



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

████████████████████
████████████████████
██████████ MI ██████████

Date Mailed: September 9, 2019
MOAHR Docket No.: 19-007690
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 appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Mariah Schaefer, manager.

ISSUE

The issue is whether MDHHS properly determined Petitioner's medical 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 9, 2019, Petitioner applied for medical benefits.
2. As of May 9, 2019, Petitioner was unmarried, non-pregnant, disabled, a recipient of Medicare, and not a caretaker to minor children.
3. As of May 2019, Petitioner received ongoing gross Retirement, Survivors and Disability Insurance (RSDI) of \$1,060/month. Petitioner also received at least \$25/year from songwriting royalties.¹

¹ Petitioner testified that she cowrote, ██████████, performed by ██████████.

4. On an unspecified date, Petitioner submitted documents to MDHHS listing bank account balances available to Petitioner which totaled \$3,739.90.
5. On June 3, 2019, MDHHS denied Petitioner's application for medical benefits due to excess assets.
6. On July 3, 2019, Petitioner requested a hearing to dispute the denial of Medicaid.
7. On an unspecified later date, MDHHS determined Petitioner to be eligible for Medicaid subject to a deductible.

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 stated that she intended to dispute her Medicaid eligibility for every benefit month in 2019.² Petitioner's intent was not apparent from her hearing request signed on June 30, 2019, which simply requested a hearing. As of June 30, 2019, the most recent action taken by MDHHS was a denial of Petitioner's application dated May 9, 2019, which requested medical benefits. Given the content of Petitioner's hearing request, it is reasonably interpreted as a request for a hearing to dispute the denial of her application dated May 9, 2019. A Health Care Coverage Determination Notice dated June 3, 2019, stated that MDHHS denied Petitioner's application due to excess assets.

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

As of Petitioner's application month, Petitioner was unmarried, not pregnant, disabled, a recipient of Medicare, and not a caretaker to minor children. Under her circumstances, Petitioner is ineligible for all MAGI-related categories. As a disabled individual, Petitioner is potentially eligible for Medicaid under an SSI-related category.

² MDHHS credibly testified that Petitioner was eligible for Medicaid in January 2019 and February 2019.

Assets must be considered in determining eligibility for SSI-related MA categories. BEM 400 (January 2018), p. 1. The SSI-Related MA asset limit for an unmarried individual is \$2,000. *Id.*, p. 8.

After requesting verifications from Petitioner, Petitioner submitted documentation of her personal savings and checking account at ██████████ Credit Union. The documentation listed \$100 balances for each. The \$200 total is a countable asset.

Petitioner also submitted documentation of three accounts at ██████████ Bank. The documentation submitted by Petitioner listed a checking account in her name in which her monthly RSDI was deposited, her roommate's checking account which included Petitioner's name, and a savings account to which Petitioner also had access. Petitioner contended that her roommate's checking and savings account should not be factored as assets because Petitioner's name was only added to the accounts in the case of an emergency.

An asset must be available to be countable. BEM 400 (April 2019), p. 10. Available means that someone in the asset group has the legal right to use or dispose of the asset. *Id.*

Petitioner did not deny that the monies in each Huntington Bank account were available to her. As the account funds were available to Petitioner, the accounts are properly considered to be assets of Petitioner. Thus, all ██████████ Bank accounts can be considered in determining Petitioner's asset-eligibility for Medicaid.

Petitioner's Huntington Bank documentation listed account balances of \$967.46, \$849.86, and \$1,722.58. Exhibit A, p. 7. The assets totaled \$3,539.90. Adding Petitioner's \$200 from ██████████ Credit Union results in \$3,739.90 in countable assets. Thus, Petitioner's countable assets exceeded the \$2,000 asset limit for SSI-Related MA.

The above analysis did not consider whether Petitioner's assets fell below the asset limit for one day in the benefit month or whether MDHHS counted Social Security Administration benefits directly deposited into one of Petitioner's accounts as an asset (see BEM 400). These considerations were moot because MDHHS later approved Petitioner for Medicaid subject to a monthly deductible.³ The evidence did not establish when MDHHS determined Petitioner to be eligible for Medicaid but the evidence suggested the determination was made after Petitioner requested a hearing. Petitioner's hearing request could be dismissed as MDHHS reversed the action that was the subject

³ A determination that Petitioner is eligible for Medicaid (even if subject to a deductible) cannot be made unless MDHHS determined that Petitioner's assets fell below the asset limit.

of Petitioner's hearing request dispute. As a courtesy to Petitioner, the analysis will proceed to determine if MDHHS properly denied full Medicaid to Petitioner.⁴

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.*

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.

As a disabled and/or aged individual, Petitioner is potentially eligible for Medicaid under the SSI-related category of 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 \$1,060.00/month in RSDI benefits. Generally, MDHHS factors the gross amount of RSDI in determining Medicaid eligibility.⁵ BEM 503 (April 2019), p. 28. MDHHS additionally budgeted approximately \$50/year that Petitioner received from songwriting royalties.⁶ Petitioner testified that \$50/year is unrepresentative and that she anticipates receiving maybe half as much royalty income in 2019; for purposes of the analysis, Petitioner's testimony will be accepted as fact and only \$25/year will be factored as Petitioner's royalty income. Dividing Petitioner's royalty income by 12 results in a countable income of \$2/month (dropping cents). Thus, Petitioner's total income for Medicaid is \$1,062.

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 by \$1. Notably, MDHHS provides no consolation for the proximity of a client's income to the income limit. In other words, a client that is \$1 above the income limit is as ineligible for full Medicaid as a client that is thousands of dollars from the income limit. Therefore, Petitioner is not eligible for

⁴ The analysis will not determine whether MDHHS correctly calculated the amount of Petitioner's deductible. If Petitioner wishes to dispute her deductible amount, she can do so by requesting another hearing.

⁵ 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.

⁶ Petitioner's royalty income is so unusual that MDHHS appears to have no specific policy stating how royalty income should be budgeted. In lieu of such a policy, the income is presumed to be countable.

Medicaid through AD-Care and MDHHS properly determined Petitioner to be ineligible for full Medicaid under a Group 1 Medicaid category.

Petitioner's circumstances raise two points that merit attention. First, the difference between Medicaid eligibility and ineligibility appears to be Petitioner's relatively small royalty income. Thus, if Petitioner sells ownership of her royalties, she may be eligible for full Medicaid.⁷ The evidence also suggested a Medicaid deductible of hundreds of dollars despite Petitioner exceeding the Group 1 income limit by a slight margin. Such a circumstance is typical because MDHHS calculates a client's deductible from a protected income level (see RFT 240) which is much smaller than the Group 1 Medicaid income limit.

During the hearing, Petitioner also expressed a dispute over Medicare Savings Program (MSP) eligibility. As a courtesy to Petitioner, the matter was addressed during the hearing. MDHHS responded that Petitioner was approved for MSP benefits for all months in 2019. MDHHS verified its testimony by submitting a history of Petitioner's MSP eligibility which listed an approval of MSP for all months in 2019. Exhibit A, pp. 19-20.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's application dated May 9, 2019, requesting Medicaid due to excess assets. It is also found that MDHHS properly denied Group 1 Medicaid eligibility to Petitioner. The actions taken by MDHHS are **AFFIRMED**.

CG/jaf



Christian Gardocki

Administrative Law Judge

for Robert Gordon, Director

Department of Health and Human Services

⁷ MDHHS policy penalizes clients who divest assets to become Medicaid eligible. BEM 405. The sale of Petitioner's royalties may result in a relatively small divestment penalty depending on the value of the royalties. Petitioner should discuss the matter with her specialist.

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 (via electronic mail)

Mariah Schaefer
MDHHS-Allegan-Hearings

BSC3
D Smith
EQAD

Petitioner (via first class mail)

████████████████████
████████████████████
██████████ MI ██████████