



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

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Date Mailed: March 14, 2019
MAHS Docket No.: 19-000793
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 March 11, 2019, from Detroit, Michigan. The Petitioner was represented by his mother and step-father, both of whom are his legal guardians, ██████████ and ██████████. The ██████████ elected to have ██████████, Petitioner's Support Coordinator, act as the authorized hearing representative. The Department of Health and Human Services (Department) was represented by Richkelle Curney, Hearings Facilitator.

ISSUE

Did the Department properly determine Petitioner's Medical Assistance (MA) Program 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. On May 4, 2017, the Department's Disabled Adult Child (DAC) Determination Office issued a memo indicating that Petitioner was not eligible for DAC because he was not a recipient of DAC Retirement, Survivors and Disability Insurance (RSDI) benefits.
2. In December 2017, the Department agreed to maintain Petitioner's status as a DAC MA recipient until it could determine whether his status as a disabled adult

child recipient of Railroad Retirement Board (RRB) benefits qualified him for DAC MA benefits.

3. On January 31, 2018, in consideration of the Department's determination of ineligibility because Petitioner does not receive DAC RSDI, because Petitioner receives RRB benefits instead as a disabled adult child, and because of the Department's indication that an inquiry was ongoing into Petitioner's DAC MA eligibility, the Department was ordered in Michigan Administrative Hearing System (MAHS) docket number 17-011615 to complete a review of Petitioner's DAC MA eligibility based upon his receipt of RRB benefits.
4. On December 4, 2018, the Department issued a Redetermination to Petitioner due by January 3, 2019.
5. By January 2019, Petitioner received a new Department caseworker who was unfamiliar with the history of Petitioner's case and DAC status.
6. On January 2, 2019, the Department received the completed Redetermination.
7. On January 8, 2019, a Health Care Coverage Determination Notice (HCCDN) was issued to Petitioner informing him that he was eligible for MA benefits subject to a \$802.00 monthly deductible contradicting its earlier position that Petitioner would remain in the DAC MA category until a final conclusion could be made about his DAC eligibility.
8. On January 16, 2019, the Michigan Administrative Hearing System (MAHS) received a hearing request from Petitioner's mother on Petitioner's behalf disputing the Department's determination of MA eligibility believing that he should be placed in the Disabled Adult Child (DAC) MA category which was forwarded to the Department; in addition to the hearing request, the Department also received a letter dated December 27, 2018, indicating that Petitioner received a gross Railroad Retirement benefit of \$ [REDACTED] per month, effective January 2, 2019.

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's mother requested a hearing to dispute the Department's placement of Petitioner in a deductible MA program rather than the DAC MA program. In May 2017, the Department DAC Determination Office issued a memo indicating that Petitioner was not eligible for DAC MA because he was not a recipient of DAC RSDI benefits. On December 8, 2017, a series of emails was exchanged within the Department indicating that the Department agreed to reinstate Petitioner's DAC MA benefits until a conclusion could be made regarding his DAC RRB status and its effective on DAC MA benefits. In January 2018, the Department was ordered to complete the review of Petitioner's eligibility for DAC MA because the Department admitted during the hearing that while Petitioner was found ineligible for DAC based upon his lack of receipt of DAC RSDI benefits, the Department was considering Petitioner's eligibility for DAC MA as a result of his receipt of DAC RRB benefits. Petitioner was kept in the DAC MA program while the Department continued to deliberate his DAC MA eligibility. By January 2019, the review of Petitioner's case as it related to his RRB status had not been completed; and he had a new caseworker. Once the caseworker completed the Redetermination process for Petitioner in Bridges, the caseworker moved Petitioner to a deductible program and closed the DAC MA case. As of the hearing date, the Department still had not made a final determination of Petitioner's DAC MA eligibility based upon his RRB benefits despite the order to do so more than a year prior. Therefore, a thorough review of the applicable policies and federal law follows below.

DAC is a Supplemental Security Income (SSI)-related MA category. It is available to persons who are receiving disabled adult children's RSDI benefits under Section 202(d) of the Social Security Act (Act) if that person is age 18 or older; received SSI; ceased to be eligible on or after July 1, 1987, because they became entitled to DAC RSDI benefits under section 202(d) of the Act or an increase in their RSDI benefits; and is currently receiving DAC RSDI benefits under Section 202(d) of the Act; and would be eligible for SSI without the RSDI benefit. BEM 158 (October 2014), p. 1. This Department policy was created in response to federal law which states

(c) If any individual who has attained the age of 18 and is receiving benefits under this subchapter on the basis of blindness or a disability which began before he or she attained the age of 22—

(1) becomes entitled, on or after the effective date of this subsection, to child's insurance benefits which are payable under section 402(d) of this title on the basis of such disability or to an increase in the amount of the child's insurance benefits which are so payable, and

(2) ceases to be eligible for benefits under this subchapter because of such child's insurance benefits or because of the increase in such child's insurance benefits,

such individual shall be treated for purposes of subchapter XIX as receiving benefits under this subchapter so long as he or she would be eligible for benefits under this subchapter in the absence of such child's insurance benefits or such increase.

42 USC 1383c(c) (*emphasis added*). "This subchapter" of the Act is titled the Supplemental Security Income for Aged, Blind, or Disabled and subchapter XIX is titled Grants to States for Medical Assistance Programs. The Act became effective July 1, 1987. Section 402(2) of the Act provides children's insurance benefits to children of individuals entitled to old-age or disability insurance benefits, or for an individual's who die as a fully or currently insured individual. 42 USC 402(d). "Currently insured" is defined as

any individual who had not less than six quarters of coverage during the thirteen-quarter period ending with (1) the quarter in which he died, (2) the quarter in which he became-entitled to old-age insurance benefits, (3) the quarter in which he became entitled to primary insurance benefits under this subchapter as in effect prior to, or (4) in the case of any individual entitled to disability insurance benefits, the quarter in which he most recently became entitled to disability insurance benefits, not counting as part of such thirteen-quarter period any quarter any part of which was included in a period of disability unless such quarter was a quarter of coverage, and who satisfies the criterion specified in subsection (c).

42 USC 414(b). To summarize these federal laws, if a person is a disabled adult child receiving SSI, but is no longer receiving SSI because their parent who was receiving or was eligible to receive RSDI benefits dies and the disabled adult child begins receiving RSDI benefits, the disabled adult child may continue to receive the same type of medical coverage as if they had not began receiving RSDI or an increased benefit. There is no mention in either of these federal laws regarding RRB benefit recipients even if the RRB recipient is a disabled adult child of an RRB benefit recipient. There is no citation to any RRB related law.

The RRB is an independent federal agency separate from the Social Security Administration (SSA). See <https://www.ssa.gov/policy/docs/ssb/v68n2/v68n2p41.html>. The two agencies and the two benefit programs have different funding as well as benefit structures. *Id.* Tier 1 benefits for RRB recipients are designed to be the equivalent to the annuity offered by SSA and are subject to an offset for the receipt of SSA benefits accrued from other employment. *Id.* This is also true for survivor's benefits even if the survivor's benefit is based upon their own Social Security earnings. See https://rrb.gov/sites/default/files/2019-03/2019_IB2.pdf. The Tier 2 RRB benefit is structured similar to traditional private multiemployer pension plans and is subject to the

same tax rules. See <https://www.ssa.gov/policy/docs/ssb/v68n2/v68n2p41.html>. Finally, funding for the RRB benefit is funded in part by taxes levied on employees and employers of the railroad industry and also in part by investments made by the National Railroad Retirement Investment Trust. *Id.*

Since the federal law governing the eligibility of an individual for DAC MA coverage does not make any reference to RRB benefits and because both the SSA website and RRB website make it clear that each administers a different type of benefit, the Department's policy and the federal law do not provide for a circumstance similar to Petitioner's where he does not receive DAC RSDI but instead receives an RRB benefit because of his disabled adult child survivor's right. Therefore, Petitioner's receipt of the RRB benefit as a disabled adult child does not qualify him for DAC MA. To be eligible for DAC MA, he must receive DAC RSDI.

The Department determined in May 2017 that Petitioner did not receive DAC RSDI benefits. However, in the hearing for this case, the Department testified that Petitioner received an \$[REDACTED] RRB benefit as well as a \$[REDACTED] RSDI benefit. Since the parties agree that Petitioner is a disabled adult and that he was previously a recipient of SSI benefits because of his disability, he is not likely to have created his own work history to contribute toward a Social Security benefit for himself, and it is unclear how Petitioner is eligible for the RSDI benefit. No evidence was presented as to the origin of the RSDI benefit or its inception date. While it is clear that Petitioner's receipt of RRB benefits does not qualify him for DAC MA benefits, the Department has not presented sufficient evidence to show that Petitioner is not eligible for DAC MA benefits based upon his receipt of RSDI.

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 failed to satisfy its burden of proof that it acted in accordance with Department policy when it closed Petitioner's DAC MA case and opened an MA G2S case with a deductible of \$[REDACTED] per month.

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. Reinstate Petitioner's DAC MA case effective February 1, 2019, consistent with the Department's agreement as shown in the December 2017 emails;

2. Issue supplements to Petitioner or on his behalf for DAC MA benefits not previously issued in February and March 2019;
3. Determine Petitioner's DAC MA eligibility based upon his receipt of RSDI benefits; and,
4. Notify Petitioner and his Authorized Representatives of its determinations.



AMTM/jaf

Amanda M. T. Marler

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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Tara Roland 82-17
MDHHS-Wayne-17-Hearings

Authorized Hearing Rep.

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Petitioner

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