



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 16, 2019
MOAHR Docket No.: 19-008909
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 3-way telephone hearing was held on September 12, 2019, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Candice Bennis, hearing facilitator.

ISSUES

The first issue is whether MDHHS properly determined Petitioner's Medical Assistance (MA) eligibility.

The second issue is whether MDHHS properly determined Petitioner's Food Assistance Program (FAP) 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. As of July 2019, Petitioner was an ongoing FAP and MA recipient.
2. As of July 2019, Petitioner was disabled, unmarried, not pregnant, a Medicare recipient, and not a caretaker to minor children.
3. As of July 2019, Petitioner was a member of a household that included his girlfriend, with whom he bought and prepared food.

4. As of July 2019, Petitioner received \$1,163 in Retirement, Survivors and Disability Insurance (RSDI). Petitioner's girlfriend received \$667.50 in Supplemental Security Income (SSI); she additionally received \$42 every three months for state-issued SSI.
5. As of July 2019, Petitioner had the following expenses: \$0 dependent care, \$0 child support, \$0 medical, and \$815 for housing. Petitioner also had an obligation for heating and/or cooling utilities.
6. On July 5, 2019, MDHHS determined Petitioner to be eligible to receive \$15/month in FAP benefits.
7. On an unspecified date, MDHHS determined Petitioner to be eligible to receive Medicaid subject to a \$768/month deductible.
8. On August 6, 2019, Petitioner requested a hearing to dispute FAP and MA eligibility.

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 requested a hearing to dispute a determination that he was eligible for Medicaid subject to a deductible. Petitioner's hearing request was silent as to which benefit month he was disputing. A corresponding notice of the determination was not presented to help identify the benefit month when MDHHS determined Petitioner to be eligible for Medicaid subject to a deductible. As Petitioner requested a hearing in July 2019, it will be assumed that Petitioner intended to dispute his eligibility for that month.

Petitioner testified that he received full Medicaid before imposed a deductible to his eligibility. A determination that a client is eligible for Medicaid subject to a deductible is an income-based determination. An analysis of whether MDHHS properly determined Petitioner's ongoing income-eligibility for Medicaid need not consider past Medicaid eligibility.¹ Thus, Petitioner's past Medicaid eligibility is irrelevant.

¹ Possible reasons for a change in eligibility, other than MDHHS error, include a change in a client's circumstances, a change in policy, and/or a correction to a previously incorrect determination. It should be noted that the undersigned incorrectly advised Petitioner during the hearing that the likely change in Medicaid eligibility was due to a change in policy. MDHHS policy previously disregarded percentages of a client's RSDI income when determining a client's MAGI-related eligibility; currently, MDHHS does not

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.*

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, unmarried, 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 \$1,163/month in RSDI benefits. Generally, MDHHS factors the gross amount of RSDI in determining Medicaid eligibility.² 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 and it is found that MDHSH properly determined Petitioner ineligible for Medicaid under a Group 1 Medicaid category.

disregard any RSDI when determining a client's MAGI-related eligibility. The change in policy would not affect Petitioner because he is only eligible for SSI-related Medicaid.

² 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 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.*

For G2S, a client's gross RSDI is counted. Petitioner's countable income for purposes of G2S is \$1,163.

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. No countable 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 \$375. RFT 240 (December 2013), p. 1.

Subtracting the PIL and \$20 disregard from Petitioner's countable income results in a monthly deductible of \$768; the same deductible was calculated by MDHHS. Exhibit A, p. 22. Thus, MDHHS properly determined Petitioner's Medicaid eligibility.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-119b, and Mich Admin Code, R 400.3001-.3011. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner also requested a hearing to dispute FAP eligibility. Petitioner's hearing request was silent as to which month of benefits was disputed. In lieu of Petitioner's silence, Petitioner's hearing request will be interpreted as a dispute of the MDHHS action affecting FAP eligibility nearest before Petitioner's hearing request date of August 6, 2019. The evidence established that the action nearest and before Petitioner's hearing request date was a determination on July 5, 2019, that Petitioner was eligible to receive \$15/month beginning August 2019. Exhibit A, pp. 12-16.

MDHHS' hearing packet included a Notice of Case Action and budget pages which listed all factors related to Petitioner's FAP eligibility. Exhibit A, pp. 10-16. During the hearing, all budget factors were discussed with Petitioner. BEM 556 outlines the factors and calculations required to determine FAP eligibility.

MDHHS factored a group size of two persons. Petitioner's testimony agreed that his FAP eligibility should have been based on a group which only included himself and his girlfriend.

Petitioner's testimony acknowledged that he received \$1,163/month in RSDI and that his girlfriend received a total of \$681.50/month in SSI.³ The sum of Petitioner's group's unearned income is \$1,844.50. MDHHS factored a slightly smaller unearned income of \$1,840/month. For purposes of the analysis, the smaller, and more favorable for Petitioner, income of \$1,840 will be accepted as correct.

MDHHS uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (October 2015), p. 1. For groups without a senior (over 60 years old), disabled or disabled veteran (SDV) member, MDHHS considers the following expenses: childcare, excess shelter (housing and utilities) up to a capped amount and court-ordered child support and arrearages paid to non-household members (see *Id.*). For groups containing SDV members, MDHHS also considers the medical expenses above \$35 for each SDV group member(s) and an uncapped excess shelter expense. Countable expenses are subtracted from a client's monthly countable income.

Petitioner's testimony acknowledged he had no child support, dependent care, or medical expenses. Thus, no expense subtractions need be taken to Petitioner's income.

Petitioner's FAP benefit group size justifies a standard deduction of \$158 (see RFT 255). The standard deduction is given to all FAP benefit groups, though the amount varies based on the benefit group size. The standard deduction is subtracted from the countable monthly income to calculate the group's adjusted gross income. Subtracting the standard deduction from Petitioner's running countable income results in an adjusted gross income of \$1,682.

MDHHS budgeted Petitioner's housing costs to be \$815.⁴ Petitioner acknowledged that the amount was correct. MDHHS credited Petitioner with the standard heat/utility credit of \$543 which is the maximum utility credit available. RFT 255 (October 2018) p. 1. Petitioner's shelter costs (housing + utilities) are \$1,358.

³ The SSI total reflects a federally-issued benefit of \$667.50 and an average of \$14/month in state-issued SSI.

⁴ In the notice dated July 5, 2019, MDHHS factored Petitioner's eligibility based on a housing cost of \$780. MDHHS acknowledged that Petitioner's housing cost was \$815 and the August 2019 budget should have reflected this. During the hearing, it was thought that MDHHS had not yet corrected Petitioner's housing costs. An updated budget on August 21, 2019, reflected the correct housing cost of \$820. Thus, the evidence established that MDHHS determined Petitioner's FAP eligibility based on a correct housing cost of \$815.


MDHHS only credits FAP benefit groups with an “excess shelter” expense. The excess shelter expense is calculated by subtracting half of Petitioner’s adjusted gross income from Petitioner’s total shelter obligation. Petitioner’s excess shelter amount is found to be \$517.

The FAP benefit group’s net income is determined by taking the group’s adjusted gross income and subtracting the allowable excess shelter expense. Petitioner’s FAP benefit group’s net income is \$1,165. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Petitioner’s group size and net income, Petitioner’s proper FAP benefit issuance for August 2019 is \$15; the same issuance was calculated by MDHHS. Thus, MDHHS properly determined Petitioner’s FAP eligibility.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined Petitioner’s FAP eligibility for August 2019 to be \$15. The evidence further established that MDHHS correctly determined Petitioner to be eligible for Medicaid subject to a \$768/month deductible beginning July 2019. The actions taken by MDHHS are **AFFIRMED**.

CG/jaf



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 (via electronic mail)

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