



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: June 11, 2020
MOAHR Docket No.: 20-001734
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, a telephone hearing was held on May 26, 2020, from Lansing, Michigan. Petitioner was represented by Petitioner [REDACTED]. Petitioner's husband [REDACTED] appeared to testify. The Department of Health and Human Services (Department or Respondent) was represented by Kimberly Polasek, Lead Eligibility Specialist; Brook Bradshaw, Eligibility Specialist; and Rose Ward; Assistance Payments Supervisor.

Respondent's Exhibit A pages 1-69 was admitted as evidence.

ISSUE

Did the Department properly determine that Petitioner had excess income for Medical Assistance (MA) benefit eligibility and 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. On [REDACTED], Petitioner filed an application for Food and Medical Assistance with Newaygo County DHHS for herself, her husband and her children.
2. On April 8, 2019, a Notice of Case Action was mailed to notify Petitioner that her son Elliot was eligible for Medicaid effective January 1, 2019.

3. On April 10, 2019, a Verification Checklist was mailed to Petitioner requesting proof of assets necessary to make Medicaid determination for her husband.
4. On April 12, 2019, a telephone interview was held.
5. On April 12, 2019, a Notice of Case Action was mailed to Petitioner to notify her that her application for Food Assistance had been denied due to excess income.
6. On April 18, 2019, a verification checklist was mailed to Petitioner requesting proof of her husband's pension.
7. On May 2, 2019, a Notice of Case Action was mailed to Petitioner to notify her that her daughter [REDACTED] was eligible for Medicaid effective on January 1, 2019, and that Petitioner ([REDACTED] [REDACTED]) was found eligible for Medicaid effective April 1, 2019.
8. A May 2, 2019, eligibility for [REDACTED] (Petitioner's husband) was pending for Asset Detection due back May 7, 2019.
9. On May 7, 2019, a Notice of Case Action was mailed to Petitioner that her husband Jerome was eligible for Medical Assistance with a deductible spend-down effective April 1, 2019.
10. On February 7, 2020, Petitioner filed a Request for Hearing on his Medicaid determination was received.
11. On February 19, 2020, a Notice of Prehearing conference was sent to Petitioner.
12. On February 19, 2020, a Prehearing Conference was held.
13. On March 9, 2020, the Michigan Office of Administrative Hearings and Rules received a copy of the Hearing Summary and attached documents.
14. On May 6, 2020, the Michigan Office of Administrative Hearings and Rules sent Petitioner a Notice of Telephone Prehearing Conference scheduled for May 26, 2020 at 1:30 PM.
15. On May 26, 2020, all parties appeared on the conference line and were prepared to go forward with the hearing.
16. The undersigned Administrative Law Judge notified Petitioner's husband ([REDACTED] [REDACTED]) that due to COVID-19 Pandemic, no in-person hearings would be held until further notice.
17. Petitioner's husband ([REDACTED] [REDACTED]) requested to go forward with the telephone hearing.
18. All parties agreed and the hearing went forward.

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.

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.

Michigan provides MA eligible clients under two general classifications: group 1 and group 2 MA. Petitioner 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. 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.

The household for a tax filer, who is not claimed as a tax dependent, consists of:

- Individual.
- Individual's spouse.
- Tax dependents.

The household for a non-tax filer who is not claimed as a tax dependent, consists of the individual and, if living with the individual:

- Individual's spouse.
- The individual's natural, adopted and stepchildren under the age of 19 or under the age of 21 if a full time student.
- If the individual is under the age of 19 (or under 21 if a full time student), the group consists of individual's natural, adopted and step parents and natural, adoptive and step siblings under the age of 19 (or under 21 if a full time student). (BEM 211. Page 1)

In the instant case, the Department calculated Petitioner's income based upon receipt of unearned income form Social Security Disability. Petitioner's husband receives \$1,840 in monthly RSDI and \$199.39 in pension. Petitioner receives \$306 in RSDI.

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

Once Petitioner was given the appropriate deductions because Petitioner has children and a spouse who receive RSDI income, Petitioner's monthly net countable income was determined to be \$ [REDACTED] for a group size of two people (Petitioner and her husband). The protected income limit for a two-person household in Petitioner's circumstances is \$ [REDACTED] \$ [REDACTED] - \$ [REDACTED] = \$ [REDACTED] which left Petitioner with a deductible of \$1,088.00 per month in 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.

Petitioner's allegation of 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.

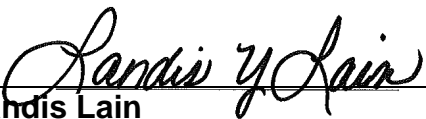
The Healthy Michigan Plan provides healthcare coverage for individuals who do not qualify for or are not enrolled in Medicare. BEM 137, page 1. Petitioner's husband does qualify and receives Medicare. Petitioner's spouse does not qualify for any other category of Medical Assistance except Group 2 under Department policy.

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 and when it determined that Petitioner has a monthly \$1,088.00 deductible spend-down that Petitioner must meet in order to qualify for Medicaid for any medical expenses. The Department's action must be upheld.

DECISION AND ORDER

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

LL/hb



Randis 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

Newaygo County via electronic mail

BSC3 via electronic mail

D. Smith via electronic mail

EQADHShearings via electronic mail

Authorized Hearing Rep.

[REDACTED], MI [REDACTED]

Petitioner

[REDACTED], MI [REDACTED]