[redacted]
[redacted]
[redacted] MI [redacted]

Date Mailed: June 16, 2021
MOAHR Docket No.: 21-002247
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 June 9, 2021, from Lansing, Michigan. The Petitioner was represented by Attorney Travis Dafoe (P73059).

The Department of Health and Human Services (Department or Respondent) was represented by Assistant Attorney General Stephanie Service (P73305). Roxanne Nichols, Eligibility Specialist appeared and testified as a witness.

Department's Exhibits pages 1-99 were admitted to the record without objection.

ISSUE

Did the Department properly determined that Petitioner had excess income for purposes of Medical Assistance (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. Petitioner filed an application for Medical Assistance.

2. Petitioner has categorical eligibility for Medical Assistance based upon her receipt of RSDI income.

3. Petitioner receives the following total monthly income [redacted]

4. The Department determined that Petitioner had no income eligibility for Medical Assistance.

5. The Department determined that the only Medical Assistance category Petitioner would be eligible for would be G2S with a monthly deductible.

6. On March 8, 2021, the Department notified Petitioner that she was eligible to receive Medical Assistance with a monthly deductible spend-down.

7. On April 16, 2021, the Michigan Office of Administrative Hearings and Rules received a Request for Hearing to contest the Department's determination and to argue that Petitioner should be given a divestment penalty and allowed eligibility for the Medicaid Waiver Program.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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.

Title XIX of the Social Security Act, commonly referred to as "The Medicaid Act," provides for Medical Assistance services to individuals **who lack the financial means to obtain needed health care**. 42 U.S.C. §1396. (Emphasis added)

The Medicaid program is administered by the federal government through the Centers for Medicaid and Medicare Services (CMS) of the Department of Health and Human Services (HHS). The state and federal governments share financial responsibility for Medicaid services. Each state may choose whether or not to participate in the Medicaid

program. Once a state chooses to participate, it must operate its Medicaid program in accordance with mandatory federal requirements, imposed both by the Medicaid Act and by implementing federal regulations authorized under the Medicaid Act and promulgated by HHS. Participating states must provide at least seven categories of medical services to persons determined to be eligible Medicaid recipients. 42 USC §1396a(a)(10)(A), 1396d(a)(1)-(5), (17), (21).

Pertinent Department Policy dictates:

The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. Medicaid is also known as Medical Assistance (MA). The Medicaid program comprise several sub-programs or categories. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. Medicaid eligibility for children under 19, parents or caretakers of children, pregnant or recently pregnant women, former foster children, MOMS, MIChild, Flint Water Group and Healthy Michigan Plan is based on Modified Adjusted Gross Income (MAGI) methodology. Michigan provides MA eligible clients under two general classifications: group 1 and group 2 MA.

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, the least amount of excess income or the lowest cost share. Petitioner qualified only under the group 2 MA classification which consists of clients whose eligibility results from the state designating certain types of individuals as medically needy. BEM 105 page 2

Petitioners must meet both categorical and income eligibility requirements in order to be eligible for any category of Medical Assistance.

Department policy sets forth a method for determining the basic maintenance level by considering:

1. Protected income level.
2. The amount deferred to dependent.
3. Health insurance premiums
4. Remedial services if determining the eligibility for claimants in Adult Care Homes.

If Petitioner's income exceeds the protected income level, the excess income must be used to pay medical expenses before group 2 MA coverage can begin. This process is known as a spend-down. The policy requires the Department to count and budget all income received that is not specifically excluded. There are 3 main types of income: countable earned, countable unearned, and excluded. Earned income means income received from another person or organization or from self-employment for duties that were performed for remuneration or profit. Unearned income is any income that is not

earned. The amount of income counted maybe more than the amount a person actually receives, because it is the amount before deductions are taken including the deductions for taxes and garnishments. The amount before any deductions are taken is called a gross amount. BEM, item 500, p. 1.

In the instant case, the Department calculated Petitioner's income based upon receipt of unearned income from RSDI income and pension income. Petitioner receives the following: [redacted] Per RFT 248, the SSI payment rate as of January 1, 2021 is [redacted] per month. This calculation makes the income limit for extended care to be $2,382.00 per month. Petitioner's income is in excess of the Extended Care Medical Assistance program.

Deductible spend-down is a process which allows the customer's excess income to be eligible for group 2 MA if sufficient allowable medical expenses are incurred. BEM, item 545, p. 1. Meeting the deductible spend-down means reporting and verifying allowable medical expenses that equal or exceed the spend-down amount for the calendar month tested. BEM, item 545, p. 9. The group must report expenses on the last day of the third month following the month it wants MA coverage for. BEM, Item 130 explains verification and timeliness standards. BEM, Item 545, p. 9.

Federal regulations at 42 CFR 435.831 provides standards for the determination of the MA monthly protected income level. The department must be in compliance with the program reference manual, tables, charts, schedules, table 240-1.

Petitioner's Representative argues that Petitioner is eligible for the MI Choice Waiver Program and should receive a divestment penalty for in excess of $100,000.00 in assets that she divested and gave to her sons.

The MI Choice Waiver Program provides home and community-based services for aged and disabled persons who, if they did not receive such services, would require care in a nursing home. Services provided under this waiver program must be less costly for Medicaid (MA) than the cost of nursing home services for the total number of waiver participants, not per person.

The **MI Choice waiver is not an MA category**, but there are special eligibility rules for people approved for the waiver. BEM 106, page 1 The MI Choice waiver Program has both financial and non-financial eligibility criteria.

Waiver services are covered for MA recipients who:

- Are age 65 or over, or
- at least age 18 years and disabled.
- Medically qualify, and
- Have needs that cannot be met by the Home Help program and may be addressed with MI Choice services.

- Seek or have an expanded Home Help Program exception grant of $1000 or more per month. BEM 106 page 1

A waiver participant is a person who is approved to receive or receives waiver services in the month being tested for **Medicaid** eligibility. BEM 106, page 3

The eligibility factors in the following items must be met.

- BEM 220, Residence.
- BEM 221, Identity.
- BEM 223, Social Security Numbers.
- BEM 225, Citizenship/Alien Status.
- BEM 255, Child Support.
- BEM 256, Spousal/Parental Support.
- BEM 257, Third Party Resource Liability.
- BEM 265, Institutional Status.
- BEM 270, Pursuit of Benefits. BEM 106 page 4

The Department is instructed to use special **MA policies in the MA eligibility** determination:

- A waiver participant is a group of one even when he lives with his spouse; see BEM 211.
- The Special MA Asset Rules in BEM 402 apply when completing the Initial Asset Assessment. See special initial asset assessment rules for waiver applicants in this item for rules on determining the first period of continuous care.
- The MA divestment policy in BEM 405 applies to waiver participants.
- The extended-care category is available to waiver participants; see BEM 164.
- **Gross income must be at or below 300 percent of the SSI Federal Benefit Rate. An individual cannot spenddown income to waiver eligibility**; see BEM 500. BEM 106 page 4

In this case, Petitioner's Representative has not contested the deductible spend-down amount. Petitioner's Representative has not contested the fact that Petitioner is not financially eligible for any category of Medical Assistance. A review of Petitioner's case reveals that the Department budgeted the correct amount of monthly income received by Petitioner. The maximum amount that a one-person household may receive to be eligible for the MI Choice Waiver Program is $2,382.00 (300% of the SSI Federal Benefit Rate. Petitioner is not eligible for the MI Choice Waiver Program because her monthly income currently exceeds 300 percent of the SSI Federal Benefit Rate. This Administrative Law Judge has no equity powers and cannot make decisions in contravention of the Medical Assistance regulations.

Therefore, this Administrative Law Judge finds the Department has established by the necessary competent, material and substantial evidence on the record that it acted in

accordance with department policy when determined Petitioner has excess income for purposes of Medical Assistance benefit eligibility and when it determined that Petitioner has a monthly deductible spend-down that Petitioner must meet in order to qualify for Medical Assistance eligibility. The Department was also correct in determining that Petitioner did not meet financial eligibility criteria for the MI Choice Waiver Program. The Department's action must be upheld.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

LL/ml

Landis Lain
Administrative Law Judge
for Elizabeth Hertel, 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	Elisa Daly Saginaw County DHHS – via electronic mail BSC2 – via electronic mail C. George – via electronic mail EQAD – via electronic mail
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