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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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██████████, MI ██████████

Date Mailed: March 24, 2022
MOAHR Docket No.: 22-000346
Agency No.: ██████████
Petitioner: ██████████ ██████████

ADMINISTRATIVE LAW JUDGE: Danielle Nuccio

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 March 14, 2022. The Petitioner appeared and represented herself. The Department of Health and Human Services (MDHHS) was represented by Princess Ogundipe, Eligibility Specialist.

ISSUES

1. Did MDHHS properly calculate Petitioner's Medicaid (MA) deductible?
2. Did MDHHS properly close Petitioner's Food Assistance Program (FAP) case for failure to return her Mid-Certification timely?

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 is an ongoing Medicare recipient.
2. Petitioner receives MA benefits under the Group 2 Aged Blind Disabled (G2S) category with a monthly deductible of \$577.00.
3. Petitioner receives \$██████████ in monthly Retirement, Survivors, Disability Insurance (RSDI).
4. Petitioner is approved for the Medicare Savings Program (MSP) – SLMB.

5. On October 1, 2021, MDHHS issued a FAP Mid-Certification Contact Notice to Petitioner informing her that she must complete the notice and return to MDHHS by October 21, 2021 (Exhibit A, p. 9).
6. On November 10, 2021, MDHHS issued a Notice of FAP Closure to Petitioner informing her that effective [REDACTED], 2021 her FAP case would close because she had not returned a completed mid-certification form (Exhibit A, pp. 7-8).
7. Petitioner did not submit the Mid-Certification Notice until December 8, 2021 and on December 22, 2021 (Exhibit A, pp. 9-11). Petitioner's FAP case closed effective [REDACTED], 2021.
8. On January 25, 2022, MDHHS received Petitioner's hearing request.

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).

Medical Assistance (MA):

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.

At the hearing, Petitioner explained that she requested a hearing regarding the calculation of her monthly deductible, or spenddown, amount of \$577.00 for MA. Although Petitioner did not identify the programs she was disputing and MDHHS did not address the MA issue in its hearing packet, Petitioner's hearing request was submitted on a Medicaid hearing request form. Therefore, the MA issue is considered.

Petitioner, who has no minor children and receives RSDI, is eligible for SSI-related MA, which is MA for individuals who are blind, disabled or over age [REDACTED]. BEM 105 (January 2021), p. 1. Individuals are eligible for Group 1 coverage, with no deductible, if their income falls below the income limit, and 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. 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 \$1,084.00, which is 100 percent of the Federal Poverty Level, plus the \$20.00 disregard. RFT 242 (November 2021), p. 1.

MDHHS 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. MDHHS 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. MDHHS testified that the only income they relied upon was Petitioner's monthly RSDI of \$[REDACTED]. Petitioner confirmed that this amount is correct, and she receives no other income. Since Petitioner's countable income exceeds the net income limit for the Ad-Care program, MDHHS 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 Group 2 Aged Blind Disabled (G2S) program with a monthly deductible.

A spenddown or deductible is a process which allows a client with excess income to become eligible for Group 2 MA if sufficient allowable medical expenses are incurred. BEM 545 (January 2022), p. 10. Individuals are eligible for Group 2 MA coverage when net income (countable income minus allowable income deductions) does not exceed the applicable Group 2 MA protected income levels (PIL), which is based on shelter area and fiscal group size. BEM 105, pp. 1-2; BEM 166, pp. 1-2; BEM 544 (January 2020), p. 1; RFT 240 (December 2013), p. 1. The PIL is a set allowance for non-medical need items such as shelter, food and incidental expenses. BEM 544, p. 1. The monthly PIL for an MA group of one living in Wayne County is \$375.00 per month. RFT 200 (April 2017), pp. 1-2; RFT 240, p. 1. Therefore, if Petitioner's net monthly income is in excess of the PIL of \$375.00, she may become eligible for assistance under the deductible program, with the deductible being equal to the amount that her monthly income exceeds \$375.00. BEM 545, p. 1.

MDHHS did not present a SSI-related MA budget to show how the deductible in Petitioner case was calculated. As stated, MDHHS relied upon Petitioner's monthly income total of \$[REDACTED]. MDHHS was then required to consider deductions to Petitioner's income, with her net income reduced by the PIL. MDHHS testified that they were unsure how Petitioner's deductible was calculated. It is noted that Department Exhibit A focuses on Petitioner's FAP case, but she requested a hearing on an MA hearing request form. No documentation of the deductible budget that MDHHS relied on was submitted. Therefore, MDHHS has failed to satisfy its burden that it acted in accordance with policy in calculating Petitioner's deductible.

Food Assistance Program (FAP):

The Food Assistance Program [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. MDHHS administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

MDHHS presented evidence concerning the closure of Petitioner's FAP case as of December 1, 2021 because Petitioner failed to timely submit her mid-certification. FAP groups assigned a 24-month benefit period must submit a mid-certification contact notice. BAM 210 (November 2021), p. 11. If the client fails to return the completed mid-certification form by the last day of the twelfth month, then their FAP case will automatically be closed. If the client reapplies, it is treated as a new application. BAM 210, p. 14.

In this case, MDHHS issued a FAP Mid-Certification Contact Notice to Petitioner informing her that she must complete the notice and return to MDHHS by October 21, 2021. On November 10, 2021, MDHHS issued a Notice of FAP Closure to Petitioner informing her that effective [REDACTED], 2021 her FAP case would close because she had not returned a completed mid-certification form. Petitioner acknowledged that she did not submit the required documentation timely. Petitioner confirmed that she submitted the form on December 8, 2021 and again on December 22, 2021. Since Petitioner did not submit the required mid-certification form timely, MDHHS acted in accordance with policy in closing her FAP case.

On January 25, 2022, Petitioner reapplied for FAP and was subsequently approved for FAP benefits (See Exhibit A, pp. 12-16).

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 MDHHS acted in accordance with policy when closing Petitioner's FAP case and MDHHS failed to satisfy its burden that it acted in accordance with policy in calculating Petitioner's deductible for G2S MA.

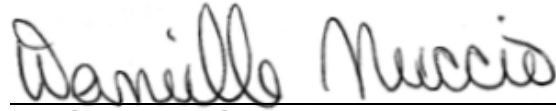
DECISION AND ORDER

Accordingly, MDHHS' decision for FAP is **AFFIRMED**.

MDHHS' decision for MA 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. Recalculate Petitioner's MA deductible amount for January 2022 ongoing;
2. Provide Petitioner with MA coverage she is eligible to receive; and
3. Notify Petitioner in writing of its decision.



Danielle Nuccio
Administrative Law Judge

DN/mp

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

