



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
Date Mailed: DRAFT
MOAHR Docket No.: 20-001132
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 March 12, 2020, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Brian Roedema, supervisor, and Dina Ani, specialist.

ISSUE

The issue is whether MDHHS properly denied Petitioner's application requesting Medicaid for himself and daughter.

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 November 2019, Petitioner was employed by [REDACTED] (hereinafter, "Employer").
2. On November 20, 2019, Petitioner applied for Medicaid.¹ Petitioner reported that he is between the ages of 19 and 64, not disabled, not a caretaker to minor children, and not married. Petitioner also reported that he lives with his [REDACTED]-year-old daughter, [REDACTED] (hereinafter, "Daughter") who is a tax dependent. Additionally, Petitioner reported that Daughter was disabled. Exhibit A, pp. 3-15.

¹ Petitioner's application was submitted to the Federally Facilitated Marketplace (FFM). MDHHS testimony acknowledged that it received Petitioner's application from the FFM on Petitioner's application date.

3. On November 18, 2019, MDHHS verified that Petitioner's last 30 days of gross pays from Employer were \$513.39 on October 25, 2019, \$497.43 on November 1, 2019, \$489.26 on November 8, 2019, and \$450.63 on November 15, 2019.
4. On January 6, 2020, MDHHS mailed Petitioner a notice stating that Daughter was denied Medicaid beginning February 2020.
5. As of January 6, 2020, MDHHS had not evaluated Daughter's claim of disability.
6. On January 29, 2020, Petitioner requested a hearing to dispute the denial of Medicaid.
7. As of January 29, 2020, MDHHS had not sent Petitioner written notice of Medicaid eligibility. Additionally, MDHHS had not sent Daughter notice of Medicaid eligibility from November 2019 through January 2020.

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 the denial of his application dated [REDACTED] 2019, requesting Medicaid for himself and Daughter. A Health Care Coverage Determination Notice (HCCDN) dated January 29, 2020, stated that Daughter was ineligible for various Medicaid categories. Exhibit A, pp. 21-23. An analysis of whether MDHHS properly denied Medicaid to Petitioner and Daughter requires a consideration of Medicaid categories.

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.*

Medicaid for Petitioner

An analysis of whether a client is properly denied Medicaid typically starts with examining the stated reason for denial on the notice. In the present case, MDHHS presented no evidence that a denial notice concerning Petitioner's Medicaid eligibility was ever sent.

MDHHS must inform the client of the reason for closure in a written notice. BAM 220 (April 2019) p. 2. Notices must include the action taken by MDHHS, the reason for the action, the specific manual item which cites the legal basis for action, an explanation of the right to request a hearing, and the conditions under which benefits may be continued if a hearing is request. *Id.*, pp. 2-3.

At the very least, MDHHS owes Petitioner written notice of denial. Thus, MDHHS will be ordered to issue notice. The analysis will proceed to determine if MDHHS properly denied Petitioner's Medicaid application for the reasons stated during the hearing.

As of Petitioner's application date, Petitioner was between the ages of 19 and 64, not disabled, not a caretaker to minor children, and not married. Under the circumstances, Petitioner is only eligible for Medicaid under HMP. MDHHS stated that Petitioner was denied HMP due to excess income.

HMP is a health care program administered by the Michigan Department of Community Health, Medical Services Administration. The program is authorized under the Affordable Care Act of 2010 as codified under 1902(a)(10)(A)(i)(VIII) of the Social Security Act and in compliance with the Michigan Public Act 107 of 2013.

HMP is based on Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (October 2016), p. 1. MAGI is based on Internal Revenue Service (IRS) rules and relies on federal tax information to determine adjusted gross income. BEM 500 (July 2017) p. 4. It eliminates asset tests and special deductions or disregards. *Id.*

MAGI-based income means income calculated using the same financial methodologies used to determine modified adjusted gross income as defined in section 36B(d)(2)(B) of the Code.² 42 CFR 435.603 (e). Financial eligibility for Medicaid for applicants, and other individuals not receiving Medicaid benefits at the point at which eligibility for Medicaid is being determined, must be based on current monthly household income and family size. 42 CFR 435.603 (h)(1). In determining current monthly or projected annual household income and family size under paragraphs (h)(1) or (h)(2), the agency

² Income exceptions are made for lump-sums which are counted as income only in the month received; scholarships, awards, or fellowship grants used for education purposes and not for living expenses; and various exceptions for American Indians and Alaska native. No known exceptions are applicable to the present case.

may adopt a reasonable method to include a prorated portion of reasonably predictable future income, to account for a reasonably predictable increase or decrease in future income, or both, as evidenced by a signed contract for employment, a clear history of predictable fluctuations in income, or other clear indicia of such future changes in income. 42 CFR 435.603 (h)(3).

MDHHS stated that Petitioner's HMP eligibility was based on group size that included Daughter. MDHHS deemed this to be proper because Petitioner was a tax filer and Daughter is a tax dependent.³ It must be noted that some skepticism exists over whether Daughter can be a tax dependent as she is ■ year-old and had not been deemed disabled by any agency. For purposes of this decision, it will be accepted that Daughter is a tax dependent; therefore, MDHHS properly determined Petitioner's group size to be two persons.

MDHHS presented no budget verifying how Petitioner's income was calculated. MDHSH did present an Employment Budget- Summary listing a monthly income of \$1,950.71 for Petitioner for purposes of MA eligibility. Exhibit A, p. 19. The documentation was consistent with calculating Petitioner's income by adding his weekly gross employment pays from October 25, 2019, through November 15, 2019, which totaled \$1,950.71. Exhibit A, pp, 17-18. Multiplying Petitioner's monthly income of \$1,950.71 by 12 results in an annual income of \$23,408.12.

MAGI can be defined as a household's adjusted gross income with any tax-exempt interest income and certain deductions added back.⁴ Common deductions and disregards which should be factored in determining a person's adjusted gross income include alimony payments, unreimbursed business expenses, Health Savings Account (e.g., 401k) payments, and student loan interest.⁵ There was no evidence of applicable deductions. Given the evidence, Petitioner's gross income of \$23,480.12 will be accepted as the group's countable income.

HMP income limits are based on 133% of the federal poverty level. RFT 246 (April 2014), p. 1. The 2019 federal poverty level is \$16,910 for a two-person group.⁶ For Petitioner to be eligible for HMP, countable income would have to fall at or below \$22,490.30. Petitioner's income exceeds the HMP income limit, but notably only slightly.

For MAGI-related Medicaid, a 5% disregard is sometimes applicable. The disregard is to be applied as follows:

- The 5% disregard is the amount equal to 5% of the FPL for the applicable family size. It is not a flat 5% disregard from the income.
- The 5% disregard shall be applied to the highest income threshold.
- The 5% disregard shall be applied only if required to make someone eligible for Medicaid. BEM 500 (July 2017) p. 5.

³ For tax filers, HMP group size includes tax dependents. BEM 211 (July 2019) p. 2.

⁴ <https://www.investopedia.com/terms/a/agi.asp>

⁵ *Id.*

⁶ <https://aspe.hhs.gov/poverty-guidelines>

In simpler terms, the income limit for HMP is based on 138% of the FPL in cases when the difference between 133% and 138% is pivotal to eligibility. Using an income limit of 138% of the FPL results in an income limit of \$23,335.80. Petitioner's income of \$23,480.12 remains above the income limit. Thus, it appears that Petitioner was not eligible for HMP. The present case's circumstances merit further consideration.⁷

Based on the above finding, MDHHS is already required to issue proper notice to Petitioner. In sending Petitioner notice, MDHHS may re-register and reprocess Petitioner's application. If so, Petitioner may want to discuss with his specialist what income period should be used to project his HMP eligibility. Petitioner should also be aware that even if he is not eligible for HMP, his income is so near the income limit that recent pays with only slightly less income might result in HMP eligibility should he reapply.

Medicaid for Daughter

MDHSH also denied Medicaid to Daughter. Some of the analysis concerning Petitioner's Medicaid eligibility applies to Daughter, but not all of it.

The HCCDN sent to Petitioner stated that Daughter was not eligible for Medicaid beginning February 2020. Though a notice of denial was sent concerning Daughter, her Medicaid eligibility from November 2019 through January 2020 was not addressed. As a Medicaid applicant for November 2019, Daughter is entitled to notice of denial from her application month.

The HCCDN stated that Daughter had excess income for HMP. The analysis of Petitioner's income-eligibility for HMP is applicable to Daughter.

The HCCDN also stated that Daughter was not disabled. Petitioner's application reported that Daughter was disabled. If Daughter is disabled, her eligibility for Medicaid could be expanded to SSI-Related Medicaid categories. Thus, it must be determined if MDHHS properly ignored Petitioner's reporting of Daughter's claim of disability.

A person meets the disability or blindness factor for a month if he is determined disabled or blind for the month being tested. BEM 260 (January 2020) p. 1. A person is disabled by any of the following:

- Death establishes disability in the month of death
- Eligible for SSI benefits
- Recently eligible for SSI
- Eligible for RSDI benefits
- RSDI eligibility following a previous application denial *Id.*

⁷ During the hearing, it was thought that the 5% disregard would place Petitioner below the income limit. This thought was erroneously based on a disregard of 5% of the 133% FPL rather than the FPL amount.

There was no evidence that Daughter met any of the above circumstances to establish disability. Such circumstances would prevent MDHHS from immediately processing Daughter's Medicaid eligibility based on being disabled. Policy does not allow MDHHS to simply disregard the claim of disability claim.

A client not eligible for RSDI based on disability or blindness must provide evidence of his disability or blindness. BEM 260 (January 2020) p. 3. After such evidence is received by MDHHS, the documentation is sent to Disability Determination Services for a determination of disability. *Id.*, p. 4. BAM 815 contains the procedures to process the medical determination. *Id.* the procedures include interviewing the client, requesting medical documents, informing the client of a need to apply for Social Security Administration benefits, and completion of various forms. BAM 815 (April 2018) pp. 2-6.

In the present case, MDHHS did not consider Daughter's potential disability or its process for determining whether she is disabled. As a remedy, Petitioner is entitled to reinstatement of the application with consideration of Daughter's claimed disability.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly denied Petitioner's Medicaid application. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reregister and reprocess Petitioner's application dated [REDACTED] 2019, subject to the following findings:
 - a. MDHHS failed to issue written notice of Daughter's Medicaid eligibility from November 2019 through January 2020;
 - b. MDHHS failed to issue written notice of Petitioner's Medicaid eligibility;
 - c. MDHHS failed to process Daughter's claim of disability;
- (2) Issue notice and/or benefits, if necessary, in accordance with policy.

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

CG/

E-Sign

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

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Petitioner

