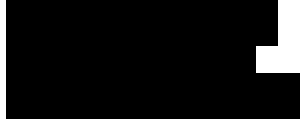




GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: February 3, 2020
MOAHR Docket No.: 19-012998
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 January 29, 2020, from Monroe, Michigan. Petitioner did not participate in the hearing. [REDACTED], Petitioner's spouse (hereinafter, "Spouse") testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Maureen Curran, specialist, and Debra Pulling, specialist.

ISSUE

The issue is whether MDHHS properly terminated Spouse's Medicaid 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. At all relevant times, Spouse was married, disabled, between the ages of 19 and 64 years, not a caretaker to minor children, and not a recipient of Medicare.
2. As of August 2019, Spouse was an ongoing recipient of Medicaid.
3. On an unspecified date, MDHHS terminated Spouse's Medicaid eligibility beginning September 2019.

4. On October 23, 2019, following an administrative hearing, MDHHS was ordered to reinstate Spouse's Medicaid eligibility beginning September 2019, and to determine Medicaid eligibility based on the best available Medicaid program.
5. On October 25, 2019, MDHHS reinstated Spouse's Medicaid eligibility.
6. As of November 2019, Petitioner had \$28,000 in annual employment income.
7. On November 22, 2019, MDHHS terminated Spouse's Medicaid eligibility due to an alleged failure to verify assets.
8. On November 22, 2019, MDHHS received documentation that Petitioner had an IRA with a cash value of \$9,485.86.
9. On [REDACTED], 2019, Spouse requested a hearing to dispute the termination of his Medicaid.
10. On December 9, 2019, MDHHS again mailed notice of termination of Spouse's Medicaid eligibility, effective December 2019. The basis for termination was excess assets.
11. On December 10, 2019, MDHHS again mailed notice of termination of Spouse's Medicaid eligibility, effective December 2019, due to excess assets.

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).

Spouse requested a hearing to dispute a termination of his Medicaid. Exhibit A, pp. 3-4. MDHHS initially terminated Spouse's Medicaid eligibility on November 22, 2019, due to Petitioner allegedly failing to verify assets. Exhibit A, pp. 31-34. After receiving Petitioner's verification of assets on November 22, 2019, MDHHS processed Spouse's Medicaid eligibility based on a timely submission of asset verification. On December 9, 2019, MDHHS again terminated Spouse's Medicaid eligibility.¹ Exhibit A, pp. 37-40. An analysis of Spouse's Medicaid eligibility requires a consideration of Medicaid categories.

¹ MDHHS issued a notice on December 10, 2019 also terminating Petitioner's Medicaid eligibility. Exhibit A, pp. 41-44.

Medicaid is also known as Medical Assistance (MA). The Medicaid program comprise several sub-programs or categories. 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. BEM 105 (April 2017), p. 1.

As of the disputed benefit month, Spouse was married, disabled, between the ages of 19 and 64 years, not a caretaker to minor children, and not a recipient of Medicare. Spouse's circumstances render him potentially eligible for Medicaid under Healthy Michigan Plan (HMP). MDHHS testimony indicated that Spouse was ineligible for HMP due to excess income.

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 is based on Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (October 2016), p. 1. MAGI methodology is based on Internal Revenue Service rules and relies on federal tax information. Bridges program Glossary (April 2019) p. 43.

MAGI-based income means income calculated using the same financial methodologies used to determine modified adjusted gross income as defined in section 36B(d)(2)(B) of the Code.² 42 CFR 435.603 (e). 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).

As of the disputed benefit month. Petitioner and Spouse were married and were not caretakers to minor children. Spouse testified he had a child who was not a tax dependent. Under the circumstances, Spouse's group size for HMP is two persons. BEM 211 (July 2019) p. 1.

² Income exceptions are made for lump-sums which are counted as income only in the month received; scholarships, awards, or fellowship grants used for education purposes and not for living expenses; and various exceptions for American Indians and Alaska native. No known exceptions are applicable to the present case.

Spouse's testimony acknowledged that his wife's annual gross employment income was \$28,000 as of December 2019. For purposes of Spouse's eligibility, \$28,000 will be accepted as the group's annual gross income.

MAGI can be defined as a household's adjusted gross income with any tax-exempt interest income and certain deductions added back.³ Common deductions and disregards which should be factored in determining a person's adjusted gross income include alimony payments, unreimbursed business expenses, Health Savings Account (e.g., 401k) payments, and student loan interest.⁴ There was no evidence of applicable deductions. Given the evidence, Petitioner's gross income of \$28,000 will be accepted as the group's countable income.

HMP income limits are based on 133% of the federal poverty level. RFT 246 (April 2014), p. 1. The 2019 federal poverty level is \$16,910 for a two-person group.⁵ For Spouse to be eligible for HMP, countable income would have to fall at or below \$22,490.30. Petitioner's group's income exceeds the income limit for HMP. Given the evidence, MDHHS properly denied Medicaid to Spouse under HMP.

Spouse is also disabled. Spouse's disability renders him potentially eligible for Medicaid under an SSI-Related category. HCCDNs dated December 9, 2019, and December 10, 2019, stated that Spouse was ineligible for Medicaid due to excess assets. The stated basis for termination on the HCCDNs is applicable to Spouse's Medicaid eligibility under an SSI-Related MA category.⁶

Assets must be considered in determining eligibility for SSI-related MA categories. BEM 400 (July 2019) p. 1. For SSI-Related MA, all types of assets, including retirement plans such as an IRA, are considered. *Id.*, p. 3. The SSI-Related MA asset limit for a married individual is \$3,000. *Id.*, p. 8. The value of a retirement plan is the amount of money the person can currently withdraw from the plan. *Id.*, p. 28. MDHHS is to deduct any early withdrawal penalty, but not the amount of any taxes due. *Id.* Funds in a retirement plan are not available if the person must quit his job to withdraw any money. *Id.*

Petitioner and Spouse were married. For SSI-Related MA, married persons are in the same group except when an individual is applying for long-term care/hospitalization, Medicaid waiver, or freedom-to-work. BEM 211 (July 2019) p. 8. Under Spouse's circumstances, Petitioner and Spouse are both group members, and therefore, Petitioner's assets are countable.

Petitioner submitted to MDHHS verification of an IRA valued at \$9,485.86. Exhibit A, p. 30. Spouse's testimony acknowledged that the IRA is not tied to Petitioner's

³ <https://www.investopedia.com/terms/a/agi.asp>

⁴ *Id.*

⁵ <https://aspe.hhs.gov/2019-poverty-guidelines>

⁶ There is no asset test for HMP. BEM 137 (January 2019) p. 4. Thus, Spouse's assets were irrelevant to determining eligibility under HMP.

employment. Thus, the IRA cannot be disregarded as an asset because Petitioner need not quit employment to obtain the funds.

Persons who withdraw money from an IRA before being 59.5 years are subject to a 10% penalty.⁷ Assuming a 10% applies, a withdrawal of IRA funds would leave Petitioner with over \$8,000. The \$8,000+ would be a countable asset. The amount of countable IRA funds exceeds the asset limit of \$3,000.

Spouse presented a summary of his past Medicaid eligibility. Exhibit 1. During the hearing, Spouse questioned why he is now ineligible for Medicaid when he was eligible in the past. Possible explanations for a difference between a client's past and present ineligibility include changes in policy, changes in a client's circumstances, and past errors by MDHHS which were favorable to a client. Spouse's curiosity is appreciated, however, a thorough comparison between a client's past and current eligibility is unnecessary to determine if a client's current eligibility was correctly determined.


Based on the evidence, Petitioner's countable assets exceeded the limit for SSI-related Medicaid. Thus, MDHHS properly terminated Spouse's Medicaid eligibility. As discussed during the hearing, Spouse may reapply for Medicaid at any time.

⁷ <https://www.irs.gov/retirement-plans/retirement-plans-faqs-regarding-iras-distributions-withdrawals>

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly terminated Spouse's Medicaid coverage beginning December 2019. The actions taken by MDHHS are **AFFIRMED**.

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 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

Via Email:

MDHHS-Monroe-Hearings
D. Smith
EQAD
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

