



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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Date Mailed: June 25, 2019  
MOAHR Docket No.: 19-004931  
Agency No.: ██████████  
Petitioner: ██████████

**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 telephone hearing was held on June 13, 2019, from Detroit, Michigan. Petitioner appeared and was unrepresented. ██████████ Petitioner's spouse (hereinafter, "Spouse"), testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Richkelle Curney, hearing facilitator. ██████████ ██████████ of Arab American and Chaldean Council, participated as an as-needed English-Arabic translator.

**ISSUES**

The first issue is whether MDHHS properly determined Spouse to be eligible for Medicaid subject to a deductible.

The second issue is whether MDHHS properly determined Petitioner's and Spouse's Medicare Savings Program (MSP) eligibility.

The third issue is whether MDHHS properly determined Petitioner to be eligible for Medicaid subject to a deductible.

**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 14, 2019, Petitioner applied for MA benefits for herself and Spouse. Exhibit A, pp. 1-14.

2. As of April 2019, Petitioner lived with Spouse and two minor children.
3. As of April 2019, Spouse received Retirement, Survivors and Disability Insurance (RSDI) of \$ [REDACTED] month. Exhibit A, pp. 32-34. Spouse additionally received a gross monthly pension of \$ [REDACTED]
4. As of April 2019, Petitioner and her two minor children each received RSDI of \$ [REDACTED] month. Exhibit A, pp. 26-31 and 35-37.
5. On April 16, 2019, MDHHS approved Spouse for MSP eligibility beginning May 2019. MDHHS also approved Spouse and Petitioner for Medicaid subject to a \$ [REDACTED] month deductible beginning May 2019. Exhibit A, pp. 16-22.
6. On 5/3/19, Petitioner requested a hearing to dispute Petitioner's and Spouse's MSP and Medicaid eligibility.

### **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).

Petitioner's hearing request cited a dispute over Medicaid eligibility. Spouse testified that the dispute concerned his and Spouse's eligibility for Medicaid and MSP. As MSP are both part of the Medical Assistance program, the analysis will consider Petitioner's and Spouse's MSP and Medicaid eligibility.

#### **Medicaid Eligibility for Spouse**

Petitioner disputed Spouse's Medicaid eligibility. The HCCDN dated April 16, 2019, stated that Spouse was eligible to receive Medicaid subject to a \$ [REDACTED] month deductible.

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

As of April 2019, Spouse was a caretaker to minor children, disabled, and received Medicare. Thus, Spouse is potentially eligible for various MAGI-related and SSI-related MA categories. As a Medicare recipient, Spouse is not entitled to receive Medicaid through Healthy Michigan Plan. BEM 137 (January 2019), p. 1.

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.* The Group 1 Medicaid category with the highest known income limit for which Spouse could be eligible is AD-Care. AD-Care is a Group 1 category. BEM 163 outlines the procedures for determining income eligibility under AD-Care.

For SSI-related categories such as AD-Care, the group size for adults is one for unmarried individuals and two for married individuals. BEM 211 (February 2019), p. 8. As a married person Spouse's group size is two for purposes of AD-Care.

Determining AD-Care income eligibility begins with factoring the group's income. As of the disputed benefit month, Spouse received \$[REDACTED] month in gross RSDI and \$[REDACTED] month in gross retirement benefits. Petitioner received \$[REDACTED] month in RSDI. Generally, MDHHS counts the gross amount of RSDI as income.<sup>1</sup> BEM 503 (April 2019), pp. 28-29. For retirement benefits, MDHHS is to count gross income. *Id.*, p. 28. For purposes of AD-Care, Spouse's countable income is \$[REDACTED] (rounding to nearest dollar).

MDHHS gives AD-Care budget credits for employment income, guardianship and/or conservator expenses. Cost of living adjustments (COLA) are applicable for the benefit months of January through March only. BEM 503 (January 2019), p. 29. No budget credits were applicable to Spouse's AD-Care eligibility.

AD-care income limits are 100% of the Federal Poverty Level + \$20. RFT 242 (April 2019) p. 1. The income limit for a two-person AD-Care group is \$1,410. *Id.* Spouse's countable income exceeds the AD-Care income limit. Thus, Spouse is not eligible for Medicaid through AD-Care.

For Group 2 categories, Medicaid 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.*

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<sup>1</sup> Exceptions to counting gross RSDI includes the following: certain former SSI recipient (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). None of the exceptions are applicable to the present case.

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

For aged/disabled persons, G2S is the applicable Group 2 Medicaid category. For G2S, the group's gross RSDI and retirement income is counted. Thus, Spouse's countable income for purposes of G2S is again \$ [REDACTED]

The G2S budget allows a \$20 disregard for unearned income, various earned income disregards, and COLA. The G2S budget also factors ongoing medical expenses (which are applied toward a deductible), insurance premiums, and remedial services. No disregards other than the standard \$20 disregard are applicable.

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. RFT 240 (December 2013), p. 1. Subtracting the PIL and \$20 disregard from countable income results in a monthly deductible of \$1,329.

MDHHS calculated a lower deductible for Spouse by determining Medicaid eligibility under G2C; the same calculation was used to determine Petitioner's eligibility. G2C is a Medicaid category for caretakers of minor children. BEM 536 outlines the following 16-step procedure for determining a client's income for purposes of G2C eligibility:

- Step 1 Determine countable employment income using BEM 500 and BEM 530.
- Step 2 Deduct \$90 from each member's employment income.
- Step 3 Subtract \$30 + 1/3 of a group member's employment income if the person received FIP or LIF benefits in any one of the four previous months.
- Step 4 Subtract \$200 from any remaining employment income if member has dependent care expenses.
- Step 5 Determine countable child support income using BEM 500 and BEM 530.
- Step 6 Subtract \$50 for countable child support income.
- Step 7 Determine countable unearned income using BEM 500 and BEM 530.
- Step 8 Add countable earned and unearned income.
- Step 9 Subtract child support paid by a group member (not to exceed the monthly obligation).
- Step 10 Subtract \$83 if client has court-appointed guardian paid by a group member. The result is the group's total net income.
- Step 11 Determine the number of dependents. A spouse and children under 18 are dependents.

Step 12 Add 2.9 to the number of dependents to determine the prorated divisor.

Step 13 Divide the prorated divisor into each group member's income to determine each member's prorated share of income.

Steps 14-16 Applicable for non-parent caretakers.

For purposes of G2C, Spouse's countable income is \$ [REDACTED] and Petitioner's income is \$ [REDACTED] month. Child support is not applicable. The dependents for Petitioner and Spouse are 3 (1 for having a spouse and 2 for children under 18). Dividing the prorated divisor of 5.9 (2.9 + 3 dependents) into each member's income creates a prorated income of \$ [REDACTED] for Spouse and \$ [REDACTED] for Petitioner. The adult's net income for purposes of G2C is the sum of the following:

- A client's share of own income = 2.9 x the client's prorated income (if the adult has dependents)
- The spouse's share of own income = 3.9 x the spouse's prorated income
- Prorated share of the client's income

Spouse's total net income is calculated by adding Spouse's share of Spouse's income ([REDACTED]716), Petitioner's share of Petitioner's income (\$ [REDACTED]) and the couple's share of each other's income (\$ [REDACTED]). The total net income is \$ [REDACTED].

G2C allows subtractions for insurance premiums, remedial services, and COLA. The PIL is then also subtracted to determine the group's deductible. The only allowable deduction is the \$500 PIL which results in a deductible of \$ [REDACTED]. MDHHS calculated the same deductible. Exhibit A, p. 39. Given the evidence, MDHHS properly determined Spouse's Medicaid eligibility.

### **MSP Eligibility**

Spouse testified he disputed MSP eligibility for Petitioner. Spouse's testimony was misguided as Petitioner does not receive Medicare. MDHHS only determines MSP eligibility for clients who receive Medicare Part A. BEM 165 (January 2018), p. 2. As Petitioner is not eligible for Medicare, she cannot be eligible for Medicare Part A. Thus, MDHHS properly did not determine Petitioner's eligibility for MSP.

MSP programs offer three different degrees of assistance with payment toward a client's Medicare premium and deductibles. Qualified Medicare Beneficiaries (QMB) coverage pays for a client's Medicare premiums, coinsurances, and deductibles. BEM 165 (January 2018), p. 2. Specified Low Income Beneficiaries (SLMB) coverage pays for a client's Medicare Part B premium. *Id.* Additional Low Income Beneficiaries (ALMB) coverage pays for a client's Medicare Part B premium if DHHS funding is available. *Id.*

Spouse does receive Medicare Part A and is entitled to an MSP determination. A HCCDN stated that Spouse was approved for MSP benefits effective May 2019. Exhibit A, p. 16. An inquiry of Spouse's MSP benefits after the hearing revealed that Spouse is receiving MSP benefits under ALMB. The approval is consistent with

Spouse's and Petitioner's combined income of \$█████ falling within the ALMB income limits of \$1,711 to \$1,923 for a married couple. Given the evidence, MDHHS properly approved Spouse for ALMB.

### **Medicaid Eligibility for Petitioner**

Petitioner also disputed her own Medicaid eligibility. The HCCDN dated April 16, 2019, stated that Petitioner was also eligible to receive Medicaid subject to a \$█████ month deductible.

As of April 2019, Petitioner was a caretaker to minor children, between the ages of 19-64 years, not pregnant, not disabled, and not a recipient of Medicare. As a non-aged and non-disabled person, Petitioner is ineligible for SSI-related categories. As a caretaker to minor children, Petitioner is entitled to G2C. Petitioner's G2C budget essentially mirrors Spouse's G2C budget and also properly resulted in a \$█████ month deductible. Unlike Spouse, Petitioner is potentially eligible to receive Medicaid under HMP because she is not a Medicare recipient. The HCCDN dated April 16, 2019, stated that Petitioner was ineligible to receive HMP due to being enrolled in Medicare.

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 provides health care coverage for individuals who:

- Are 19-64 years of age.
- Do not qualify for or are not enrolled in Medicare.
- Do not qualify for or are not enrolled in other Medicaid programs.
- Are not pregnant at the time of application.
- Meet Michigan residency requirements.
- Meet Medicaid citizenship requirements.
- Have income at or below 133% Federal Poverty Level (FPL).

BEM 137 (January 2019), p. 1.

Petitioner does not receive Medicare. Thus, it is curious that MDHHS would have denied HMP to Petitioner for receiving Medicare. It was thought that perhaps MDHHS coded Petitioner as incorrectly receiving Medicare though the MDHHS hearing facilitator testified this was not the case.

It is not known if Petitioner is eligible for Medicaid under HMP. Given the evidence, it can be stated that MDHHS improperly considered Petitioner to be a Medicare recipient in denying Petitioner's HMP eligibility. Petitioner's remedy is for MDHHS to redetermine Petitioner's HMP eligibility.

**DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined Spouse's MSP and Medicaid eligibility. It is further found that MDHHS properly did not determine Petitioner's MSP eligibility. Concerning Spouse's Medicaid eligibility, Spouse's MSP eligibility, and Petitioner's MSP 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 improperly determined Petitioner's Medicaid eligibility. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Redetermine Petitioner's HMP eligibility subject to the finding that Petitioner is not a Medicare recipient; and
- (2) Initiate a supplement of any benefits improperly not issued along with issuance of proper notice.

Concerning Petitioner's Medicaid eligibility, the actions taken by MDHHS are **REVERSED**.

CG/jaf



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**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

**DHHS**

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

**Petitioner**

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[REDACTED] MI [REDACTED]

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