[redacted]
[redacted], MI [redacted]

Date Mailed: September 5, 2019
MOAHR Docket No.: 19-006056
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 August 8, 2019, from Centreville, Michigan. Petitioner personally appeared and testified. The Department of Health and Human Services (Department) was represented by Amy Gearhart, Assistance Payment Supervisor, and Eligibility Specialist Zack Herrington.

The Department submitted 38 exhibits which were admitted into evidence. The record was closed at the conclusion of the hearing. On August 12, 2019, and September 3, 2019, Petitioner submitted additional exhibits. The exhibits were not admitted because the record was closed at the conclusion of the hearing on August 8, 2019.

ISSUE

Did the Department properly determine that Petitioner was no longer eligible for Medicaid and the Cost Share Part B Savings Program?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner submitted a New Hire Notice to the Department on May 8, 2019. [Dept. Exh. 24-26].

2. On May 8, 2019, the Department mailed Petitioner a Health Care Coverage Determination Notice informing Petitioner that she had a $1,800.00 monthly deductible beginning June 1, 2019 ongoing. In addition, the Notice explained that

the Medicare Savings Program would stop paying Medicare premiums. [Dept. Exh. 15-19].

3. On May 21, 2019, the Department mailed Petitioner a Health Care Coverage Determination Notice indicating that [redacted] was no longer eligible beginning June 1, 2019. [Dept. Exh. 11-13].

4. On May 31, 2019, Petitioner submitted a Request for Hearing contesting the Department's actions. [Dept. Exh. 2-6].

5. On August 8, 2019, Petitioner did not dispute her husband's income as indicated on the New Hire Notice of May 8, 2019.

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 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.

The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. Medicaid is also known as Medical Assistance (MA). Michigan provides MA for eligible clients under two classifications: Group 1 and Group 2 MA. Claimant falls under the Group 1 SSI-related MA classification, which consists of clients whose eligibility results due to being aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. MCL 400.106; MSA 16.490(16), MCL 400.107; MSA 16.490(17) and BEM 105.

The State of Michigan has set guidelines for income, which determine if an MA group is eligible. Income eligibility exists for the calendar month tested when:

- There is no excess income, or
- Allowable medical expenses equal or exceed the excess income (under the Deductible Guidelines). BEM 545, p 1 (4/1/2018).

In order to qualify for Group 2 MA, a medically needy client must have income which is equal to or less than the protective basic maintenance level. Agency policy sets forth a

method for determining the protective basic maintenance level by considering: (1) The protected income level; (2) the amount diverted to dependents; (3) health insurance premiums; and (4) remedial services, if determining eligibility for clients in adult-care homes. BEM 544, pp 2-3 (7/1/2016). The protected income level is the set amount for non-medical needs such as shelter, food, and incidental expenses. *Id*. at 1. In all other situations, other than those involving long-term care, the appropriate income level must be taken from RFT 240. BEM 544 and 42 CFR 435.811-435.814. If the client's income exceeds the protected income level, the excess amount (MA deductible) must be used to pay medical expenses before Group 2 coverage can begin.

An individual or MA group whose income is in *excess* of the monthly protected income level is ineligible to receive MA coverage. However, an MA group may become eligible for assistance under the deductible program. The deductible program is a process, which allows a client with excess income to be eligible for MA, if sufficient allowable medical expenses are incurred. Each calendar month is a separate deductible period. The fiscal group's monthly excess income is called the deductible amount. Meeting a deductible means reporting and verifying allowable medical expenses that equal or exceed the deductible amount for the calendar month. The MA group must report expenses by the last day of the third month following the month it wants medical coverage. BEM 545, p 10 (4/1/2018); 42 CFR 435.831.

Policy requires the Department to count and budget all gross income received that is not specifically excluded or all income that can be reasonably anticipated by the fiscal group. There are three main types of income: countable earned, countable unearned, and excluded. BEM Items 500 and 530.

Department policy states:

> **RETIREMENT SURVIVORS AND DISABILITY INSURANCE (RSDI) (AKA SOCIAL SECURITY BENEFITS)**
>
> **All Programs**
>
> RSDI is available to retired and disabled persons, their dependents, and survivors of deceased workers.
>
> Count the gross benefit amount as unearned income. BEM, Item 500.

In the instant case, the Department determined Petitioner's net income based upon Petitioner's receipt of $1430.00 from RSDI and her husband's earned net income of $[redacted] for the month of June 2018. The Administrative Law Judge has reviewed the record and the exhibits and finds that the fiscal group's net income, after being provided with the most beneficial unearned income deduction of $20.00, was $[redacted] in net income.

Federal Regulations at 42 CFR 435.831 provide standards for the determination of the Medical Assistance monthly protected income levels. The Department, in this case, is in compliance with the Bridges Reference Manual, tables, charts and schedules. RFT 242 (4/1/2019).

According to Departmental policy, AD-CARE is an SSI-related Group 1 MA category. This category is available to persons who are aged or disabled (AD). Net income cannot exceed 100% of the poverty level. Income eligibility exists when net income does not exceed the income limit in RFT 242. According to the AD-CARE program limits, a group containing two members has an income limit of $1,410.00. RFT 242. Because Petitioner's group of 2 received $2,337.50 in net income, it far exceeds the federal guideline of $1,410.00 limit. Because Petitioner's husband's income is added to her RSDI, Petitioner is no longer eligible for the AD-CARE program.

Prior to June 2019, Petitioner was receiving a Medicare Part B Cost Share benefit. Petitioner submitted the New Hire Notice on May 8, 2019. On May 21, 2019, the Department determined that Petitioner was no longer eligible for the Medicare Part B Cost Share benefit due to excess income. The limit for the MA program under which Petitioner receives income is $[redacted] As a result, Petitioner had excess income and was no longer eligible for the Medicare Part B Cost Share benefit. Petitioner did not contest her husband's earned income and credibly testified that his employment was only seasonal. The Department explained she would need to submit documentation of when his employment ended at which time her eligibility for the AD-CARE program and Medicare Part B Cost Share benefit programs would be redetermined.

While this Administrative Law Judge acknowledges Petitioner's genuine concern for her health because she can no longer afford her prescriptions or doctor visits, she is bound by the laws and regulations governing the issuance of AD-CARE and Medicare Part B Cost Share benefit programs on which the Department's policies are based. An extensive review of Petitioner's budgets by this Administrative Law Judge before rendering this Hearing Decision shows that all calculations were properly made at review, and all AD-CARE and Medicare Part B Cost Share benefit program policies were properly applied.

Petitioner's grievance centers on dissatisfaction with the Department's current policy. Petitioner's request that her AD-CARE and Medicare Part B Cost Share benefit programs be reinstated is not within the scope of authority delegated to this Administrative Law Judge. Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or make exceptions to the Department policy set out in the program manuals. Furthermore, administrative adjudication is an exercise of executive power rather than judicial power and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940). As such, the Department's closure of Petitioner's AD-CARE and Medicare Part B Cost Share benefit programs must be upheld.

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 acted in accordance with Department policy when it determined Petitioner was no longer eligible for the AD-CARE and Medicare Part B Cost Share benefit programs.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

VLA/nr

Vicki L. Armstrong
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

Jennifer Dunfee
692 E. Main
Centreville, MI
49032

St. Joseph County DHHS- via electronic mail

BSC3- via electronic mail

D. Smith- via electronic mail

EQAD- via electronic mail

Petitioner

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