



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: July 23, 2019
MOAHR Docket No.: 19-004358
& 19-005478

Agency No.: [REDACTED]

Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 July 3, 2019, from Flint, Michigan. The Petitioner was represented by her authorized Hearings Representative [REDACTED]. Petitioner was ill and did not appear at the hearing. The Department of Health and Human Services (Department or Respondent) was represented by April Nemec, Hearings Facilitator.

This case is consolidated with Docket #19-005478 as the issues are identical.

ISSUE

Did the Department properly determine that Petitioner would be eligible for Medical Assistance (MA) with a deductible spend-down?

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 MA benefits recipient.
2. Petitioner is a Medicare benefit recipient.
3. Petitioner receives \$ [REDACTED] per month in RSDI income from the Social Security Administration.

4. Petitioner was a legal guardian and caretaker relative for her minor grandson, whom she shared a household with.
5. On October 22, 2018, the Department sent Petitioner a Health Care coverage Determination Notice which notified Petitioner that she was eligible for Medicare Savings Program coverage but not eligible for other Medical Assistance effective December 1, 2018.
6. On December 1, 2018, Petitioner's MA case was closed for excess income for MAGI-MA and excess assets for G2S and G2C.
7. Respondent determined that Petitioner does not meet eligibility requirements for MA-HMP because she is sixty-three years old, is disabled and has been receiving Medicare for two years due to her disability.
8. On [REDACTED], 2018, Petitioner filed an application for Medical Assistance, Medicare Savings Plan and Food Assistance Program benefits.
9. On January 7, 2019, a DHS-1606 Health Care Coverage Determination Notice was sent to Petitioner notifying her that Petitioner, her grandson and her daughter, SO, were ineligible to receive Medical Assistance for February 1, 2019, ongoing because Petitioner had excess income and because bank account information was not returned.
10. The Department Representative acknowledged that the notice was sent in error and was incorrect.
11. SO remained active on her own MA case. The grandson retained MA coverage.
12. MA and MSP were denied for Petitioner for failure to return bank accounts, but the verification request had never been sent to Petitioner.
13. On January 8, 2019, the program was reprocessed for Petitioner and a DHS-3503 Verification Checklist was sent for MA and MSP requesting verification of checking and savings accounts, due January 17, 2019.
14. On January 17, 2019, a bank statement for Huntington, and a bank statement and DHS-20 were submitted for Dort Federal.
15. On February 4, 2019, Petitioner filed a Request for Hearing to contest the cancellation of her Medical Assistance and to contest the deductible spend-down.
16. The request for hearing was not processed.
17. On February 14, 2019, Administrative Law Judge Jeffrey Kemm held a hearing (#Docket Number 18-013416) and held that Petitioner's Medical Assistance case was properly cancelled because Petitioner had more than \$3,000 in countable

assets on deposit accounts in her name issued from Social Security backpay from November 2017 and her assets exceeded the Department's asset limit.

18. On February 20, 2019, the caseworker determined that there was an asset divestment issue and verification was needed to determine what happened to the assets.
19. Petitioner's Authorized Hearings Representative alleges that Petitioner should be eligible to receive full Medical Assistance under the Pickle Amendment.
20. On May 7, 2019, the Michigan Office of Administrative Hearings and Rules received a copy of the Hearing Summary and attached documents.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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.

Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever they believe the decision is incorrect. The Department provides an administrative hearing to review the decision and determine its appropriateness in accordance to policy. This item includes procedures to meet the minimum requirements for a fair hearing. BAM 600, page 1.

Michigan provides MA eligible clients under two general classifications: group 1 and group 2 MA. Claimant qualified under the group 2 MA classification which consists of clients whose eligibility results from the state designating certain types of individuals as medically needy. PEM 105. Once SSI benefits were cancelled, claimant was no longer automatically eligible to receive Medical Assistance under the SSI category. In order to qualify for group 2 MA, a medically needy client must have income as equal to or less than the basic protected monthly income level.

Department policy sets forth a method for determining the basic maintenance level by considering:

1. Protected income level.
2. The amount deferred to dependent.
3. Health insurance premiums
4. Remedial services if determining the eligibility for claimants in Adult Care Homes.

If Petitioner's income exceeds the protect income level, the excess income must be used to pay medical expenses before group 2 MA coverage can begin. This process is known as a spend-down. The policy requires the Department to count and budget all income received that is not specifically excluded. There are 3 main types of income: countable earned, countable unearned, and excluded. Earned income means income received from another person or organization or from self-employment for duties that were performed for remuneration or profit. Unearned income is any income that is not earned. The amount of income counted maybe more than the amount a person actually receives, because it is the amount before deductions are taken including the deductions for taxes and garnishments. The amount before any deductions are taken is called a gross amount. BEM, item 500, p. 1.

In the instant case, the Department calculated Petitioner's income based upon receipt of unearned income from RSDI income and pension income.

Federal regulations at 42 CFR 435.831 provides standards for the determination of the MA monthly protected income level. The department must be in compliance with the program reference manual, tables, charts, schedules, Table 240-1.

The Administrative Law Judge calculates and determines:

Petitioner's gross monthly income was determined to be \$ [REDACTED] in RSDI income.

Petitioner was given a \$281 (BEM 536) Individual prorated income deduction because of her caretaker relative status. $\$ [REDACTED] - \$281 = \$ [REDACTED]$ total net income.

Petitioner was given a \$30 COLA exclusion for a total net income of \$ [REDACTED]

The protected income for a person in Petitioner's circumstances is \$408. (PFT 240)

$\$ [REDACTED]$ total net income - \$408 in protected income (PRT 240) = \$378 in remaining monthly Medicaid deductible spend-down.

Deductible spend-down is a process which allows the customer's excess income to be eligible for group 2 MA if sufficient allowable medical expenses are incurred. BEM, item 545, p. 1. Meeting the deductible spend-down means reporting and verifying allowable

medical expenses that equal or exceed the spend-down amount for the calendar month tested. BEM, item 545, p. 9. The group must report expenses on the last day of the third month following the month it wants MA coverage for. BEM, Item 130 explains verification and timeliness standards. BEM, Item 545, p. 9.

Petitioner's Representative's allegation that the spend-down is too expensive and unfair because of other expenses is a compelling equitable argument to be excused for the Department's program policy requirements. This Administrative Law Judge has no equity powers. A review of Petitioner's case reveals that the Department budgeted the correct amount of income earned by Petitioner. Petitioner's protected income level and amounts are set by Medicaid policy and cannot be changed by the Department or this Administrative Law Judge.

Petitioner's claim that she should be eligible for Medicaid under the 503 Individual (Pickle Amendment) category is incorrect because Petitioner is a Medicare benefit recipient.

Pertinent Department policy indicates in BEM 155, page 1:

This is an SSI-related Group 1 MA category.

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. The reason for SSI ineligibility does not matter.

All eligibility factors must be met in the calendar month being tested. If the month being tested is an L/H month and eligibility exists, go to BEM 546 to determine the post-eligibility patient-pay amount.

503 individuals eligible for Medicare are covered by the Buy-In Program (see BAM 810) and are considered eligible for QMB (BEM 165).

Nationally, this MA category is referred to as Medicaid under the Pickle Amendment.

Medicaid coverage under the Healthy Michigan Plan does not include those individuals who are Medicare eligible pursuant to 42 CFR 425.119 which indicates:

§ 435.119 Coverage for individuals age 19 or older and under age 65 at or below 133 percent of the federal poverty level.

(a) *Basis*. This section implements section 1902(a)(10)(A)(i)(VIII) of the Act.

(b) *Eligibility*. Effective January 1, 2014, the agency must provide Medicaid to individuals who:

- (1) Are age 19 or older and under age 65;
- (2) Are not pregnant;
- (3) Are not entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act;**
- (4) Are not otherwise eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part; and**
- (5) Have household income that is at or below 133 percent FPL for the applicable family size.

This Administrative Law Judge has no equity powers and cannot act in contravention of Medicaid policy or statute. A review of Petitioner's case reveals that the Department budgeted the correct amount of income earned by Petitioner. Petitioner's protected income level and amounts are set by Medicaid policy and cannot be changed by the Department or this Administrative Law Judge. The Department's determination that Petitioner has deductible spend-down in the amount of \$376 or \$408 per month is incorrect based upon the information contained in the file.

Therefore, this Administrative Law Judge finds the Department has established by the necessary competent, material and substantial evidence on the record that it acted in accordance with department policy when determined Petitioner has excess income for purposes of Medical Assistance benefit eligibility.

However, the Department has not properly or clearly determined the monthly deductible spend-down amount or provided appropriate notice of such to Petitioner. The Department must redetermine the deductible spend-down amount because the budgets contained in the file are inconsistent.

DECISION AND ORDER

Accordingly, the Department's decision that Petitioner has excess countable income for purposes of Medical Assistance Program eligibility is **AFFIRMED**.

The Department's decision as to the amount of the deductible spend-down 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. Redetermine the deductible spend-down amount that Petitioner must meet each month from the [REDACTED], 2018, application date forward.

2. Provide Petitioner with appropriate notice of the amount of deductible spend-down for each month forward.

LL/hb



Landis Lain
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 Office of Administrative Hearings and Rules (MOAHR).

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

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

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

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

DHHS

Tamara Morris
125 E. Union St 7th Floor
Flint, MI 48502

Genesee County (Union), DHHS

BSC2 via electronic mail

D. Smith via electronic mail

EQADHShearings via electronic mail

Authorized Hearing Rep.

[REDACTED]
[REDACTED] MI [REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]