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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: October 11, 2019
MOAHR Docket No.: 19-008225
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 September 5, 2019, from Detroit, Michigan. The Petitioner was represented by ██████████, his Authorized Hearing Representative (AHR). Also present at the hearing were ██████████ and ██████████, Case Coordinator of the ██████████. Petitioner ██████████ also appeared. The Department of Health and Human Services (Department) was represented by Lori Milbocker, Eligibility Specialist, and Kathy Burr, Assistance Payments Supervisor.

ISSUE

Did the Department properly find Petitioner eligible for Medical Assistance (MA) subject to a spenddown?

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, through his AHR, applied for Medicaid and the Medicare Savings Program (MSP) on May 6, 2019.
2. The Department issued a Health Care Coverage Determination Notice on June 11, 2019, which approved Petitioner for MA subject to a MA deductible of \$830 a month and full coverage MSP (cost sharing) for SLMB.

3. The local DHHS (Washtenaw County DHHS) sent a request to the Michigan Department of Health and Human Services-Disabled Adult Child (MDHHS-DAC) screening unit to determine if Petitioner met the DAC MA eligibility requirements. The MDHHS-DAC determined that Petitioner did not meet the DAC eligibility criteria for Medicaid. Exhibit D.
4. The MDHHS-DAC determined on July 11, 2019, that Petitioner was not eligible for DAC Medicaid because his Supplemental Security Income (SSI) eligibility ended. Notes from the MDHHS-DAC indicate that SSI ended due to change in living arrangement, not due to the start or increase of any DAC Retirement, Survivors and Disability Insurance (RSDI). Petitioner's eligibility for SSI ended on February 1, 2008. Exhibit D.
5. Petitioner is over the age of 18, (DOB [REDACTED], 1977). Petitioner is disabled.
6. Petitioner receives \$1,258.00 monthly; \$761 in RSDI from his work record and \$497 in DAC RSDI based upon his father's Social Security under Section 202 (d) of the Social Security Act, 42 USC 402 section 202(d).
7. Petitioner was found eligible for DAC RSDI by a Social Security Administration (SSA) Hearing Decision issued on April 12, 2017, which found him disabled and entitled to SSA child's insurance benefits under section 202(d) of the Act. 42 USC 402 section 202(d). Petitioner is a Disabled Adult Child (DAC). The Petitioner was eligible because he was a child of an individual entitled to old age or disability insurance benefits and because he was determined disabled, and his disability began before he attained the age of 22. The SSA Decision determined that Petitioner's disability onset date to be [REDACTED], 1995, his 18th birthday. Petitioner Exhibit 1, pp. 10-17.
8. Petitioner is not an SSI recipient. The Petitioner's SSI ended when the SSA determined that his income, when the value of food and shelter received from living in his parent's home was included (added to his income) exceeded the amount of SSI he was entitled to receive. Petitioner's application for SSI filed on October 29, 2014, was denied by the SSA. Petitioner Exhibit 3.
9. The Petitioner's AHR requested a timely hearing on August 8, 2019, protesting the denial of Petitioner's application for full Medicaid and denial of Petitioner for DAC Medicaid.

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, the Petitioner applied for Medicaid on May 6, 2019. The Petitioner's AHR challenges the Department's denial of full Medicaid coverage for the Petitioner and the imposition of MA with an \$830.00 monthly spenddown amount based upon the Petitioner's income. The Petitioner's AHR's position is that Petitioner should be eligible for full Medicaid coverage as a Disabled Adult Child (DAC). The Department has a designated unit that determines whether a DAC individual is eligible for Medicaid based upon that status. BEM 158 is the Department policy utilized to determine DAC Medicaid eligibility. At the outset, it must be understood that an individual could be a disabled adult child but not be DAC eligible for Medicaid. In this case, the MDHHS-DAC unit provided a determination at the request of the local office and found based upon information from the SSA that the Petitioner was not eligible for Medicaid as a DAC.

The DAC unit advised that the Petitioner was not eligible for Medicaid as a DAC because Petitioner's SSI ended due to a change in his living arrangement, NOT due to the start or increase of any DAC RSDI. Exhibit D, pp. 36-37.

Medicaid DAC eligibility provisions are set forth in Department policy found in BEM 158:

MA is available to a person receiving disabled adult children's (DAC) (also called Childhood Disability Beneficiaries' or CDBs') RSDI benefits under section 202(d) of the Social Security Act if he or she:

1. Is age 18 or older; and
2. Received SSI; and
3. Ceased to be eligible for SSI on or after July 1, 1987, because he became entitled to DAC RSDI benefits under section 202(d) of the Act or an increase in such RSDI benefits; and
4. Is currently receiving DAC RSDI benefits under section 202(d) of the Act; and

Note: To receive DAC RSDI a person must have a disability or blindness that began before age 22.

5. Would be eligible for SSI without such RSDI benefits.

Supplemental Security Income (SSI) is a cash benefit for needy individuals who are aged (at least 65), blind or disabled. The Social Security Administration (SSA) determines SSI eligibility. BEM 150 (October 2019), p. 1.

In this case, because Petitioner's SSI ended due to a change in living arrangement and NOT due to receiving DAC-RSDI or due to an increase in DAC-RSDI, it is determined that Petitioner is not eligible for Medicaid under BEM 158 as a DAC. This determination is supported by Petitioner's Exhibit 3 in which the SSA decision denied Petitioner's application for SSI because of excess income due to the monetary value of the assistance received by Petitioner for food and shelter from his family. Petitioner's AHR also testified to the same. Thus the Department DAC unit found that Petitioner's SSI benefits did not end due to his receipt of RSDI or DAC RSDI. Petitioner Exhibit 3, p. 3 and Exhibit D.

In a SSA Hearing Decision, presented by Petitioner's AHR at the hearing, Petitioner sought a determination that he was entitled to payment of disabled child's insurance benefits. The hearing decision found the Petitioner to be entitled to Disability Childs Insurance under Section 202 (d) of the Social Security Act, 42 USC 402 Section 202(d).

As stated in that decision, in order to be eligible for such benefits, the claimant must be 18 years or older and have a disability that began before the age of 22. The onset date for Petitioner's disability was determined by the SSA ALJ to be [REDACTED], 1995, the day the claimant (Petitioner) turned 18. The Decision found that the Petitioner was disabled from [REDACTED], 1995, through the date of the SSA decision. [REDACTED], 1995, was determined by the ALJ to be the Petitioner's alleged disability onset date based on his application for disabled child's insurance filed on November 25, 2014, under section 223d of the Social Security Act, 42 USC 402 Section 223d.

The Petitioner is a DAC by virtue of his receipt of DAC RSDI based upon the SSA provisions found in section 202d of the Act as discussed above. An RSDI-DAC is an individual who is 18 years old or older and is determined disabled as a child before the age of 22 which entitles the individual to receive RSDI benefits as a child of parent who is receiving SSA benefits known as disabled child's insurance benefits.

A Petitioner's receipt of DAC RSDI does not make him automatically eligible for Medicaid based upon his DAC status. Although Petitioner is eligible for DAC RSDI, Petitioner did not meet the criteria for eligibility for DAC MA due to the fact that his SSI ended due to a change in his living arrangement. Thus he is not eligible for DAC. In addition, based upon Petitioner's non DAC RSDI income of \$761 the Petitioner also does not meet the income eligibility requirements for DAC Medicaid. Based upon the income limit for DAC Medicaid of \$514.00 for a group of one individual living in the household of another the Petitioner does not meet the financial eligibility requirements for DAC Medicaid. RFT 245 (January 2019), p. 1.

Even though the Department found Petitioner ineligible for DAC MA coverage, it determined he was eligible for MA subject to an \$830 monthly deductible. At the

hearing, Petitioner's AHR asserted that the MA deductible amount was incorrect because the Petitioner's DAC-RSDI income should not be included in countable income in determining whether the Petitioner's income exceeded the Medicaid income limit. Petitioner's AHR based her assertion on the provisions found in BEM 158 which governs DAC Medicaid income eligibility determinations. DAC Medicaid is an SSI-related Group 1 category of medical assistance. The provision that determines income eligibility for a DAC applicant provides:

Income eligibility exists when net income does **not** exceed the special protected income level in RFT 245. Income eligibility **cannot** be established with a patient-pay amount or by meeting a deductible.

Determine countable income according to MA policies in BEM 500 and 530 **except** as explained in **COUNTABLE RSDI** below. Apply the deductions in BEM 541 to countable income to determine net income.

The Countable RSDI section provides:

Exclude all DAC related RSDI benefits for the person whose **DAC eligibility** is being determined. **Count any RSDI benefits that are not related to DAC.**

For all other persons, countable RSDI is the person's gross RSDI for the month being tested. Gross RSDI means the amount before any deductions such as Medicare. BEM 158 (October 2014), p.3.

This provision is used to determine Medicaid financial eligibility on the basis of **DAC Medicaid eligibility requirements in BEM 158**, not Medicaid eligibility for a non DAC individual. BEM 158 requires that all DAC related RSDI be excluded in a DAC income eligibility determination. This provision does not apply to determining what income is to be included as countable income for other Medicaid program income eligibility. Thus, the Department correctly included the Petitioner DAC-RSDI income of \$467 when determining his Medicaid eligibility and including it as countable income for Group 2 SSI related MA. For Group 2, eligibility is possible even when net income exceeds the income limit. This is because incurred medical expenses are used when determining eligibility for Group 2 categories. Group 2 categories are considered a limited benefit because a deductible is possible. BEM 105 (April 2017) p.1.

BEM 503 covers how to treat unearned income and provides:

RSDI is a federal benefit administered by the Social Security Administration that is available to retired and disabled individuals, their dependents, and survivors of deceased workers.

Bridges counts the gross benefit amount as unearned income.

Exceptions:

- Special rules apply when determining MA eligibility for certain former SSI recipients; see BEM 155, 503 Individuals, 157, Early Widow(er)s, and 158, Disabled Adult Children. These special rules do **not** apply to post-eligibility patient-pay amount calculations in BEM 546.

BEM 503, (October 1, 2019), p. 30.

Based upon Petitioner's monthly income, the Department determined that his income exceeded the monthly income limit for full Medicaid Ad Care. Petitioner is an MA group of one individual, does not receive SSI and is disabled and thus, his income must be used to determine his eligibility for Medicaid. The Petitioner's income is based upon receipt of DAC RSDI of \$497 from the Petitioner's own Social Security from his work record and from RSDI \$761. Petitioner's total monthly countable income is \$1,258. The parties did not dispute the total income determination.

The MA income limit for (SSI)-related categories for a group size of one member is \$1,061.00. RFT 242 (April 2019), p. 1. As determined by the Department and the evidence presented, Petitioner's countable income from RSDI and RSDI-DAC is \$1,258 monthly. Exhibit B. Based upon the monthly income limit for full Medicaid coverage, under Ad Care, the Department correctly determined that the Petitioner's income exceeded the MA income limit for full Medicaid. BEM 163 ((July 2017), p. 2 and RFT 242.

Since Petitioner has excess income for eligibility under the full coverage SSI-related MA program, an evaluation of Petitioner's eligibility for MA coverage under the Group 2 program follows. Group 2 provides MA coverage with a deductible. BEM 105 (April 2017), p. 1. The Department presented a budget it used to determine the Petitioner's MA spenddown which is reviewed hereafter. Exhibit B.

The deductible is the amount that the client's net income (less any allowable deductions) exceeds the applicable Group 2 MA protected income level (PIL). PIL is a set allowance for non-medical need items such as shelter, food, and incidental expenses. BEM 544 (July 2016), p. 1. It is based on the client's MA fiscal group size and the county in which the client resides. *Id.* Petitioner resides in ██████████ County and has a group size of one; therefore, he is in shelter area VI, and the PIL is \$408.00. RFT 200 (April 2017), p. 3; RFT 240 (December 2013), p. 1. Thus, if Petitioner's monthly net income (less allowable needs deductions) is in excess of \$408.00, Petitioner is eligible for MA under the G2S program with a deductible equal to the amount of income remaining after the appropriate and allowed deductions which are greater than \$408.00.

As discussed above, Petitioner's household net income was \$1,258.00. In calculating the deductible, allowances are made for health insurance premiums and remedial services. BEM 544, pp. 1-2. The unearned income exclusion of \$20 is first deducted from the total income leaving \$1,238.00. Next, the PIL \$408.00 is subtracted from his

countable income to reach a deductible of \$830.00. No medical premium deduction for Medicare Part B was made as it is not paid by the Petitioner. Exhibit B and Exhibit C. Based upon the evidence presented it is determined that the Department correctly calculated the Petitioner's MA spenddown.

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 acted in accordance with Department policy when it determined the Petitioner was eligible for Medical assistance subject to a \$830.00 deductible.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

LMF



Lynn M. Ferris

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 (via electronic mail)

Courtney Jenkins
MDHHS-Washtenaw-Hearings
BSC4
D Smith
EQAD

Petitioner (via first-class mail)

[REDACTED]

Authorized Hearing Rep.
(via first-class mail)

[REDACTED]