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GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: July 30, 2020
MOAHR Docket No.: 20-003980
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 July 22, 2020, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Mary Strand, Family Independence Manager.

ISSUES

Did the Department properly process Petitioner's Family Independence Program (FIP) benefits?

Did the Department properly determine that Petitioner was eligible for Medical Assistance (MA) benefits with a monthly deductible?

Did the Department properly determine Petitioner's eligibility for Medicare Savings Program (MSP) benefits?

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 not an active recipient of FIP benefits and did not submit an application for FIP benefits in the 90 days prior to the hearing date. Petitioner confirmed that she checked the FIP box in error on her request for hearing and indicated there was no issue to address during the hearing regarding the FIP.

2. Petitioner was an ongoing recipient of MA benefits under the Group 2 Caretaker Relatives (G2C) category with a monthly deductible.
3. Petitioner receives gross monthly unearned income from Retirement Survivors Disability Insurance (RSDI) benefits in the amount of [REDACTED] and effective April 1, 2020, was responsible for her own Medicare premiums in the amount of \$144.60.
4. The Department asserted that Petitioner's MSP case was closed effective April 1, 2020, as a result of a prior Hearing Decision issued on October 28, 2019 which found that Petitioner had excess income for MSP eligibility.
5. On February 28, 2020, the Department sent Petitioner a Health Care Coverage Determination Notice advising her that effective April 1, 2020, she was approved for MA with a monthly deductible of \$691. (Exhibit A, pp. 14-17)
6. Petitioner's deductible was reduced to \$546 effective May 1, 2020, based on her responsibility for her Medicare insurance premiums. (Exhibit B)
7. On May 8, 2020, Petitioner requested a hearing disputing the calculation of her MA deductible, the closure of her MSP case, and the denial of her FIP benefits. (Exhibit A, pp. 25-26)

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).

FIP

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

At the hearing, Petitioner confirmed that she was not an active recipient of FIP benefits and did not submit an application for FIP benefits in the 90 days prior to the hearing date. Petitioner testified that she checked the FIP box in error on her request for hearing and indicated there was no issue to address during the hearing regarding the FIP. The request for hearing concerning the FIP was withdrawn and will be DISMISSED. The hearing proceeded with respect to Petitioner's MA and MSP eligibility.

MA/MSP

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.

MA is available (i) to individuals who are aged (65 or older), blind or disabled under SSI-related categories, (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, which provides health care coverage for a category of eligibility authorized under the Patient Protection and Affordable Care Act and Michigan Public Act 107 of 2013 effective April 1, 2014. BEM 105 (April 2017), p. 1; BEM 137 (January 2019), p. 1.

Persons may qualify under more than one MA category. Federal law gives them the right to the most beneficial category. The most beneficial category is the one that results in eligibility or the least amount of excess income. BEM 105, pp. 1-2. For Group 1 MA categories, which have no deductible, net income (countable income minus allowable income deductions) must be at or below a certain income limit for eligibility to exist. BEM 105, p. 1. Clients may be eligible for Group 2 coverage, with a deductible that must be satisfied before MA is activated, when their income exceeds the income limit. BEM 105, p. 1.

Petitioner is potentially eligible for MA under either an SSI related category based on her receipt of RSDI or a Modified Adjusted Gross Income (MAGI) related category based on her status as a parent/caretaker. Petitioner is ineligible for HMP, as she is eligible for and enrolled in the Medicare program. See BEM 137. The Department testified that Petitioner was ineligible for Group 1 MA under the SSI-related full coverage Ad-Care category and under the MAGI-related Parent/Caretaker Relative category without a deductible because her income exceeded the limit for each program. Upon review, Petitioner's MAGI, which includes her unearned income from RSDI in the amount of [REDACTED] was greater than 54% of the federal poverty level based on her household size and thus, she is ineligible for Group 1 MA under the Parent/Caretaker Relative Category. Additionally, Ad-Care coverage is a SSI-related Group 1 MA category which must be considered before determining Group 2 MA eligibility. BEM 163 (July 2017), p. 1. Eligibility for Ad-Care is based on the client meeting nonfinancial and financial eligibility criteria. BEM 163, pp. 1-2. The eligibility requirements for Group 2 MA and Group 1 MA Ad-Care are the same, other than income. BEM 166 (April 2017), pp. 1-2.

Income eligibility for the Ad-Care program is dependent on MA fiscal group size and net income which cannot exceed the income limit in RFT 242. BEM 163, p. 2. Petitioner has a MA fiscal group of one. BEM 211 (July 2019), pp. 5-8. Effective April 1, 2020, an MA fiscal group with one member is income-eligible for full-coverage MA under the Ad-Care

program if the group's net income is at or below \$1,084, which is 100 percent of the Federal Poverty Level, plus the \$20 disregard. RFT 242 (April 2020), p. 1.

The Department is to determine countable income according to SSI-related MA policies in BEM 500 and 530 *except* as explained in the countable RSDI section of BEM 163. The Department will also apply the deductions in BEM 540 (for children) or 541 (for adults) to countable income to determine net income. BEM 163, p. 2. The Department testified that in calculating Petitioner's countable income, it considered her gross monthly RSDI benefits in the amount of [REDACTED], which Petitioner confirmed was accurate.

After further review of Department policy and based on the evidence presented at the hearing, because Petitioner's countable income exceeds the net income limit for the Ad-Care program, the Department acted in accordance with Department policy when it determined that Petitioner was ineligible for full coverage MA benefits under the Ad-Care program without a deductible and determined that she would be eligible for MA under the G2C with a deductible, as it was more beneficial than the Group 2 Aged Blind Disabled (G2S) category because her monthly deductible would be lower under the G2C.

In this case, Petitioner requested a hearing disputing the Department's actions with respect to her MA case. Specifically, the Department's determination that she was eligible for MA under the G2C category with a monthly deductible of \$691 for the month of April 2020 and \$546 for May 2020, ongoing.

Individuals are eligible for G2C MA coverage when net income (countable income minus allowable income deductions) does not exceed the applicable Group 2 needs in BEM 544 and the MA protected income level (PIL), which is based on shelter area and fiscal group size. The PIL is a set allowance for non-medical need items such as shelter, food and incidental expenses. BEM 135 (October 2015), p 1,3; BEM 544 (July 2016), p 1-3; BEM 545 (January 2019); RFT 200 (April 2017); RFT 240 (December 2013), p 1. A fiscal group is established for each person requesting MA and budgetable income is determined for each fiscal group member. The Department is to use the policies in BEM 500 and BEM 530 to determine each fiscal group member's countable earned income. BEM 211 (July 2019); BEM 536 (July 2019), p. 1.

In determining a person's eligibility and their fiscal group however, the only income that may be considered is the person's own income and the income of the following persons who live with the client: the client's spouse, and the client's parents if the client is a child. This means that a child's income cannot be used to determine a parent's eligibility. BEM 211, p. 5. Additionally, for the G2C category, an adult's fiscal group is the adult and the adult's spouse. Therefore, with respect to Petitioner's deductible, because she is unmarried, the monthly PIL for her one person fiscal group living in Oakland county is \$408 per month. BEM 211, pp.5-9; RFT 200, p 1; RFT 240, p 1. A multi-step process is then utilized when determining a fiscal group member's income and deductible. BEM 536, pp. 1-7. Thus, if net monthly income is in excess of the applicable \$408 PIL, Petitioner may become eligible for assistance under the deductible program, with the

deductible being equal to the amount that the monthly income exceeds \$408. BEM 545, p 1.

The Department produced a G2-FIP Related (MA) Adult Net Income results budget for the months of April 2020 and May 2020 which were reviewed to determine if the Department properly calculated Petitioner's deductible of \$691 for April 2020 and \$546 for May 2020. (Exhibit B). Because Petitioner did not have any earned income, there was no applicable standard work expense and Petitioner was not eligible for the \$30 plus 1/3 disregard or the dependent care deduction. BEM 536, pp. 1-3. There was also no evidence presented that Petitioner received any child support earnings or that she had a responsibility for child support expenses.

The Department testified that in calculating income for MA purposes, it considered her monthly unearned income from RSDI income of [REDACTED], which as referenced above was properly determined. Following the steps contained in BEM 536, the number of dependents (under the age of 18) living with the fiscal group member is also determined. This number is added to 2.9 to determine the prorate divisor. BEM 536, pp.1-5. In this case, because Petitioner was unmarried and had one child under age 18 living in the home, the prorate divisor is 3.9. BEM 536, pp. 3-5. The Department testified that for April 2020, Petitioner was not eligible for any additional needs-based deductions; however, the Department properly considered Petitioner's eligibility for a needs-based deduction of \$144.60 for her Medicare Part B premium effective May 2020.

Upon further review, the Department determined that for the month of April 2020, Petitioner had net income of [REDACTED]. Because [REDACTED] exceeds the \$408 PIL by [REDACTED], the Department properly calculated Petitioner's MA deductible of \$691 for April 2020. For the month of May 2020, the Department determined that Petitioner's net income was [REDACTED]. Because [REDACTED] exceeds the \$408 PIL by [REDACTED], the Department properly calculated Petitioner's MA deductible of \$546 for May 1, 2020 ongoing.

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 determined that Petitioner was eligible for MA under the G2C category and properly calculated her monthly deductible.

Petitioner raised additional concerns regarding the closure of her MSP case. The Department asserted that Petitioner's MSP case was closed effective April 1, 2020, as a result of a prior Hearing Decision issued on October 28, 2019 which found that Petitioner had excess income for MSP eligibility. The Department asserted that the delay in implementing the Hearing Decision was due to worker error. Judicial Notice of the Hearing Decision issued by Administrative Law Judge Scully under MOAHR Docket No. 19-008833 was taken and upon review, while the Hearing Decision finds that Petitioner is eligible for MA with a deductible and ineligible for a full coverage MA program such as Ad-Care, it does not reference or address Petitioner's income eligibility for MSP benefits. Therefore, Petitioner's MSP eligibility will be discussed below.


MSP are SSI-related MA categories. There are three MSP categories: Qualified Medicare Beneficiaries (QMB); Specified Low-Income Medicare Beneficiaries (SLMB); and Additional Low-Income Beneficiaries (ALMB). BEM 165 (January 2018), p. 1. QMB is a full coverage MSP that pays Medicare premiums (Medicare Part B premiums and Part A premiums for those few people who have them), Medicare coinsurances, and Medicare deductibles. SLMB pays Medicare Part B premiums and ALMB pays Medicare Part B premiums provided funding is available. BEM 165, pp. 1-2. Income eligibility for MSP benefits may exist when net income is within the limits in RFT 242 or 247 or when below 135% of the FPL. In order to be eligible for an MSP category, an individual's net income cannot exceed \$1,456 for a fiscal group of one. The Department is to determine countable income according to the SSI-related MA policies in BEM 500 and 530, except as otherwise explained in BEM 165. RFT 242, pp1-2; BEM 165, pp. 7-8. As discussed above, Petitioner receives gross monthly RSDI of [REDACTED] and when the unearned income general exclusion is applied, net income of [REDACTED]. Therefore, Petitioner's net income is in excess of the income limits for her one-person fiscal group size.

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 determined that Petitioner had excess income and was ineligible for MSP.

DECISION AND ORDER

Accordingly, the hearing request with respect to FIP is **DISMISSED** and the Department's MA/MSP decisions are **AFFIRMED**.

ZB/tm



Zainab A. Baydoun
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

Yaita Turner
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Petitioner

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cc: ME—D. Smith; EQADHShearings
FIP: B. Sanborn