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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: September 3, 2019  
MOAHR Docket No.: 19-007674  
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 August 21, 2019, from ██████████ Michigan. Petitioner testified and was represented by an authorized hearing representative (AHR). ██████████ Petitioner's sister, testified and participated as Petitioner's AHR. The Michigan Department of Health and Human Services (MDHHS) was represented by Gena Harrington, specialist.

### **ISSUES**

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

The second issue is whether MDHHS properly failed to determine 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. On May 20, 2019, Petitioner applied for medical benefits. Exhibit A, pp. 6-9.
2. As of May 2019, Petitioner was disabled, unmarried, not a caretaker to minor children, and a recipient of Medicare.
3. As of May 2019, Petitioner was eligible to receive \$1,069.50 in gross Retirement, Survivors and Disability Insurance (RSDI). Petitioner's RSDI payments were reduced by \$135.50/month for a Medicare Part B premium.

4. On June 27, 2019, MDHHS denied Petitioner's application due to excess income and/or excess assets. Exhibit A, pp. 16-17.
5. On July 9, 2019, Petitioner's AHR requested a hearing to dispute Petitioner's medical eligibility. Exhibit A, pp. 3-4.
6. On an unspecified date, MDHHS determined that Petitioner was eligible for Medicaid subject to a \$506/month deductible beginning June 2019.<sup>1</sup>
7. As of the hearing date, MDHHS did not determine Petitioner's eligibility for MSP.

### **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).

The MA program includes two separate types of benefits. First, health care coverage is available through Medicaid. Secondly, Medicare Savings Program (MSP) is potentially available to assist client with Medicare copayments and premiums.

Petitioner requested a hearing to dispute a denial of Medicaid. At the time of Petitioner's hearing request, MDHHS denied Petitioner's application dated May 20, 2019, requesting Medicaid. A Health Care Coverage Determination Notice (Exhibit A, pp. 16-17) stated that Petitioner had excess income and failed to submit proof of assets. MDHHS later changed its denial to an approval of Medicaid subject to a \$506/month deductible. MDHHS' later Medicaid determination will be the subject of the analysis.

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.*

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<sup>1</sup> MDHHS also stated that Petitioner was approved for full Medicaid in May 2019. MDHHS stated the approval was improper and corrected to Medicaid subject to a deductible beginning June 2019.

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 the hearing date, Petitioner was disabled and/or aged, not pregnant, a Medicare recipient, and not a caretaker to minor children. Petitioner's circumstances render him ineligible for all MAGI-related categories. As a disabled and/or aged individual, Petitioner is potentially eligible for Medicaid through the SSI-related category of AD-Care.

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.* AD-Care is a Group 1 category. BEM 163 outlines the procedures for determining income eligibility under AD-Care.

Determining AD-Care income eligibility begins with factoring a client's income. As of the disputed benefit month, Petitioner was eligible to receive \$1,069.50/month in RSDI benefits. Generally, MDHHS factors the gross amount of RSDI in determining Medicaid eligibility.<sup>2</sup> BEM 503 (April 2019), p. 28.

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 relevant expenses were alleged.

AD-care income limits are 100% of the Federal Poverty Level + \$20. RFT 242 (April 2019), p. 1. The income limit for a one-person AD-Care group is \$1,061. *Id.* Petitioner's countable income exceeds the AD-Care income limit; 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 amount. *Id.* Meeting a deductible means reporting and verifying allowable medical expenses that equal or exceed the deductible amount for the calendar month. *Id.*

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<sup>2</sup> 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.

For G2S, a client's gross RSDI is counted. Petitioner's countable income for purposes of G2S is \$1,069.50

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. MDHHS factored a Medicare premium of \$135.50. 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 \$408. 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 \$506; the same deductible was calculated by MDHHS. Thus, MDHHS properly determined Petitioner's Medicaid eligibility.

Petitioner testified that his monthly RSDI benefits were reduced \$135.50 every month; the reduction is indicative of a cost for a Medicare premium which is typically \$135.50. MDHHS testimony acknowledged that Petitioner was not eligible for MSP. The evidence raised a concern that MDHHS did not evaluate Petitioner's application dated May 20, 2019, for MSP eligibility.

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 MDHHS funding is available. *Id.*

The evidence suggested that MDHHS never determined Petitioner's MSP eligibility despite Petitioner paying for a Medicare premium every month. When asked why Petitioner was not considered for MSP eligibility, MDHHS responded that he probable was and denied due to excess income. MDHHS' response is dubious as Petitioner's monthly income falls within the range of SLMB income-eligibility (\$1,061.01 to \$1,269). RFT 242 (April 2019), p. 1.

Given the evidence, MDHHS failed to process Petitioner's application dated May 20, 2019, for MSP benefits. The failure of MDHHS entitled Petitioner to a processing of his application for MSP benefits.

**DECISION AND ORDER**

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 \$506/month deductible beginning June 2019. 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 failed to process Petitioner's application dated May 20, 2019, concerning MSP benefits. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Register Petitioner's application dated May 20, 2019, concerning MSP;
- (2) Process Petitioner's MSP eligibility, including issuing any benefits improperly not issued and mailing notice.

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 (vis electronic mail)**

Lori Duda  
MDHHS-Oakland-2-Hearings

BSC4  
D Smith  
EQAD

**Petitioner (via first class mail)**

[REDACTED]  
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**Authorized Hearing Rep.  
(via first class mail)**

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