



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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Date Mailed: July 26, 2019  
MOAHR Docket No.: 19-006133  
Agency No.: ██████████  
Petitioner: ██████████

**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 was held on July 11, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by ██████████, Hearing Facilitator and Eligibility Specialist, and ██████████, Eligibility Specialist.

**ISSUE**

Did the Department properly conclude that Petitioner was eligible for Medicaid (MA) subject to a monthly ██████████ deductible?

Did the Department properly process Petitioner's Medicaid Savings Program (MSP) case?

**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 had been an ongoing recipient of full-coverage MA under the AD-Care program and MSP benefits under the Qualified Medicare Beneficiaries (QMB) program.
2. In connection with a redetermination, Petitioner reported the following income: ██████████ in gross monthly Retirement, Survivors and Disability Insurance (RSDI) benefits and ██████████ in monthly spousal support (Exhibit A, pp. 6-13).

3. Petitioner receives RSDI due to a disability.
4. Petitioner is a Medicare recipient.
5. During all relevant periods, Petitioner was not the parent of a minor child or pregnant.
6. Petitioner is unmarried and lives in Ottawa County.
7. On May 20, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice notifying her that she was over the income limit for full coverage MA but was eligible for MA subject to a monthly [REDACTED] deductible.
8. On May 30, 2019, the Department received Petitioner request for hearing disputing the Department's finding that she was eligible for MA subject to a deductible and her loss of "extra help" assistance.

### **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. MSP is part of the MA program.

Petitioner requested a hearing to dispute the Department's finding that she was no longer eligible for full-coverage MA and was eligible for MA with a monthly \$1,126 deductible. She also disputed her loss of "Extra Help," explaining that she needed assistance for payment of her Medicare premiums and copays. The Department explained that the only state program that covered Medicare deductibles and copayments was the MSP program and that Petitioner was not eligible for MSP benefits due to her income. The Department was not familiar with the "Extra Help" program and testified that it is not a program it administered. A review of Department policy and the state Medicaid Provider Manual confirms that the Extra Help program is not a state

benefit.<sup>1</sup> Therefore, the only issue that is addressed in this decision is the payment of Medicare insurance premiums under Petitioner's MSP case.

### **MA Deductible Case**

With respect to Petitioner's MA case, in the May 20, 2019 Health Care Coverage Determination Notice, the Department notified Petitioner that she had excess income for full-coverage MA but, effective July 1, 2019, was eligible for MA with a [REDACTED] monthly deductible.

Under federal law, Petitioner is entitled to the best available MA coverage she is eligible to receive based on her income and other eligibility criteria. BEM 105 (April 2017), p. 2. Because Petitioner is disabled and the recipient of Medicare but is not the parent of a minor child or pregnant, the only MA category under which she was potentially eligible to receive benefits was an SSI-related MA program. The Ad-Care program is a full-coverage SSI-related MA program for disabled individuals who are income eligible based on their MA fiscal group size. BEM 163 (July 2017), p. 1. Because Petitioner is unmarried, her fiscal group size for MA purposes is one. BEM 211 (July 2019), p. 8. The income limit under the Ad-Care program where there is one member in the MA fiscal group is \$1061. BEM 163, p. 2; RFT 242, p 1.

In calculating income for MA purposes, the Department considers gross direct spousal support (payment a client receives from a spouse or ex-spouse because of a legally binding obligation) and, except in limited circumstances not applicable in the instant case, gross RSDI income. BEM 503 (April 2019), pp. 32. Petitioner did not dispute that she received gross monthly RSDI income of \$1037 and started receiving [REDACTED] in gross monthly spousal support in April 2019. Thus, the sum of Petitioner's unearned income is \$[REDACTED]. For MA purposes, Petitioner's net income, which is her gross income less a [REDACTED] disregard, is [REDACTED]. BEM 541 (July 2019), p. 3. Because Petitioner's net income exceeds the income limit under the Ad-Care program, Petitioner is ineligible for full-coverage MA under the Ad-Care program.

Despite having excess income for Ad-Care eligibility, Petitioner, based on her receipt of RSDI income due to a disability, was potentially eligible for MA coverage under a Group 2 SSI-related (G2S) program, which provides for MA coverage subject to a monthly deductible. The deductible is equal to the amount the individual's net income, less any applicable deductions, exceeds the applicable Group 2 MA protected income level (PIL). BEM 166 (April 2017), p. 1; BEM 105 (April 2017), p. 1. The PIL is a set allowance for non-medical need items such as shelter, food and incidental expenses and is based on the county in which the client resides and the client's fiscal MA group size. BEM 544 (July 2016), p. 1. The PIL for Ottawa County, where Petitioner resides, is \$391 based on her single-person MA group. RFT 200 (April 2017), p. 2; RFT 240 (December 2013), p. 1.

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<sup>1</sup> The website for the Social Security Administration (SSA) indicates that "Extra Help" is a *federal* program for assistance with payment of Medicare prescription drug coverage with application through SSA. See [www.ssa.gov](http://www.ssa.gov); also [www.cms.gov](http://www.cms.gov).

In determining the monthly deductible, net income is reduced by health insurance premiums paid by the MA group and remedial service allowances for individuals in adult foster care or homes for the aged. BEM 544 (July 2016), pp. 1-3. In this case, Petitioner does not reside in an adult foster care home or home for the aged. Therefore, she is not eligible for any remedial service allowances. Because Petitioner's MSP case has not closed, she is not currently responsible for any Part B Medicare premiums. However, Petitioner testified that she also had a Part D monthly premium of \$31, which the Department did not consider or verify. Because the Department failed to establish that it properly excluded the Part D Medicare premium, the Department failed to satisfy its burden that it acted in accordance with Department policy when it calculated Petitioner's deductible.

### **MSP Case**

MSP is a State-administered program in which the State pays an income-eligible client's Medicare premiums, coinsurances, and deductibles. BEM 165 (January 2018), pp 1-2; BAM 810 (July 2019), p. 1. There are three MSP categories: (1) QMB, which pays for a client's Medicare premiums (both Part A, if any, and Part B), Medicare coinsurances and Medicare deductibles; (2) Specified Low-Income Medicare Beneficiaries (SLMB), which pays for a client's Medicare Part B premiums; and (3) Additional Low Income Medicare Beneficiaries (ALMB), which pays for a client's Medicare Part B premiums when funding is available. BEM 165, pp. 1-2. The MSP category a client is eligible for is dependent on the client's income: an individual who is unmarried and is therefore the only member of her MA fiscal group is eligible for QMB if her monthly net income is no more than \$1061, SLMB if her net monthly income is between [REDACTED] and [REDACTED] and ALMB if her net income is between [REDACTED] and [REDACTED]. RFT 242 (April 2019), pp. 1-2; BEM 165, pp. 2, 8.

The Department asserted that Petitioner was not income-eligible for MSP. As discussed above, Petitioner has net income of [REDACTED]. Because her net income exceeds the limit for MSP eligibility under any of the three programs, Petitioner is not eligible for MSP. However, the Department acknowledged at the hearing that Petitioner's MSP case had not closed and no notice advising Petitioner of the case closure had been sent. Department policy requires that, unless policy expressly provides that no notice or adequate notice is permitted, the Department must timely notify the client in writing of any negative actions by generating the appropriate notice of case action, specifying the action being taken by the Department, the reason for the action, the specific manual item which cites the legal base for an action or the regulation or law itself, an explanation of the right to request a hearing, and the conditions under which benefits are continued if a hearing is requested. BAM 220 (July 2017), pp. 2-3, 5. A timely notice is mailed at least 11 days before the intended negative action takes effect, and the action is pended during this time to provide the client a chance to react to the proposed action. BAM 220, p. 5.

Because the Department has conceded that Petitioner was not provided a timely notice of the negative action, it has failed to comply with policy to the extent it intended to close Petitioner's MSP case.

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 in processing Petitioner's MSP case or calculating her MA deductible.

### **DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the closure of Petitioner's MSP case and **REVERSED IN PART** with respect to the calculation of Petitioner's MA deductible.

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. Continue to provide MSP coverage for July 1, 2019 ongoing until a timely notice of change is provided in accordance with policy;
2. Recalculate Petitioner's MA deductible;
3. Provide Petitioner with MA coverage she is eligible to receive from July 1, 2019 ongoing; and
4. Notify Petitioner in writing of its decision.

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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 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**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**cc:**

[REDACTED]  
[REDACTED]