



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]

Date Mailed: August 22, 2019  
MOAHR Docket No.: 19-007334  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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 August 19, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator.

### **ISSUE**

Did the Department properly place Petitioner in the Group 2 Caregiver category of the Medical Assistance (MA) Program?

### **FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner's husband receives a Retirement Survivors Disability Insurance (RSDI) benefit of [REDACTED] per month effective January 2019.
2. Petitioner's husband also receives [REDACTED] as a disability benefit from Cigna Group Insurance each month.
3. Petitioner is employed with [REDACTED] and has a variable pay rate; for October 2018 through December 2018, Petitioner's total wages were [REDACTED]
4. The household composition consists of Petitioner and her husband, two minor children, and two adult children one of whom is claimed as a tax dependent and is age 18.

5. On June 12, 2019, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner informing her that her and her husband had the following MA eligibility:
  - a. Petitioner was eligible for MA for February 2019 with a deductible of [REDACTED] per month;
  - b. Her husband was eligible for MA for February 2019 with a deductible of [REDACTED] per month;
  - c. Petitioner was eligible for MA for March 2019 ongoing with a deductible of \$[REDACTED] per month;
  - d. Her husband was eligible for MA for March 2019 with a deductible of [REDACTED] per month; and,
  - e. Her husband was eligible for MA effective April 2019 with a deductible of [REDACTED] per month.
6. On July 1, 2019, the Department received Petitioner's request for hearing disputing the Department's determination of MA eligibility and MA deductible.

### **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 disputes the Department's determination of MA eligibility and calculation of a deductible. Medicaid is also known as Medical Assistance Program (MA). BEM 105 (April 2017), p. 1. The Medicaid program comprises several sub-programs or categories. *Id.* To receive MA under an 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 (HMP) is based on Modified Adjusted Gross Income (MAGI) methodology. *Id.*

The parties agree that Petitioner and her husband are responsible for the care of their minor child. Petitioner's circumstances potentially qualify her for Medicaid under numerous MA categories.

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 and the least amount of excess income or the lowest cost share. *Id.*

As caretakers, Petitioner and her husband are potentially eligible for MA through Low-Income-Family (LIF). LIF is a Modified Adjusted Gross Income (MAGI) related MA category. BEM 110 (April 2018), p. 1. For MAGI purposes the group composition for a tax filer who is not claimed as a tax dependent consists of the individual, their spouse, and their tax dependents. BEM 211 (February 2019), p. 2. Therefore, Petitioner has a group size of five for MAGI purposes. Adults with a dependent child and income under 54% of the Federal Poverty Level will be considered LIF eligible. *Id.* The 2019 FPL for a five-person household is \$30,170.00. See <https://aspe.hhs.gov/poverty-guidelines>. The corresponding LIF income limit is \$16,291.80.

In order to determine income in accordance with MAGI rules, a client's adjusted gross income (AGI) is added to any tax-exempt foreign income, tax-exempt Social Security benefits, and tax-exempt interest. It is calculated by taking the "federal taxable wages" for each income earner in the household as shown on the paystub or, if not shown on the paystub, by using gross income before taxes reduced by any money the employer takes out for health coverage, child care, or retirement savings. This figure is multiplied by the number of paychecks the client expects in 2018 to estimate income for the year. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>. Petitioner's employment verification shows that she received [REDACTED] for the period October 2018 through December 2018; therefore, her average monthly wage is \$[REDACTED]. There is no record that Petitioner is subject to deductions for health coverage, childcare, or retirement savings. In addition to taxable wages, all RSDI income is countable for tax-filers and adults not claimed as dependents. BEM 503 (January 2019), p. 29. Petitioner's husband receives [REDACTED] for an RSDI benefit in addition to a disability benefit in the amount of [REDACTED] per month. Therefore, total MAGI for the household is [REDACTED] monthly or [REDACTED] annually. Petitioner and her husband are ineligible for LIF because their income is significantly greater than the income limit.

Many individuals receive MA through HMP. HMP provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income at or below 133% of the federal poverty level (FPL) under the Modified Adjusted Gross Income (MAGI) methodology; (iii) do not qualify for or are not enrolled in Medicare; (iv) do not qualify for or are not enrolled in other MA programs; (v) are not pregnant at the time of application; and (vi)

are residents of the State of Michigan. BEM 137 (April 2018), p. 1; MPM, Healthy Michigan Plan, § 1.1. HMP has an income limit of 133% of the FPL or \$40,126.10 based upon a group size of five. Since Petitioner's husband is a recipient of Medicare benefits, Petitioner's husband is not eligible for HMP. However, no evidence was presented that Petitioner was older than age 64, under age 19, eligible for or enrolled in Medicare, or eligible for some other full-coverage MA program. Since Petitioner's MAGI income falls below the HMP income limit, she is eligible for HMP benefits and the Department erred in placing her in the G2C deductible program.

Since Petitioner's husband is disabled, he potentially qualifies for the Ad-Care category of MA. In determining the SSI-related MA category Petitioner's husband is eligible to receive, the Department must determine Petitioner's husband's SSI-related MA fiscal group size and net income. Petitioner's husband has a group size for SSI-related MA purposes of two as he is married living with a spouse. BEM 211, p. 8. His total monthly income is [REDACTED] and his wife's is [REDACTED] as discussed above.

The Ad-Care program, an SSI-related MA category, requires that net group income cannot exceed one hundred percent of the federal poverty level. BEM 163, pp. 1-2. The 2019 federal poverty level for a two-person household was \$16,910.00, effective January 11, 2019. <https://aspe.hhs.gov/poverty-guidelines>. The net income limit is established through policy by subtracting \$20.00 from the amount shown in RFT 242 at \$1,391.67 for a group size of two effective April 1, 2018. RFT 242 (April 2018), p. 1. After consideration of the [REDACTED] general exclusion, Petitioner's husband's income is [REDACTED] plus Petitioner's income of [REDACTED] BEM 541 (January 2018), p. 3. No evidence was submitted regarding any Guardianship or Conservatorship expenses. Therefore, Petitioner's husband's group net income is \$[REDACTED] which is greater than the net income limit and the federal poverty limit when his group net income is multiplied by 12. He is not eligible for the full coverage under Ad-Care category.

Petitioner may still receive Medicaid subject to a monthly deductible through a Group 2 Medicaid category. Clients with a deductible may receive Medicaid if sufficient allowable medical expenses are incurred. BEM 105, p. 1; BEM 545 (October 2018), p. 1. Each calendar month is a separate deductible period. BEM 545, p. 11. The fiscal group's monthly excess income is called the deductible amount. *Id.* Meeting a deductible means reporting and verifying allowable medical expense that equal or exceed the deductible amount for the calendar month. *Id.* Petitioner is potentially eligible for a deductible through Group 2- Aged Blind Disabled (G2S) and Group 2- Caretaker (G2C) categories. G2C generally offers significantly lower deductibles than G2S. Thus, only Petitioner's G2C eligibility will be examined.

Income eligibility for G2C exists when net income does not exceed the Group 2 needs in BEM 544. BEM 135 (October 2015), p. 2. The Department applies the MA policies in BEM 500, 530 and 536 to determine net income. *Id.*

The G2C net income calculation starts with determining Petitioner's and her husband's pro-rated income. This is calculated by subtracting a [REDACTED] work standard work expense from any earned income, a deduction for [REDACTED] plus 1/3 of the remaining earned income if the group member received Family Independence Program (FIP) or LIF benefits in one of the last four months, subtracting any dependent care expenses arising from costs while working, and child support. BEM 500 (July 2017); BEM 536 (November 2018), p. 1-3. Petitioner's husband has no earned income and there was no evidence of a child support expense. No evidence was presented that Petitioner or her husband were FIP or LIF recipients, so the only deduction is [REDACTED] to Petitioner's earned income. Next, any unearned income and child support income is added to the new earned income total to achieve the total net income. BEM 536, p. 3. Petitioner's husband's total net income is [REDACTED]. No evidence was presented of receipt of guardianship/conservator expenses; therefore, this step of the calculation is skipped. BEM 536, p. 3. Finally, after consideration of all of the above income, expenses, and deductions, the remaining income is divided by the sum of the number of dependents and 2.9. BEM 536, p. 4. Petitioner's husband has 2 children under age 18; therefore, his prorated divisor is 5.9 (wife plus two kids plus 2.9) and his prorated share of the group's income is [REDACTED] (dropping the cents). The same steps are followed to achieve Petitioner's prorated share of income of [REDACTED]. Finally, the adult fiscal group's net income is 2.9 times Petitioner's prorated share, plus 3.9 times his wife's prorated share, plus one prorated share of Petitioner's husband's net income for a total of [REDACTED] (dropping the cents). BEM 536, pp. 6-7.

The remainder of the calculations are governed by BEM 544 and 545. BEM 536, p. 7. Deductions are given for insurance premiums and remedial services. BEM 544 (July 2016), pp. 1-2. Petitioner's husband is responsible for the payment of a Medicare Part B Premium in the amount of \$[REDACTED] per month. Therefore, the total net income is [REDACTED]. To achieve the deductible, the protected income level (PIL) is subtracted from the total net income. The PIL is a set allowance for non-medical need items such as shelter, food, and incidental expenses. *Id.* The PIL for G2C eligibility with a group size of two (an adult and their spouse for G2C purposes) is [REDACTED] because Petitioner is a resident of [REDACTED] County (Shelter Area VI) and married. RFT 240 (December 2013), p. 1; RFT 200 (April 2017), p. 2; BEM 211, p. 9. Petitioner's husband has a deductible of [REDACTED]. The Department calculated deductibles less than the amount determined here for each month between February 2019 to present. The evidence presented is unclear as to why Petitioner's husband had a variable deductible between February and April 2019 which suggests that some information was not presented by the Department or Petitioner in the hearing. Since the calculations made by the Department are more beneficial to Petitioner's husband, those deductible calculations are affirmed and will not be changed for purposes of this decision.

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 did not act in accordance with Department policy when it denied Petitioner eligibility for the

HMP, but acted in accordance with Department policy when it determined Petitioner's husband's eligibility for MA with a deductible under the G2C category.

**DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the determination of Petitioner's husband's MA eligibility with a deductible and **REVERSED IN PART** with respect to Petitioner's eligibility for MA benefits.

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. Redetermine Petitioner's MA eligibility effective February 2019;
2. If otherwise eligible, issue supplements to Petitioner or on her behalf for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.

AM/tm



---

**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 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**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**CC:**

[REDACTED]  
[REDACTED]