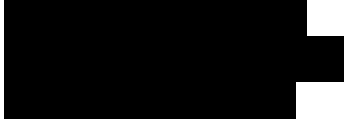




GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR



Date Mailed: January 14, 2020  
MOAHR Docket No.: 19-012583  
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 telephone hearing was held on January 8, 2020, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Valarie Foley, hearing facilitator.

### **ISSUE**

The issue is whether MDHHS properly determined Petitioner's Medicaid 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 December 2019, Petitioner was disabled, over the age of 65 years, married, a recipient of Medicare, not pregnant, and a caretaker to a minor child.
2. As of December 2019, Petitioner received gross monthly Retirement, Survivors and Disability Insurance (RSDI) of \$1,942. Petitioner also received monthly retirement income of \$2,447.
3. As of December 2019, Petitioner had no responsibility for payment of insurance premiums, guardianship costs, or remedial services.

4. On an unspecified date, MDHHS determined Petitioner to be eligible for Medicaid subject to a \$3,733 monthly deductible.
5. On November 15, 2019, Petitioner requested a hearing to dispute the determination of Medicaid.

### **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 of Medicaid eligibility. A Health Care Coverage Determination Notice dated November 7, 2019, stated that Petitioner and his spouse were ineligible for Medicaid. Exhibit A, pp. 6-10. MDHHS credibly testified that Petitioner's Medicaid eligibility was subsequently updated to Medicaid subject to a monthly deductible of \$3,733.

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 date of notice, Petitioner was aged and/or disabled. As an aged and/or disabled 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.

As of December 2019, Petitioner was married. For purposes of AD-Care, Petitioner's group size is two. BEM 211 (July 2019) p. 8.

As of the disputed benefit month, Petitioner received monthly income of \$1,942 from RSDI. Exhibit A, p. 11. Generally, MDHHS counts the gross amount of RSDI in determining Medicaid eligibility.<sup>1</sup> BEM 503 (October 2019), pp. 28-29. For purposes of AD-Care, Petitioner's countable RSDI is \$1,942.

Additionally, Petitioner received monthly income of \$2,447 from a pension. For retirement income, MDHHS is to count the gross benefit as unearned income. *Id.* Thus, for purposes of AD-Care, Petitioner's countable pension income is \$2,447 and his total countable income (RSDI + pension) is \$4,389.

MDHHS gives AD-Care budget credits for employment income, guardianship expenses, 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. Petitioner did not allege any relevant expenses.

For SSI-Related MA categories, MDHHS is to apply the deductions allowed in BEM 541 for adults. BEM 163 (July 2017) p. 2. A \$20 disregard is given for unearned income. BEM 541 (July 2019) p. 3. Subtracting the \$20 disregard results in a net income for Petitioner of \$4,369.

Net income for AD-Care cannot exceed 100% of the federal poverty level. BEM 163 (July 2017) p. 2. The annual federal poverty level for a 2-person group in Michigan is \$16,910<sup>2</sup>. Dividing the annual amount by 12 results in a monthly income limit of \$1,410 (rounding up to nearest dollar). Petitioner's countable income of \$4,369 greatly exceeds the AD-Care income limit of \$1,410. Thus, MDHHS properly determined Petitioner to be ineligible for Medicaid under AD-Care. As part of Petitioner's Medicaid determination, Petitioner is entitled to a determination of eligibility under a Group 2 category.

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

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<sup>1</sup> 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.

<sup>2</sup> <https://aspe.hhs.gov/2019-poverty-guidelines>

amount. *Id.* Meeting a deductible means reporting and verifying allowable medical expenses that equal or exceed the deductible amount for the calendar month. *Id.*

Petitioner's gross countable income of \$4,389 is unchanged for G2S. 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. MDHHS credited Petitioner for \$135.50 for Medicare Part B premiums; Petitioner did not allege payment of additional premiums.

A client's deductible is calculated by subtracting the protected income level (PIL) from the client's 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 \$500. RFT 240 (December 2013), p. 1.

Subtracting the PIL, insurance premium, and \$20 disregard from Petitioner's income results in a monthly deductible of \$3,733 (rounding down to nearest dollar). MDHHS calculated the same deductible. Exhibit A, p. 13. Thus, MDHHS properly determined Petitioner's Medicaid eligibility for G2S.

Petitioner testified that he is a caretaker to his two adult-aged children and a nephew who is [REDACTED] years old. Petitioner's claimed caretaker status to his adult-aged children would not expand Petitioner's potential Medicaid categories. Petitioner's status as a caretaker to his young nephew may qualify him for Medicaid categories other than AD-Care and G2S.

Low Income Family (LIF) eligibility is a MAGI-related eligibility subgroup. BEM 110 (April 2018) p. 1 Eligibility for LIF will be derived after a successful MAGI-related eligibility determination for either Parent/Caretaker Relative or Children Under 19. *Id.* Persons not income-eligible for LIF may be eligible for a deductible under G2C. BEM 135 (October 2015) p. 1.

The HCCDN dated November 7, 2019, stated that Petitioner was not eligible for Medicaid under the category of Parents and Caretaker because he was not a caretaker to a person under age 19. In other words, Petitioner was not considered for LIF or G2C because he was not considered to be a caretaker to a child under 19 years. Petitioner's status as a caretaker suggests he is potentially eligible for Medicaid under LIF and/or G2C. Unfortunately, the evidence did not explain why MDHHS did not pursue Petitioner's potential Medicaid eligibility under LIF and/or G2C. In lieu of an explanation, MDHHS will be ordered to consider Petitioner's eligibility under LIF and G2C. Petitioner should be advised that LIF has a lower income level than AD-Care (see BEM 110) and that G2C eligibility typically results in Medicaid deductibles comparable to G2S deductibles. Thus, Petitioner should restrict his expectations following redetermination to, at best, a slightly lower Medicaid monthly deductible.

**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 eligibility under G2S as eligible for Medicaid subject to a \$3,733 monthly deductible. Concerning Petitioner's G2S eligibility, the actions taken by MDHHS are **AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's Medicaid eligibility for all MAGI-related programs. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Redetermine Petitioner's Medicaid eligibility beginning December 2019 subject to the finding that Petitioner reported that he is a caretaker to a minor child; and
- (2) Issue written notice of any updated determination in accordance with policy.

The actions taken by MDHHS are **REVERSED**.

CG/cg



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**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

**Via Email:**

MDHHS-Wayne-19-Hearings  
D. Smith  
EQAD  
BSC4- Hearing Decisions  
MOAHR

**Petitioner – Via First-Class Mail:**

