



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: October 28, 2020
MOAHR Docket No.: 20-005936
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 hearing was held on October 14, 2020, via telephone conference line. Petitioner did not participate. Nicole Reed, Medicaid coordinator from [REDACTED], a [REDACTED], participated as Petitioner's authorized hearing representative (AHR). The Michigan Department of Health and Human Services (MDHHS) was represented by Kelly Teed, hearing facilitator.

ISSUE

The issue is whether MDHHS properly denied Petitioner's application for Medicaid

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. At all relevant times, Petitioner was unmarried, not pregnant, with no minor children, and disabled and/or aged.
2. At all relevant times, Petitioner's only known asset was a checking account.
3. On April 29, 2020, Petitioner received a \$1,200 deposit from the Internal Revenue Service (IRS) which may have been an income tax refund.
4. On May 1, 2020, \$913 for Petitioner's Retirement, Survivors, Disability Insurance (RSDI) was deposited into Petitioner's checking account.

5. As of May 11, 2020, Petitioner's checking account balance was \$5,099.83.
6. From May 12, 2020 through the end of May 2020, approximately \$2,000 in withdrawals were made from Petitioner's checking account.
7. On [REDACTED], 2020, Petitioner applied for Medicaid benefits, including retroactive Medicaid benefits from May 2020.
8. On July 22, 2020, MDHHS issued written notice denying Petitioner for Medicaid beginning June 2020 due to excess assets. The determination did not factor Petitioner's assets after June 14, 2020.
9. As of July 22, 2020, MDHHS did not request proof of Petitioner's checking account balance for all of June 2020.
10. On [REDACTED] 2020, Petitioner's AHR disputed the denial of Petitioner's Medicaid applications. Exhibit A, pp. 6-7.
11. As of the date of the hearing, MDHHS had not issued written notice of Petitioner's Medicaid eligibility for May 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's AHR requested a hearing disputing the denial of Petitioner's application for Medicaid benefits. It was not disputed that Petitioner applied for Medicaid in [REDACTED] 2020 and sought retroactive Medicaid benefits for May 2020. MDHHS testified that Petitioner was denied Medicaid due to excess assets.

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 Medicaid 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 disputed eligibility date, Petitioner was disabled and/or aged, not pregnant, and not a caretaker to minor children. Thus, Petitioner appears ineligible for all MAGI-related categories. As a disabled and/or aged individual, Petitioner is potentially eligible for Medicaid through SSI-Related Medicaid.

Assets must be considered in determining SSI-Related Medicaid eligibility. BEM 400 (October 2018) p. 1 and 6. SSI-Related Medicaid eligibility considers all assets. *Id.*, p. 3. Countable assets include cash. *Id.*, p. 2.

At application, MDHHS is to not authorize Medicaid for future months if the person has excess assets on the processing date. *Id.*, p. 7. For SSI-Related MA, asset eligibility exists when the group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. *Id.*, p. 7. Federal income tax refunds are excluded for 12 months from the month of receipt; the refund amount is subtracted from the household's total assets to determine if they meet the asset limit. *Id.*, p. 22. MDHHS is not to count funds treated as income by a program as an asset for the same month for the same program. *Id.*, p. 23. For an unmarried individual, the SSI-related MA asset limit is \$2,000. *Id.*, p. 8.

Petitioner's only known asset was a checking account. MDHHS determined Petitioner's asset eligibility for June 2020 (and ongoing months) based on two checking account statements covering April 14, 2020, through June 11, 2020. Exhibit A, pp. 13-23. MDHHS testified that Petitioner's assets were calculated by starting with Petitioner's account balance as of June 11, 2020: \$3,461.72. MDHHS subtracted two bank deposits in early June 2020: \$913 for Petitioner's RSDI and \$144.60 which was assumed to be repayment for a Medicare premium taken from Petitioner's RSDI. The result was Petitioner exceeded the \$2,000 asset limit due to \$2,404.12 in countable assets. Exhibit A, p. 25. There were two problems with MDHHS's calculation.

First, it is uncertain whether MDHHS should have factored a \$1,200 deposit from the [REDACTED] to Petitioner in April 2020. During the hearing, MDHHS realized that the deposit may have been an income tax refund which should have also been subtracted from Petitioner's countable assets. Subtracting the \$1,200 deposit would have placed Petitioner under the asset limit of \$2,000. It cannot be stated that Petitioner was asset eligible for June 2020 because it is not certain if the \$1,200 deposit was for a tax refund. Petitioner is entitled to a reprocessing of assets based on the possibility that the \$1,200 deposit was an income tax refund.

The second problem with MDHHS's asset calculation for June 2020 is that only Petitioner's daily balances through June 14, 2020 were considered. Had MDHHS considered Petitioner's asset eligibility for all of June 2020, Petitioner's assets may have

fallen under \$2,000. Perhaps MDHHS did not consider Petitioner's asset eligibility after June 14, 2020 because it did not possess Petitioner's bank statements covering all of June 2020. MDHHS would be at fault for not possessing the statement unless bank statements covering all of June 2020 were requested. For all programs, MDHHS is to request needed verifications via Verification Checklist. BAM 130 (April 2017) p. 3. MDHHS did not present evidence that Petitioner was sent a VCL requesting a bank statement for all of June 2020.

Given the evidence, MDHHS improperly determined Petitioner's asset eligibility for June 2020. As a remedy, Petitioner is entitled to a reprocessing of assets for June 2020, an opportunity to submit a bank statement covering all of June 2020, and consideration of an income tax refund as an excluded asset.

For Petitioner's asset eligibility from May 2020, MDHHS again stated that Petitioner exceeded the asset limit. Unlike Petitioner's asset eligibility from June 2020, MDHHS did not present evidence that written notice of denial was sent to Petitioner.

Upon certification of eligibility results, MDHHS automatically notifies the client in writing of positive and negative actions by generating the appropriate notice of case action. BAM 220 (April 2020), p. 2. A notice of case action must specify the following: the action(s) being taken by the department; the reason(s) for the action; the specific manual item which cites the legal base for an action or the regulation or law itself; an explanation of the right to request a hearing; and the conditions under which benefits are continued if a hearing is requested. *Id.*, pp. 2-3.

MDHHS testimony acknowledged that a notice of case action concerning Petitioner's Medicaid eligibility for May 2020 was not mailed. The failure of MDHHS to send Petitioner written notice implies that Petitioner's application was not fully processed. Before MDHHS processes Petitioner's application from May 2020, MDHHS should be aware that Petitioner appears to be asset eligible for that month.

MDHHS presented an asset budget for May 2020. Exhibit A, p. 24 Petitioner's asset eligibility was calculated from a starting point of \$5,099.83: Petitioner's bank balance as of May 11, 2020. MDHHS subtracted \$913 for Petitioner's RSDI and a \$1,200 deposit from the IRS resulting in countable assets of \$2,986.83.

Petitioner's bank statements provided a starting balance, ending balance, transaction dates, transaction amount, and a transaction description. Notably, the statements did not include updated daily balances. Thus, the ending statement balance of \$5,099.83 was the only daily balance listed on the statement ending May 11, 2020. MDHHS failed to consider that the subsequent statement listed withdrawals throughout the remainder of May 2020 of approximately \$2,000. Had MDHHS considered those withdrawals, it would have realized that Petitioner's daily balance fell below \$2,000 in late May 2020. Thus, Petitioner would have been eligible for Medicaid. As a result of MDHHS's error, it will be ordered to consider Petitioner's asset balance after May 14, 2020 when processing Petitioner's asset eligibility for May 2020.

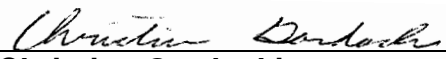
DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's asset eligibility for May 2020 and June 2020. It is ordered that MDHHS initiate the following actions within 10 days of the date of mailing of this decision:

- (1) Process Petitioner's asset eligibility for May 2020 subject to the findings that MDHHS failed to send proper notice of the determination, and MDHHS failed to consider Petitioner's assets for all days in May 2020; and
- (2) Reprocess Petitioner's asset eligibility for June 2020 subject to the findings that MDHHS failed to establish requesting proof of Petitioner's assets for all of June 2020, and MDHHS failed to consider a \$1,200 deposit from April 2020 as an exempt federal tax income refund.

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

CG/tm



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-Macomb-12-Hearings
D. Smith
EQADHearings
BSC4
MOAHR

Petitioner-First Class Mail:

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Petitioner's Authorized Hearing Representative-First Class Mail:

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