



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: July 2, 2019
MOAHR Docket No.: 19-005536
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 27, 2019, from ██████████ 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 Michelle Morley, supervisor.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's Medicaid 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 May 2019, Petitioner was an ongoing recipient of Medicaid through the Healthy Michigan Plan (HMP) category.
2. As of May 2019, Petitioner was between the ages of 19-64 years, not pregnant, possibly disabled, not a caretaker to minor children, and married.
3. As of May 2019, Spouse received ongoing gross Retirement, Survivors, Disability Insurance (RSDI) of \$2,286.50/month.
4. On May 14, 2019, MDHHS determined that Petitioner was eligible for Medicaid subject to a \$1,771/month deductible beginning June 2019.

5. On May 21, 2019, Petitioner requested a hearing to dispute the determination of Medicaid. Exhibit A, pp. 1-2.

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 requested a hearing to dispute a decrease of Medicaid benefits. MDHHS issued Medicaid benefits to Petitioner through May 2019. A Health Care Coverage Determination Notice (HCCDN) dated May 14, 2019, stated that Petitioner was eligible, effective June 2019, for Medicaid subject to a \$1,771/month deductible. Exhibit A, pp. 3-7.

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.*

MDHHS testimony indicated that Petitioner's Medicaid eligibility decreased due to a policy change which now requires MDHHS to count all of Petitioner's group's RSDI income (see BEM 503). MDHHS' testimony provided a plausible explanation for the change in Petitioner's Medicaid eligibility. To verify the correctness of Petitioner's Medicaid eligibility, a more complete Medicaid determination is needed.

As of the disputed benefit month, Petitioner was between the ages of 19-64 years, not pregnant, possibly disabled, not a caretaker to minor children, and married. Petitioner's circumstances render her potentially eligible for Medicaid through HMP. MDHHS alleged that Petitioner was ineligible for HMP due to excess income.

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 policies are found in the Medicaid Provider Manual and Modified Adjusted Gross Income Related Eligibility Manual (MAGIM).

HMP is based on Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (October 2016), p. 1. Modified adjusted gross income (MAGI) is a methodology for how income is counted and how household composition and family size are determined. MAGIM (May 28, 2014), p. 14. It is based on federal tax rules for determining adjusted gross income. *Id.* It eliminates asset tests and special deductions or disregards. *Id.* Every individual is evaluated for eligibility based on MAGI rules. *Id.*

For individuals who have been determined financially-eligible for MA using the MAGI-based methods set forth in this section, a State may elect in its State plan to base financial eligibility either on current monthly household income and family size or income based on projected annual household income and family size for the remainder of the current calendar year. 42 CFR 435.603 (h)(2). In determining current monthly or projected annual household income and family size under paragraphs (h)(1) or (h)(2) of this section, the agency may adopt a reasonable method to include a prorated portion of reasonably predictable future income, to account for a reasonably predictable increase or decrease in future income, or both, as evidenced by a signed contract for employment, a clear history of predictable fluctuations in income, or other clear indicia of such future changes in income. 42 CFR 435.603 (h)(3).

As of the disputed benefit month, Petitioner was married. For all MAGI-related adults, a spouse is a group member. BEM 211 (January 2016), pp. 1-2. Thus, Spouse's income is countable in the eligibility determination for HMP. The evidence suggested that Petitioner had no children who were tax dependents. Thus, Petitioner's group size for purposes of HMP is two persons. BEM 211.

MDHHS presented no budgets verifying how Petitioner's HMP eligibility was calculated. Petitioner's HMP eligibility was simple enough to determine whether Petitioner was income-eligible for HMP.

For Medicaid, countable RSDI for fiscal group members is the gross amount 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 be disregarded for these three months. *Id.* For all other months countable RSDI is the gross amount for the month being tested. *Id.*

The present case concerns Petitioner's Medicaid eligibility for June 2019. In June 2019, Spouse received ongoing gross RSDI of \$2,286.50. Multiplying Spouse's income by 12 results in a countable annual income of \$27,438.

Common deductions and disregards which should be factored in determining a person's adjusted gross income include alimony payments, unreimbursed business expenses,

Health Savings Account (e.g., 401k) payments, and student loan interest.¹ There was no evidence that Petitioner or Spouse were eligible for any income deductions.

HMP income limits are based on 133% of the federal poverty level. RFT 246 (April 2014), p. 1. The 2019 federal poverty level is \$16,910 for a two-person group residing in Michigan.² For Petitioner to be eligible for HMP, countable income would have to fall at or below \$22,490.30. The group's income exceeds HMP limits; thus, Petitioner is not eligible for Medicaid through HMP.

Based on the evidence, Petitioner's group's income exceeds HMP limits. Thus, MDHHS properly determined Petitioner to be ineligible for Medicaid.

The evidence was mixed concerning whether Petitioner was disabled. Petitioner testified she previously received Social Security Administration benefits for being disabled but that her award ended after she reported her marriage to the Social Security Administration. MDHHS did not confirm if Petitioner was evaluated for disability-related Medicaid categories. For purposes of this decision, it will be assumed that Petitioner is disabled and the analysis will proceed to determine Petitioner's eligibility under the Medicaid category of AD-Care.

AD-Care budgets factor the group's monthly income. As a married individual, Spouse is a member of Petitioner's AD-Care group (see BEM 211). As Spouse is a member of Petitioner's group, Spouse's income of \$2,286.50/month is also counted.

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. Petitioner did not allege any relevant expenses.

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 \$1,430. *Id.* Petitioner's group's countable income exceeds the AD-Care income limit; and therefore, Petitioner is not eligible for Medicaid through AD-Care.

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

¹ <https://www.investopedia.com/terms/a/agi.asp>

² <https://aspe.hhs.gov/2019-poverty-guidelines>

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 G2S, again the group consists of Petitioner and Spouse. Petitioner's group's countable income for purposes of G2S is \$2,286.50.

The G2S budget allows a \$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. Social Security Administration documentation verified that Spouse paid \$135.50 for a Medicare premium; no other expenses were 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 \$475 (see RFT 240 (December 2013), p. 1).

Subtracting the PIL, insurance premium, and \$20 disregard from Petitioner's countable income results in a monthly deductible of \$1,656. MDHHS calculated a higher deductible of \$1,771. MDHHS did not present a corresponding budget so it cannot be specified where the MDHHS determination differs from the present analysis. Presumably, the MDHHS determination factored an incorrect RSDI income for Spouse and/or no insurance premium payments by Spouse. MDHHS may have also determined Petitioner's Medicaid eligibility through a different Medicaid category. Given the evidence, the deductible of \$1,771 calculate by Petitioner cannot be confirmed. Petitioner is entitled to an updated determination of Medicaid

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's Medicaid eligibility for June 2019. MDHHS is ordered to begin the following actions within 10 days of the date of mailing of this decision:

- (1) Redetermine Petitioner's Medicaid eligibility subject to the following: Spouse's income is \$2,286.50/month and that Spouse pays for \$135.50 in Medicare insurance costs; and
- (2) Issue notice of the updated determination.

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

CG/jaf



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

Angela Neubecker
MDHHS-Ogemaw-Hearings

Petitioner

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