



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: November 23, 2020  
MOAHR Docket No.: 20-005408  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Alice C. Elkin**

### **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 hearing was held on November 16, 2020 via teleconference. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Amber Ogden, Eligibility Specialist.

During the hearing, the Department submitted an evidence packet that was entered into the record as Exhibit A, pages 1 to 24. Petitioner did not submit any exhibits.

### **ISSUE**

Did the Department properly determine Petitioner's Medicaid (MA) 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. On [REDACTED] 2020, Petitioner applied for MA.
2. Petitioner lives with her husband and her minor child, born [REDACTED], 2018.
3. In connection with her application, Petitioner submitted a Health Care Coverage Supplemental Questionnaire that indicated that she had monthly Retirement, Survivors and Disability Income (RSDI) income due to a disability RSDI and her husband had biweekly employment income.
4. The paystubs Petitioner included with the Supplemental Questionnaire showed that her husband received \$2,125 in biweekly gross income. A total of \$463.88 for

dental, vision, and flex benefit premiums was deducted from this biweekly income. (Exhibit A, pp. 14-17).

5. The Social Security Administration (SSA) withholds \$144 from Petitioner's monthly RSDI income to pay for her Part B Medicare premium (Petitioner's testimony).
6. On July 31, 2020, the Department sent Petitioner a Health Care Coverage Determination Notice notifying her that her application was denied due to excess assets (Exhibit A, pp. 6-8).
7. On [REDACTED], 2020, the Department received Petitioner's request for hearing disputing the MA determination.
8. The Department subsequently reviewed Petitioner's MA application and determined she was eligible for full coverage MA for the month of July 2020 and for MA with a \$1,869 monthly deductible for August 2020 ongoing (Exhibit A, pp. 18-24).

### **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.

Petitioner requested a hearing to dispute the Department's denial of her MA application. At the hearing, the Department explained that it initially improperly denied Petitioner's application on the basis of excess assets, but, upon review of her case after receiving her hearing request, it concluded that she was eligible for MA under a Group 2 SSI-related (G2S) program subject to a monthly \$1,869 deductible. At the hearing, Petitioner continued to be concerned about why she was no longer eligible for full-coverage MA.

Under federal law, Petitioner is entitled to the best available MA coverage she is eligible to receive based on her income and other eligibility criteria. BEM 105 (January 2020), p. 2. As a disabled individual, Petitioner may be eligible for MA under an SSI-related category. BEM 105, p. 1. Additionally, as the parent of a minor child, she may also be eligible for MA under the Parent/Caretaker/Relative (PCR) program under the Low-

Income Family (LIF) category or, if she has excess income, under the Group 2 Caretaker (G2C) program. BEM 105, p. 1; BEM 110 (April 2018); BEM 135 (October 2015), p. 1. Because Petitioner pays a Part B Medicare premium and is a Medicare recipient, she is not eligible for MA under the Healthy Michigan Plan. See BEM 137 (January 2020), p. 1.

LIF is a MAGI-related MA category. BEM 110, p. 2. An individual's group size for MAGI purposes requires consideration of the client's tax filing status or, if not a tax filer, the individual's household. 42 CFR 435.603(f)(1); BEM 211 (July 2019), p. 1. For MAGI-related categories, group size for a tax filer who is not claimed as a tax dependent consists of the individual, the individual's spouse, and the individual's tax dependents. BEM 211, pp. 1-2. Although Petitioner only listed herself and her husband as household members in the supplemental questionnaire, the Department was aware that Petitioner had a child born in 2018 and it appears that this child also lives in the household with Petitioner and her husband. Thus, Petitioner's group size for MAGI purposes is three.

An individual may be eligible for MA under PCR if the MAGI group's monthly income is under 54% of the federal poverty level for the applicable group size. BEM 110 (April 2018), p. 1. Monthly income at 54% of the federal poverty level in 2020 for a three-person tax group is \$977.40. <https://aspe.hhs.gov/2020-poverty-guidelines>. Additionally, a 5% disregard equal to 5% of the federal poverty level for the applicable group size is applied to the highest income threshold only if required to make someone eligible for MA. Application of the 5% threshold increases the limit for PCR eligibility for a three-person group to \$1,026.27 monthly.

When determining eligibility for MAGI-related MA, all RSDI income is countable to tax-filers and adults not claimed as dependents; a child/tax-dependent's RSDI is counted only if that child or tax-dependent is required to file taxes. BEM 503 (September 2020), p. 30. Although there was no evidence concerning whether Petitioner's son was an RSDI recipient based on Petitioner's receipt of RSDI, because there was no evidence that Petitioner's son was required to file taxes, only Petitioner's RSDI income is considered in determining her eligibility for MA coverage under PCR.

Additionally, because Petitioner's husband is a part of her MAGI group, his earned income must be included in assessment of Petitioner's eligibility for MA under a MAGI-related MA program. 42 CFR 435.603(d)(1). Earned income is calculated in accordance with MAGI under federal tax law under Internal Revenue Service rules. BEM 500 (July 2017), p. 3. In order to determine earned income in accordance with MAGI, a client's adjusted gross income (AGI) is added to any tax-exempt foreign income, tax-exempt Social Security benefits, and tax-exempt interest. AGI is found on IRS tax form 1040 at line 37, form 1040 EZ at line 4, and form 1040A at line 21. Alternatively, it is calculated by taking the "federal taxable wages" for each income earner in the household as shown on the paystub or, if not shown on the paystub, by using gross income before taxes reduced by any money the employer takes out for health coverage, child care, or retirement savings. This figure is multiplied by the number of paychecks the client

expects in the year to estimate income for the year. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>

To calculate Petitioner's husband's income in accordance with the MAGI rules, his gross biweekly income of \$2,125 is reduced by the \$463.88 withheld from each paycheck for health care coverage. This results in biweekly income \$1,661.12 in MAGI income for each paycheck, or \$3,571.41 in monthly earned income. This earned income alone results in excess income for Petitioner to be eligible for MA under the PCR/LIF program.

Because Petitioner receives SSA benefits due to a disability, she is also potentially eligible to receive full-coverage benefits under the Ad-Care program if she is income eligible based on her MA fiscal group size or under the SSI-MA program if any portion of her SSA benefits consist of SSI payment. BEM 163 (July 2017), pp. 1-2; BEM 150 (July 2020), p. 1. According to Petitioner, her SSA benefits are all categorized as RSDI, and no portion is allocated to SSI. Accordingly, Petitioner is not eligible for MA for SSI recipients. Because Petitioner is married, her fiscal group size for purposes of the Ad-Care program is two. BEM 211, p. 8. Starting April 2020, the income limit under the Ad-Care program where there are two members in the MA fiscal group is \$1,457. BEM 163, p. 2; RFT 242 (April 2020), p 1.

Petitioner's husband's income must be considered when determining Petitioner's eligibility for SSI-related MA. BEM 211, p. 8. For SSI-related purposes, gross income is considered, without a deduction for payments for health coverage other than flex benefits. BEM 501 (January 2020), p. 6. For biweekly income, monthly income is determined by multiplying the biweekly income by two. BEM 530 (April 2020), pp. 1, 3. Petitioner's husband's biweekly income, reduced by the \$436.24 flex benefit premium withheld by his employer from each paycheck, results in countable income of \$1,688.76 per paycheck for SSI-related MA purposes. This amount multiplied by two results in monthly income of \$3,377.52 for SSI-related MA purposes, greatly in excess of the income limit for full-coverage MA under the Ad-Care program. Therefore, Petitioner is not eligible for MA under the Ad-Care program.

Despite having excess income for Ad-Care eligibility, Petitioner was potentially eligible for MA coverage under a Group 2 deductible program, which provides for MA coverage subject to a monthly deductible for individuals with excess income. BEM 105, p. 1. There are Group 2 deductible programs for adults under either a Group 2 SSI-related (G2S) program for disabled or aged adults or a Group 2 Caretaker/Relative (G2C) program for parents of minor children. BEM 105, p. 4. Because Petitioner is the parent of a minor child, the G2C MA program would provide the lowest deductible and, as such, is the most beneficial Group 2 deductible program Petitioner is eligible for. BEM 105, p. 2; BEM 135 (October 2015), p. 1.

The Department testified that Petitioner was receiving Group 2 MA coverage with a monthly deductible under a G2S program. However, if Petitioner's minor child lives in the household with her and her husband, she would be eligible for MA under a G2C program, which should result in a lower deductible than the deductible calculated under a G2S program. The Department conceded that Petitioner had given birth to a child on January 13, 2018 and was unable to explain why Petitioner was not eligible for MA under the G2C program. Furthermore, the Department did not provide a budget to show how it calculated Petitioner's deductible. Thus, the Department failed to show that it acted in accordance with Department policy both in determining the most beneficial program Petitioner was eligible for and in calculating the monthly deductible applied to Petitioner's MA case.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that Petitioner was eligible for MA under the G2S program with a monthly deductible of \$1,869.

### **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. Assess Petitioner's eligibility for MA under the G2C program;
2. Recalculate Petitioner's monthly MA deductible; and
3. Notify Petitioner in writing of its decision.

AE/tm



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**Alice C. Elkin**  
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-15-Hearings  
D. Smith  
EQADHearings  
BSC4  
MOAHR

**Petitioner-First Class Mail:**

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