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

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

MI

Date Mailed: July 21, 2021
MOAHR Docket No.: 21-002515
Agency No.:
Petitioner:

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 July 15, 2021, from Lansing, Michigan. Petitioner appeared and self-represented. The Department of Health and Human Services (Department or Respondent) was represented by Lisa Angel-Eligibility Specialist.

Department's Exhibit A pages 1-32 were admitted as evidence.

ISSUE

Did the Department properly determine that Petitioner had excess income for Medical Assistance (MA) benefit eligibility and a deductible spend-down?

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 2021, Petitioner filed an application for Medical Assistance with the Department for herself.

2. On April 28, 2021, the Department generated a budget based on Petitioner's income + income and determined that Petitioner qualified for Medical Assistance with a deductible Spend-down.

3. On April 15, 2021, a Health Care Coverage Determination Notice was mailed to notify Petitioner that her son was eligible for Medicaid effective May 2, 2021, but

Petitioner was not eligible for Medical Assistance Coverage because Petitioner did not provide verification information.

4. On April 28, 2021, the Department sent Petitioner a Health Care Determination Notice that Petitioner was eligible for Freedom to Work MA from September 1, 2020-November 30, 2020, with an estimated $0.00 premium amount; and was eligible for Medical Assistance May 1, 2021-ongoing with an $843.00 monthly deductible spend-down.

5. On May 18, 2021, Petitioner filed a Request for Hearing to contest the deductible spend-down amount.

6. On May 18, 2021, a Notice of Prehearing conference was sent to Petitioner.

7. On May 27, 2021, a Prehearing Conference was held.

8. On May 27, 2021, the Michigan Office of Administrative Hearings and Rules received a Hearing Summary and attached documents.

9. On May 26, 2020, all parties appeared on the conference line and were prepared to go forward with the hearing.

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.

Michigan provides MA eligible clients under two general classifications: group 1 and group 2 MA. Petitioner qualified under the group 2 MA classification which consists of clients whose eligibility results from the state designating certain types of individuals as medically needy. PEM 105. In order to qualify for group 2 MA, a medically needy client must have income as equal to or less than the basic protected monthly income level.

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 protect 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.

The household for a tax filer, who is not claimed as a tax dependent, consists of:

- Individual.
- Individual's spouse.
- Tax dependents.

The household for a non-tax filer who is not claimed as a tax dependent, consists of the individual and, if living with the individual:

- Individual's spouse.
- The individual's natural, adopted and stepchildren under the age of 19 or under the age of 21 if a full-time student.
- If the individual is under the age of 19 (or under 21 if a full-time student), the group consists of individual's natural, adopted and step parents and natural, adoptive and step siblings under the age of 19 (or under 21 if a full time student). (BEM 211. Page 1)

In the instant case, the Department calculated Petitioner's income based upon receipt of unearned income form [redacted]. Petitioner's husband receives

in monthly and in Petitioner receives in

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

Once Petitioner was given the appropriate deductions because Petitioner has a child, Petitioner's monthly net countable income was determined to be in income + per month in for a total of in total monthly unearned income. She was given the appropriate prorated deduction for her child in the amount of $477.00 which left her with Petitioner was given the Insurance premium deduction of $148.50 which left Petitioner with total net income of The protected income limit for a two-person household in Petitioner's circumstances is which left Petitioner with a deductible of $867.00 per month in Medicaid deductible spend down.

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.

Petitioner's allegation of the spend-down is too expensive and unfair because of other expenses is a compelling equitable argument to be excused for the Department's program policy requirements. This Administrative Law Judge has no equity powers. A review of Petitioner's case reveals that the Department budgeted the correct amount of income earned by Petitioner. Petitioner's protected income level and amounts are set by Medicaid policy and cannot be changed by the Department or this Administrative Law Judge.

The Healthy Michigan Plan provides healthcare coverage for individuals who do not qualify for or are not enrolled in Medicare. BEM 137, page 1. Petitioner does receive Medicare and therefore does not qualify for the Healthy Michigan Program Medical Assistance.

The deductible for a pregnant woman is usually met at the first office visit because the woman incurs the full cost of obstetric (OB) services (including labor and delivery) at their first OB visit. The total cost of the OB services must be equal to or greater than the amount of the deductible in order to open. She is Medicaid eligible for the remainder of the pregnancy and two months post-partum. BEM 545, page 1-2

BEM 126 is a Group 2 Medicaid (MA) category. Medicaid is available to a pregnant woman who meets the nonfinancial and financial eligibility factors in this item. A woman who is eligible for, and receiving, Medicaid when her pregnancy ends and remains otherwise eligible may continue receiving Medicaid benefits for the two calendar months

following the month her pregnancy ended. The postpartum extension is available when the pregnancy ends for any reason (for example, live birth, miscarriage, stillborn). The eligibility requirements for the postpartum extension of Medicaid eligibility are discussed later in this item. All eligibility factors must be met in the calendar month being tested. If the month being tested is an L/H month and eligibility exists, go to BEM 546 to determine the post-eligibility patient-pay amount. (Page 1)

Income eligibility exists when net income does not exceed Group 2 needs in BEM 544. Apply the Medicaid policies in BEM 500, 530 and 536 to determine net income. If the net income exceeds Group 2 needs, Medicaid eligibility is still possible. The deductible for a pregnant woman is usually met at the first office visit because the woman incurs the full cost of the obstetric (OB) services (including labor and delivery) at her first OB visit. Her coverage should then be updated to MAGI-related Pregnant Women (PW) for the remainder of the pregnancy and two months post-partum; see BEM 545. (Page 2)

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 it determined Petitioner has excess income for purposes of Medical Assistance benefit eligibility and when it determined that Petitioner has a monthly $867.00 deductible spend-down that Petitioner must meet to qualify for Medical Assistance coverage for any medical expenses. However, because Petitioner has alleged that she is pregnant, the Department needs to determine if Petitioner has met her deductible to qualify for Medical Assistance under Group 2 Pregnant Women (BEM 126) for the duration of the pregnancy and two months post-partum.

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. Reinstate Petitioner's [redacted], 2021, Medical Assistance application;

2. Reassess Petitioner's application for Medical Assistance because Petitioner has alleged that she is 15 weeks pregnant;

3. Determine whether Petitioner qualifies for Medical Assistance under the pregnancy Medical Assistance Category; and

4. If Petitioner is otherwise eligible for Medical Assistance, open a Medical Assistance case from the date of eligibility forward.

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 – via electronic mail

MDHHS-Kent-Hearings
BSC3
C. George
EQAD
MOAHR

Petitioner – via first class mail

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