



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: September 20, 2019
MOAHR Docket No.: 19-008257
Agency No.: ██████████
Petitioner: ██████████

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 September 18, 2019, from Detroit, Michigan. The Petitioner was represented by her husband, ██████████, who was the recipient in question based upon the request for hearing. The Department of Health and Human Services (Department) was represented by ██████████, Hearings Coordinator.

ISSUE

Did the Department properly determine Rex Recek's (Client) Medical Assistance (MA) Program 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 July 22, 2019, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner informing her that Client was eligible for MA benefits with a deductible of ██████████ for the month of April 2019, ██████████ for the months of April through July 2019, and ██████████ per month beginning August 2019.
2. The HCCDN also informed Petitioner that Client was not eligible for the Medicare Savings Program (MSP) because his income exceeded the program limit.

3. On July 29, 2019, the Department received a request for hearing disputing the Department's determination of MA eligibility for Client signed by Client.

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, Client requested a hearing to dispute the Department's determination of MA eligibility. At the hearing, there was some discussion and debate about whether Petitioner's son should be included in his MA group. Policy provides that when determining eligibility for an SSI-Related Adult MA category, the group includes the applicant and their spouse for all categories except L/H, waiver, and Freedom to Work clients. BEM 221 (February 2019), p. 8. Policy also provides that when determining MA eligibility for a Modified Adjusted Gross Income (MAGI) category, the group for a tax-filer who is not claimed as a dependent consists of the individual, their spouse, and their tax dependents. BEM 211, p. 2.

On July 6, 2019, Client's son turned age 18. Around that time, Client informed the Department that he had enlisted in the military, but that he did not know when his ship out date would be. At the hearing, Client testified that his son moved out due to his enlistment on September 7, 2019 and that they did not know his ship out date until about a week prior. According to the Department case comments on Client's file, the Department believed that Client's son had moved out effective July 29, 2019. Given that the person who made the note did not appear in the hearing, and the circumstances of Client's son leaving the home, the evidence shows that there was a misunderstanding or miscommunication about Client's son's presence in the home in July 2019.

Since Client's son was still in the home until September 7, 2019, Client was potentially eligible for MA under the Low-Income Family (LIF) category. BEM 110 (April 2018), p. 1. To be eligible, adults with a dependent child must have income under 54% of the federal poverty level (FPL). *Id.* LIF is a MAGI MA category; therefore, Client's son and wife are considered to be part of Client's MA group. BEM 110, p. 1; BEM 211, p. 2.

The 2019 FPL for a three-person household is \$21,330.00. See <https://aspe.hhs.gov/poverty-guidelines>. The corresponding LIF income limit is \$11,518.20. Therefore, to be income eligible for LIF coverage, Client's group's income must be less than \$11,518.20 annually or \$959.85 per month.

Client is a Retirement Survivors Disability Insurance (RSDI) recipient with a monthly benefit of \$[REDACTED] per month. His wife is also an RSDI benefit recipient with a monthly benefit of \$[REDACTED] per month. All RSDI income is countable for tax-filers and adults not claimed as dependents. BEM 503 (January 2019), p. 29. Client's income on its own is greater than the LIF income limit; therefore, he is not eligible for LIF MA benefits.

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. Since Client is a Medicare recipient, he is not eligible for HMP.

Client is an RSDI recipient; thus, he potentially qualifies for the Ad-Care category of MA. In determining the SSI-related MA category Client is eligible to receive, the Department must determine Client's husband's SSI-related MA fiscal group size and net income. As discussed above, his group for SSI-related MA purposes includes himself and his wife. Therefore, his SSI-related MA group's income is [REDACTED].

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 \$1,430.00 for a group size of two effective April 1, 2018. RFT 242 (April 2019), p. 1. After consideration of the \$20.00 general exclusion, Client's group's income is \$2,098.50. BEM 541 (January 2018), p. 3. No evidence was submitted regarding any Guardianship or Conservatorship expenses. Therefore, Client'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.

Client 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.* Client is potentially eligible for a deductible through Group 2- Aged Blind Disabled (G2S) and Group 2- Caretaker (G2C) categories because he is an RSDI recipient and was responsible for the care of a dependent child through September 6, 2019. G2C generally offers significantly lower deductibles than G2S. The Department did not present any evidence of an evaluation of a G2C deductible and instead only presented evidence of a G2S deductible. Policy provides that persons may qualify under more than one MA category and Federal law gives them the right to choose the most beneficial category. BEM 105 (April 2017), p. 2. The most beneficial category is the one that results in eligibility, the least amount of excess income, or the lowest cost share. *Id.* Since the Department did not evaluate Client's potential deductible under the G2C category for any of the months in question, the Department has not met its burden of proof that it acted in accordance with Department policy in placing Petitioner in the G2S category effective April 2019, ongoing.

Turning to the issue of Client's Medicare Savings Program (MSP) eligibility, the Department determined that Petitioner was over the income limit for the program. The MSP is divided into three subcategories. BEM 165 (January 2018), p. 1. Qualified Medicare Beneficiary (QMB) is the full coverage MSP. BEM 165, p. 1. Specified Low-Income Medicare Beneficiary (SLMB) is a limited coverage MSP. *Id.* The third MSP category is the Additional Low-Income Medicare Beneficiary (ALMB). *Id.* QMB pays for Medicare premiums, coinsurances, and deductibles. BEM 165, p. 2. SLMB pays Medicare Part B premiums. *Id.* ALMB pays for Medicare Part B premiums if funding is available. *Id.*

Income determines placement in the programs. BEM 165, p. 1. For QMB, net income cannot exceed 100% of the federal poverty level, the same as AD-Care. *Id.* SLMB is available for individuals whose income is over 100% of the federal poverty level, but not more than 120% of the federal poverty level. *Id.* Finally, ALMB is available to those whose income exceeds 120% of the federal poverty level but does not exceed 135%. *Id.* MSP is also a SSI-related MA category; therefore, Client's group size is two including himself and his wife. The income limit for QMB for a two-person household is \$1,410.00. RFT 242 (April 2019), p. 1. The income limit for SLMB is \$1,691.00. *Id.* Finally, the income limit for ALMB is \$1,903.00. *Id.* The net income limit is established through policy by subtracting \$20.00 from the amount shown in RFT 242.

As discussed above, Client's and his wife's monthly income is [REDACTED] which is greater than the ALMB income limit. Therefore, Client is not eligible for MSP coverage.

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 closed Client's benefits for MSP coverage but failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Client's MA eligibility effective April 1, 2019, ongoing.

DECISION AND ORDER

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

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 Client's eligibility for MA benefits effective April 1, 2019, ongoing;
2. If otherwise eligible, issue supplements to Petitioner, Client, or on their behalf for benefits not previously received; and,
3. Notify Client in writing of its decisions.



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]

Petitioner

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

cc: MA- Deanna Smith; EQADHShearings
AP Specialist (1)