating Petitioner's pro-rated income.

Petitioner also requested a hearing to dispute Spouse's MSP eligibility. MDHHS did not provide a corresponding notice, however, the evidence suggested that Spouse was denied MSP benefits due to excess income.

MSP programs offer three different degrees of assistance with payment toward a client's Medicare premium and deductibles. Qualified Medicare Beneficiaries (QMB) coverage pays for a client's Medicare premiums, coinsurances, and deductibles. BEM 165 (January 2018), p. 2. Specified Low Income Beneficiaries (SLMB) coverage pays for a client's Medicare Part B premium. *Id.* Additional Low Income Beneficiaries (ALMB) coverage pays for a client's Medicare Part B premium if DHHS funding is available. *Id.*

For MSP income eligibility, MDHHS is to determine countable income according to the SSI-related MA policies in BEM 165, 500, 501, 502, 503, 504 and 530. BEM 165 (October 2016) p. 8. MDHHS is to apply the deductions in BEM 540 (for children) and 541 (for adults) to countable income to determine net income. *Id.*

As an SSI-related MA category, Spouse's countable income for purposes of MSP is the same calculation undertaken for G2S. Thus, Spouse's group's income is [REDACTED].

MDHHS generally counts gross RSDI as unearned income.⁵ BEM 503 (July 2017), p. 31. Gross amount means the amount of RSDI before any deduction, such as Medicare. BEM 163 (July 2017), p. 2. A \$46 COLA is not countable for a benefit month of January 2019. Subtracting Spouse's COLA from the group's income results in a countable income of [REDACTED].

Income eligibility exists for MSP when net income is within the limits in RFT 242 or 247. BEM 165 (January 2018) p. 8. The highest income limit for any MSP category for a group size of 2 is [REDACTED]. RFT 242 (April 2018), p. 1. Spouse's group's countable income exceeds the income limits for MSP eligibility. Thus, MDHHS properly denied MSP eligibility to Spouse.

⁵ Exceptions to counting gross RSDI include disregarding cost-of-living adjustments for the benefit months of January-March, special rules for certain former SSI recipients (e.g. 503 individuals), fee deductions for qualified organizations acting as a payee, Medicare premium refunds, returned benefits, and exclusions for retroactive benefits.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined Spouse to be ineligible for MSP benefits. Concerning MSP, the actions taken by MDHHS are **AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined the Medicaid deductible for Petitioner and Spouse. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Recalculate Petitioner's and Spouse's Medicaid eligibility effective January 2019 subject to the finding that the income amounts provided during the hearing do not justify the calculated deductible of [REDACTED]; and
- (2) Issue a supplement of any benefits improperly not issued.

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

CG/cg



Christian Gardocki

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

Via Email:

MDHHS-Oakland-4-Hearings
D. Smith
EQAD
BSC4- Hearing Decisions
MAHS

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]