



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: September 13, 2019  
MOAHR Docket No.: 19-008387  
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 September 11, 2019, from Detroit, Michigan. The Petitioner was self-represented and had his mother, [REDACTED] appear as a witness. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator.

### **ISSUE**

Did the Department properly determine Petitioner's 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. Petitioner was an ongoing MA recipient enrolled in the Ad-Care MA category.
2. Beginning in 2009, Petitioner was a recipient of Supplemental Security Income (SSI) benefits.
3. Effective December 1, 2018, Petitioner began receiving [REDACTED] per month as a Retirement Survivors Disability Insurance (RSDI) benefit.
4. On June 28, 2019, the Department received Petitioner's completed Redetermination.

5. On July 18, 2019, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner informing him that he was eligible for full coverage under the Medicare Savings Program (MSP) (to assist with his Medicare Premiums and expenses) effective August 1, 2019, but that he was eligible for MA with a deductible of \$[REDACTED] per month effective August 1, 2019.
6. On July 30, 2019, the Department received Petitioner's request for hearing disputing the Department's determination of his MA eligibility and deductible of [REDACTED] per month.

### **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 disputed the Department's determination that he was no longer eligible for the full coverage Ad-Care program and that instead he was eligible for MA only with a deductible of [REDACTED] per month.

Medicaid is available (i) under Supplemental Security Income (SSI)-related categories to individuals who are aged (65 or older), blind or disabled, (ii) to individuals who are under age 19, parents or caretakers of children, or pregnant or recently pregnant women, and (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage. BEM 105 (April 2017), p. 1. 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 (January 2019) p. 1; MPM, Healthy Michigan Plan, § 1.1.

Petitioner is not under age 19 or pregnant. No evidence was presented that Petitioner was a parent or caretaker of a minor child, or former foster child. Therefore, the

programs for each of these groups are inapplicable to the Petitioner. Since Petitioner is a Medicare Recipient, he is not eligible for HMP.

In determining the SSI-related MA category Petitioner is eligible to receive, the Department must determine Petitioner's MA fiscal group size and net income. Petitioner has a group size for SSI-related MA purposes of one as there was no evidence presented that Petitioner is married living with a spouse. BEM 211 (July 2019), p. 8. Petitioner's total monthly income is [REDACTED] as a result of his RSDI benefit.

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 one-person household is \$12,490.00. <https://aspe.hhs.gov/poverty-guidelines>. The net income limit is established through policy by subtracting [REDACTED] from the amount shown in RFT 242 at [REDACTED] for a group size of one effective April 1, 2019. RFT 242 (April 2019), p. 1. Countable income is calculated by adding the amounts of income actually received/available within the past month. BEM 530 (July 2017), p. 2. A review of the SSI-Related MA budget submitted by the Department shows that the Department properly considered Petitioner's RSDI income. The Department then properly applied the [REDACTED] general exclusion. BEM 541 (January 2018), p. 3. Other deductions may include a disregard for earned income, guardianship or conservator expenses, and work expenses. BEM 541, p. 3. These are the only allowable deductions in determining eligibility for Ad-Care and no evidence was presented that Petitioner had any of these expenses. Therefore, Petitioner's net income is \$[REDACTED] which is greater than the net income limit and the federal poverty limit when his net income multiplied by 12. Petitioner is not eligible for the full coverage Ad-Care program.

Since Petitioner has excess income for eligibility under the Ad-Care program, 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, p. 1.

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 [REDACTED] County and has a group size of one; therefore, he is in shelter area IV, and his PIL is \$[REDACTED]. 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 [REDACTED] Petitioner is eligible for MA assistance under the G2S program with a deductible equal to the amount of income remaining after the appropriate and allowed deductions which are greater than [REDACTED]

As discussed above, Petitioner's net income was [REDACTED]. In calculating the deductible, allowances are made for health insurance premiums and remedial services. BEM 544, pp. 1-2. These are the only allowable deductions when considering MA Group 2 eligibility. Remedial services produce the maximum reduction of physical and mental limitations, and restore an individual to their best possible functional level. BEM 544, p. 2. At a minimum, remedial services include basic self-care and rehabilitation training which teach and reinforce the following skills: dressing, grooming, eating, bathing, toileting, following simple instructions. *Id.* The Department budgeted [REDACTED] for an insurance premium, although neither party was clear what the premium was for. In any case, the inclusion of the premium in Petitioner's budget is beneficial to him and will not be removed for purposes of this decision. Petitioner also testified that he attended therapy sessions; however, therapy sessions are not considered remedial services, but instead would be counted as a medical expense. BEM 545 (July 2019) p. 17. Next, the Petitioner's PIL of [REDACTED] was subtracted to reach a deductible of [REDACTED] (dropping the cents). The Department properly calculated Petitioner's deductible.

However, at the hearing, the Department raised the possibility that Petitioner may be eligible for MA under the Disabled Adult Child (DAC) category of MA benefits. To be eligible for DAC, the individual must be receiving a DAC RSDI benefit, be age 18 or older, has received SSI in the past, but ceased to be eligible for SSI on or after July 1, 1987 because they became eligible for DAC RSDI benefits under section 202(d) of the Social Security Act, and would otherwise be eligible for SSI but for the RSDI benefits. BEM 158 (October 2014), p. 1. Policy provides that clients are entitled to receive the most beneficial MA category available to them. BEM 105 (April 2017), p. 2. The most beneficial category is the category that results in eligibility, with the least excess income or lowest cost share. *Id.* Since the Department did not evaluate Petitioner's eligible for MA DAC prior to the hearing, and he meets at least some of the criteria defined by policy, the Department has not met its burden of proof that it properly determined Petitioner's MA eligibility.

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 determined Petitioner's MA eligibility.

### **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 Petitioner's eligibility for MA benefits with consideration of MA DAC;

2. If otherwise eligible for DAC, issue supplements to Petitioner or on his behalf for benefits not previously received;
3. If not eligible for DAC, continue Petitioner's eligibility for MA with a deductible of \$669.00 under the G2S program.
4. Notify Petitioner in writing of its decision.



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**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:**

[REDACTED]  
[REDACTED]