



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: May 18, 2020
MOAHR Docket No.: 20-001243
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 three-way telephone hearing was held on May 14, 2020, from Clawson, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Jhawana Dixon, Assistance Payments Supervisor.

ISSUE

Did the Department properly determine the Petitioner's spenddown amount for Medical Assistance (MA)?

FINDINGS OF FACT

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

1. The Petitioner is an ongoing recipient of MA subject to a monthly spenddown amount of \$648.
2. The Petitioner has income from Retirement, Survivors, Disability Insurance (RSDI) from the Social Security Administration (SSA) of \$1186.00 monthly. Exhibit A
3. The Petitioner also has pension income of \$12.50 monthly from [REDACTED]. Exhibit B
4. The Department issued a Health Care Coverage Determination Notice on July 31, 2019 advising the Petitioner that she was subject to a spenddown (deductible) for her MA in the amount of \$648 monthly and also notified the Petitioner that she was eligible for full coverage for the Medicare Savings Program for payment of her Social security Medicaid Part B premium. Exhibit D

5. The Department completed a spenddown budget for the period March 2020 which included a deduction of \$135.50 for Petitioner's Medicare Part B premium which was already paid by the Department under the Medicare Savings Plan (MSP). Exhibit A and Exhibit C. The premium was deducted in error by the Department.
6. The Petitioner requested a timely hearing on January 29, 2020 regarding her spenddown amount determination.

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.

In this case, Petitioner has sought a hearing to determine if the Department properly calculated her medical assistance spenddown amount.

Medicaid is available (i) under Supplemental Security Income (SSI)-related categories to individuals who are aged (65 or older), blind or disabled, (ii) to individuals who are under age 19, parents or caretakers of children, or pregnant or recently pregnant women, and (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage. BEM 105 (April 2017), p. 1. HMP provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income at or below 133% of the federal poverty level (FPL) under the Modified Adjusted Gross Income (MAGI) methodology; (iii) do not qualify for or are not enrolled in Medicare; (iv) do not qualify for or are not enrolled in other MA programs; (v) are not pregnant at the time of application; and (vi) are residents of the State of Michigan. BEM 137 (January 2019) p. 1; MPM, Healthy Michigan Plan, § 1.1.

Petitioner is a Medicare recipient and receives income from the Social Security Administration due to disability (RSDI) in the amount of \$1,186.00. Because Petitioner is disabled, she is not eligible for HMP.

In determining the SSI-related MA category Petitioner is eligible to receive, the Department must determine the MA fiscal group size and net income. Petitioner's has a group for SSI-related MA purposes of one. BEM 211 (February 2019), p. 8. Income for Petitioner must be considered in determining her MA eligibility. The Ad-Care program,

an SSI-related MA category, requires that net group income cannot exceed one hundred percent of the federal poverty level. BEM 163, pp. 1-2. The 2019 federal poverty level for a one person household was \$12,490.00, effective until January 11, 2019. <https://aspe.hhs.gov/poverty-guidelines>; <https://aspe.hhs.gov/2019-poverty-guidelines>. The net income limit is established through policy by subtracting \$20.00 from the amount shown in RFT 242 at \$1,061 for April 1, 2019 for a group size of one and is currently \$1,084 effective April 1, 20120. RFT 242 (April 2018), p. 1. Thus, if Petitioner's net income exceeds \$1,061.00, she is not eligible for Ad-Care.

Policy provides that countable RSDI for fiscal group members is the gross amount received for the previous December when the month being tested is January, February, or March. BEM 503 (January 2019), p. 29. Federal law requires the cost-of-living (COLA) increase received in January to be disregarded for these three months. *Id.* The Department properly considered Petitioner's RSDI benefit for the July 31, 2019 review date. The COLA exclusion amount of \$19.00 was also correctly applied and deducted by the Department as the month being tested was not January, February or March. Exhibit C

In addition to Petitioner's RSDI income of \$1186.00, she also had a pension benefit of \$12.50 per month which the Department properly considered and determined Petitioner's total monthly unearned income was \$1,198.00. Thus, as can be seen the Petitioner monthly income exceeded and was greater than the net income limit for Ad-Care. Petitioner was not eligible for full coverage MA Ad Care program.

Since Petitioner's income is over the limit to be eligible for full coverage MA the Department correctly considered Petitioner's eligibility for MA coverage for Group 2 SSI related MA which provides MA coverage with a deductible. BEM 105, (April 2017) p. 1. Under Group 2, eligibility is possible even when net income exceeds the income limit. This is because incurred medical expenses are used when determining eligibility for Group 2 categories.

The deductible is the amount that the client's net income (less any allowable deductions) exceeds the applicable Group 2 MA protected income level (PIL). PIL is a set allowance for non-medical need items such as shelter, food, and incidental expenses. BEM 544 (July 2016), p. 1. It is based on the client's MA fiscal group size and the county in which the client resides. *Id.* Petitioner resides in Wayne County and based on a group size of one, the PIL is \$375.00. RFT 200 (April 2017), p. 2; RFT 240 (December 2013), p. 1. Thus, if Petitioner's monthly net income (less allowable needs deductions) is in excess of \$375.00, Petitioner is eligible for MA under the G2S program with a deductible equal to the amount of income remaining after the appropriate and allowed deductions which are greater than \$375.00.

As discussed above, Petitioner's household net income was \$1,198.00. In calculating the deductible, allowances are made for health insurance premiums and remedial services. BEM 544, pp. 1-2. The Department incorrectly considered Petitioner's Medicare premium of \$135.50 per month. The premium was deducted from her net

income and should not have been as the Department pays the premium as part of the Medicare Saving program. Exhibit D. After a review of the spenddown budget it is determined the spenddown was improperly calculated. The Department correctly calculated the income of \$1,198.00 and correctly deducted the unearned income exclusion of \$20 leaving Net Unearned income of \$1178. The COLA exclusion of \$19.00 was properly deducted from net income. Next, the PIL of \$375.00 is subtracted from her countable income to reach a deductible of \$784.00. (\$1178.00 net income -\$19.00 COLA – PIL \$375 = \$784.00. Since the Department improperly considered the Medicare premium as a deduction, the Department did not properly calculate Petitioner's deductible for the July 31, 2019 review date. Therefore, it is concluded that the Department did not properly calculate the Petitioner's spenddown.

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 when it calculated the Petitioner's spenddown amount and included the Medicare Part B premium.

DECISION AND ORDER

Accordingly, the Department's decision 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 Petitioner's eligibility for MA benefits effective July 31, 2019, ongoing to determine the MA spend down;
2. Notify Petitioner in writing of its decision.

LMF/



Lynn M. Ferris

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-Wayne-31-Hearings
BSC4 Hearing Decisions
EQAD
D. Smith
MOAHR

Petitioner – Via First-Class Mail:

