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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
Date Mailed: September 11, 2020
MOAHR Docket No.: 20-004615
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, a hearing was held on August 12, 2020, via telephone conference line. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Markita Mobley, hearing facilitator. Michelle Collins, specialist, observed the hearing. [REDACTED] participated as a Bengali-English translator.

ISSUES

The first issue is whether Petitioner timely requested a hearing to dispute a termination of Food Assistance Program (FAP) benefits.

The second issue is whether MDHHS properly determined Petitioner's Medicaid eligibility.

The third issue is whether MDHHS properly processed Petitioner's Medicare Savings Program (MSP) 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. As of November 2019, Petitioner was an ongoing recipient of Medicare - Part A and MSP benefits.
2. As of December 2019, MDHHS inexplicably stopped Petitioner's MSP eligibility.
3. As of January 2020, Petitioner was an ongoing recipient of FAP benefits.

4. On January 8, 2020, Petitioner submitted to MDHHS documentation of his spouse's income, which listed \$ [REDACTED] in gross wages for the month of November 2019.
5. On January 8, 2020, MDHHS terminated Petitioner's FAP eligibility beginning February 2020 due to excess income.
6. As of April 2020, Petitioner was married, disabled, not pregnant, not a caretaker to dependent children, and a Medicare recipient.
7. As of April 2020, Petitioner received gross monthly Retirement, Survivors and Disability Insurance (RSDI) of \$ [REDACTED].
8. As of April 2020, Petitioner was responsible for a monthly Medicare premium of \$145.
9. As of April 2020, Petitioner was an ongoing recipient of Medicaid subject to a monthly deductible of \$1,068.
10. As of April 2020, Petitioner was not receiving MSP benefits.
11. On April 23, 2020, Petitioner requested a hearing to dispute the termination of FAP, Medicaid and MSP eligibility.

CONCLUSIONS OF LAW

The Food Assistance Program [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. MDHHS administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

On April 23, 2020, Petitioner requested a hearing, in part, to dispute FAP eligibility. Exhibit A, pp. 3-4. Petitioner testimony clarified that he disputed a termination of FAP benefits from earlier in 2020. It was not disputed that MDHHS mailed Petitioner a Notice of Case Action dated January 8, 2020, stating that Petitioner's FAP eligibility would end February 2020 due to excess income. Before the merits of the MDHHS can be evaluated, the timeliness of Petitioner's hearing request must be examined.

A client's request for hearing must be received in the MDHHS local office within 90 days of the date of the written notice of case action. BAM 600 (January 2020) p. 6. Generally, hearing requests must be submitted to MDHHS in writing. *Id.*, p. 2. Requests for Food Assistance Program benefit hearings may be made orally. *Id.*

MDHHS received Petitioner's hearing request 106 days after MDHHS sent written notice of FAP closure. There was no evidence that Petitioner verbally requested a hearing to dispute FAP eligibility. Given the evidence, Petitioner failed to timely request a hearing. Accordingly, Petitioner's hearing request disputing FAP eligibility will be dismissed.¹

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).

Petitioner also requested a hearing to dispute MA eligibility. Petitioner specifically disputed his eligibility for two different MA programs: Medicaid and Medicare Savings Program. Petitioner's testimony clarified that he only intended to dispute his own Medicaid eligibility, and not the eligibility of his wife or children. MDHHS presented a Health Care Coverage Determination Notice dated January 13, 2020, stating that Petitioner was eligible for Medicaid subject to a \$1,052 monthly deductible beginning January 2020. Exhibit A, pp. 5-6.

The Medicaid program includes several sub-programs or categories. BEM 105 (January 2020), p. 1. To receive Medicaid 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. *Id.*

Persons may qualify under more than one MA category. *Id.*, p. 2. Federal law gives them the right to the most beneficial category. *Id.* The most beneficial category is the one that results in eligibility, the least amount of excess income or the lowest cost share. *Id.*

MA categories are also split into categories of Group 1 and Group 2. *Id.*, p. 1. For Group 1, a group's net income must be at or below a certain income level for eligibility. *Id.* Eligibility for a Group 1 category would result in issuance of full-Medicaid (i.e. Medicaid without a monthly deductible).

As of the hearing date, Petitioner was disabled and/or aged, not pregnant, a Medicare recipient, and not a caretaker to dependent children. Under Petitioner's circumstances,

¹ Petitioner is encouraged to reapply if FAP benefits are still needed.

the only Group 1 category for which Petitioner could receive Medicaid is the SSI-related category of AD-Care.

For SSI-related categories, MDHHS is to determine countable income according to the policies in BEM 165, 500, 501, 502, 503, 504 and 530. BEM 165 (October 2016) p. 8. For SSI-Related categories, MDHHS is to apply the deductions in BEM 540 (for children) and 541 (for adults) to determine a client's net income. *Id.*

For SSI-related Medicaid categories, group members include the client and spouse. BEM 211 (July 2019) p. 8. For purposes of AD-Care, as a married individual, Petitioner's group size is two.

As of the disputed benefit month, Petitioner received monthly gross RSDI of \$[REDACTED]. Generally, for SSI-related MA, MDHHS factors the gross amount of RSDI in determining Medicaid eligibility.² BEM 503 (April 2019), p. 28. For purposes of AD-Care, Petitioner's RSDI of \$[REDACTED] is countable.

For AD-Care, MDHHS gives employment income disregards, guardianship and conservatorship expense credits, and cost-of-living adjustments (COLA) disregards during the benefit months from January through March. MDHHS presented documentation of Petitioner's spouse's most recently reported employment income. Exhibit A, p. 11. The documentation listed \$[REDACTED] in monthly gross income for November 2019. For employment income, MDHHS is to apply a disregard of \$65 + ½ of remaining earnings. Applying the disregard to Petitioner's spouse's income results in countable income of \$[REDACTED] (dropping cents). Adding Petitioner's and his spouse's countable income results in a total countable income of \$[REDACTED].

AD-care income limits are 100% of the Federal Poverty Level + \$20. RFT 242 (April 2019), p. 1. The income limit for a 2-person AD-Care group is \$1,430. *Id.* Petitioner's net countable income exceeds the AD-Care income limit; therefore, Petitioner is not eligible for Medicaid under AD-Care.

Petitioner may still be eligible for Medicaid under a Group 2 category. For Group 2 categories, eligibility is possible even when net income exceeds the income limit for a Group 1 category; this is possible because incurred medical expenses are used when determining eligibility. *Id.* Group 2 categories are considered a limited benefit because a deductible is possible. *Id.* For aged/disabled persons, G2S is the applicable Group 2 Medicaid category.

Clients with a deductible may receive Medicaid if sufficient allowable medical expenses are incurred. BEM 545 (April 2018), p. 11. Each calendar month is a separate deductible period. *Id.* The fiscal group's monthly excess income is called the deductible

² Exceptions to counting gross RSDI include the following: certain former SSI recipients (e.g. disabled-adult children, 503 individuals, and early widowers), retroactive RSDI benefits, Medicare premium refunds, fee deductions made by qualified organizations acting as payee, and "returned benefits" (see BAM 500). No exceptions were applicable to the present case.

amount. *Id.* Meeting a deductible means reporting and verifying allowable medical expenses that equal or exceed the deductible amount for the calendar month. *Id.*

Like AD-Care, G2S is an SSI-related category. Thus, Petitioner's countable income of \$[REDACTED] calculated for AD-Care, is also Petitioner's countable income for G2S.

The G2S budget allows a standard \$20 disregard for unearned income and various earned income disregards. The G2S budget also factors ongoing medical expenses (which are applied toward a deductible), insurance premiums, and remedial services. Cost of living adjustments (COLA) are applicable for the benefit months of January through March only. BEM 503 (January 2019), p. 29. MDHHS acknowledged that Petitioner paid \$144.60 for a Medicare premium (a \$145 credit after rounding to nearest dollar); no other expenses were alleged.

A client's deductible is calculated by subtracting the protected income level (PIL) from the MA net income. A PIL is a standard allowance for non-medical need items such as shelter, food and incidental expenses. The PIL for Petitioner's shelter area and group size is \$500 (see RFT 240 (December 2013), p. 1).

Subtracting the PIL, Medicare premium, and \$20 disregard from Petitioner's countable income results in a monthly deductible of \$1,068. MDHHS calculated the same deductible. Given the evidence, MDHHS properly determined that Petitioner is eligible for Medicaid subject to a \$1,068 monthly deductible.

Petitioner lastly requested a hearing to dispute MSP eligibility.³ The evidence concerning the status of Petitioner's MSP was meager. It was not disputed that Petitioner was ineligible for MSP for an unspecified extended period. No documentation or testimony was presented explaining Petitioner's MSP ineligibility.

MSP is an SSI-related Medicaid category. BEM 165 (January 2018) p. 1. One of three different types of subprogram are available under MSP. Qualified Medicare Beneficiaries coverage pays for a client's Medicare premiums, coinsurances, and deductibles. BEM 165 (January 2018), p. 2. Specified Low Income Beneficiaries coverage pays for a client's Medicare Part B premium. *Id.* Additional Low Income Beneficiaries coverage pays for a client's Medicare Part B premium if DHHS funding is available. *Id.* The client's income determines the MSP subprogram issued (see RFT 242).

The evidence did not establish when or if Petitioner was previously eligible for MSP. Also, the evidence did not establish if Petitioner was disputing a program closure or application denial. Generally, an analysis of a client's benefit eligibility under such circumstances is challenging or impossible because a proper outcome hinges on knowing if a client applied for benefits or was an ongoing recipient. Fortunately,

³ Petitioner did not reference MSP in his hearing request but did dispute "MA" eligibility. Because the MA program includes MSP, Petitioner's hearing request will be interpreted as a dispute over MSP.

Petitioner's MSP eligibility can be evaluated despite the absence of evidence concerning Petitioner's past eligibility.

MDHHS is to complete an MSP determination for clients receiving Group 2 Medicaid. BEM 165 (January 2018) pp. 2-3. The individual who is eligible for MA under Group 2 Medicaid does not have to request a determination of MSP eligibility or re-apply for MA in order to be reviewed for MSP eligibility. *Id.* p. 3.

Documentation of Petitioner's Social Security Administration benefits verified that Petitioner is a recipient of Medicare - Part A since 2017. Exhibit A, pp. 8-10. It was already determined that Petitioner is eligible for Medicaid under the Group 2 Medicaid category of G2S. Thus, Petitioner was entitled to an MSP determination, regardless of whether he applied for MSP.

Petitioner's SSA documentation listed a stoppage date of Medicare Part B "buy-in" beginning December 2019.⁴ MDHHS presented no evidence that a determination of Petitioner's MSP eligibility was made, that Petitioner was sent written notice of MSP closure, or if MSP closure occurred. In other words, MSP failed to establish that an MSP determination was made concerning Petitioner's MSP eligibility for December 2019. Thus, Petitioner is entitled to a determination of MSP eligibility from December 2019.⁵

⁴ A "buy-in" of Medicare Part B equates to eligibility for MSP.

⁵ It should be noted that Petitioner is not barred from such a remedy due to failing to timely dispute eligibility. In the FAP benefit analysis, Petitioner was barred from administrative remedy due to not timely requesting a hearing. Petitioner's MSP eligibility can be distinguished because MDHHS did not establish that written notice was sent to Petitioner.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner failed to timely dispute a termination of FAP benefits beginning February 2020. Concerning Petitioner's dispute of FAP eligibility, Petitioner's hearing request is **DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined Petitioner to be eligible for Medicaid subject to a monthly deductible of \$1,068 beginning April 2020. Concerning Petitioner's Medicaid eligibility, the actions taken by MDHHS are **AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to process Petitioner's MSP eligibility. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Process Petitioner's MSP eligibility from December 2019; and
- (2) Issue written notice in accordance with policy.

The actions taken by MDHHS are **REVERSED**.

CG/tlf



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-Wayne-55-Hearings
BSC4 Hearing Decisions
EQAD
D. Smith
MOAHR

Petitioner – Vi First-Class Mail:

