



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

██████████
██████████
██████████, MI ██████████

Date Mailed: November 14, 2023
MOAHR Docket No.: 23-006221
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 November 8, 2023, via conference lines. Petitioner was present and was unrepresented. The Department of Health and Human Services (Department) was represented by Rebecca Scott, Eligibility Specialist.

ISSUE

Did the Department properly determine Petitioner and Petitioner's husband's Medical Assistance (MA) eligibility?

Did the Department properly close Petitioner's husband's Medicare Savings Program (MSP) benefit case?

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 was an ongoing MA recipient under the Healthy Michigan Plan (HMP) program.
2. Petitioner's husband was an ongoing MA recipient under the Ad-care MA program and Medicare Savings Program (MSP).

3. On July 5, 2023, Petitioner completed a redetermination related to her and her husband's MA benefit cases (Exhibit A, pp. 7-13).
4. Petitioner's husband had unearned income in the form of Retirement, Survivors and Disability Insurance (RSDI) benefits in the gross amount of \$██████ (Exhibit A, pp. 34-35).
5. Petitioner had unearned income in the form of RSDI benefits in the gross monthly amount of \$██████ (Exhibit A, pp. 31-33).
6. Petitioner's husband had income from employment (Exhibit A, pp. 37-38).
7. On September 11, 2023, the Department sent Petitioner a Health Care Coverage Determination Notice informing her that her MA benefit case was closing effective October 1, 2023, her husband was approved for MA benefits subject to a monthly deductible of \$2,492, and her husband's MSP benefit case was closing effective October 1, 2023, ongoing (Exhibit A, pp. 16-21).
8. On September 21, 2023, Petitioner submitted a request for hearing disputing the Department's actions.

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.

In this case, Petitioner was an ongoing MA recipient under the HMP program. In July 2023, the Department completed a redetermination related to Petitioner's MA benefit case. The Department concluded that Petitioner was not eligible for HMP because her household income exceeded the applicable income limit for her group size.

HMP uses a Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (April 2018), p. 1. An individual is eligible for HMP if her household's income does not exceed 133% of the Federal Poverty Level (FPL) applicable to the individual's group size. BEM 137, p. 1. Additionally, for MAGI-related MA programs, the Department allows a 5 percent disregard in the amount equal to five percent of the FPL level for the applicable

family size. BEM 500 (July 2017), p. 5. It is not a flat 5 percent disregard from the income. BEM 500, p. 5. The 5 percent disregard is applied to the highest income threshold. BEM 500, p. 5. The 5 percent disregard shall be applied only if required to make someone eligible for MA benefits. BEM 500, p. 5.

An individual's group size for MAGI-related purposes requires consideration of the client's tax filing status. At the time of the redetermination, Petitioner was married and living with her husband. Petitioner and her husband did file taxes and were not claimed as dependents. The household of a tax filer who is not claimed as a tax dependent consists of the individual and, if living with the individual: (i) the individual's spouse; (ii) the individual's natural, adopted and step children under the age of 19 or under the age of 21 if a full time student; and (iii) 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 (February 2019), p. 2. Therefore, in determining Petitioner's MA status, the Department properly considered Petitioner as having a group size of two.

138% of the annual FPL in 2023 for a household with two members is \$27,214. See <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's annual income cannot exceed \$27,214 (1,677 per month). To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. BEM 500 (July 2017), p. 3. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500, p. 3. Income is verified via electronic federal data sources in compliance with MAGI methodology. MREM, § 1.

In order to determine income in accordance with MAGI, a client's adjusted gross income (AGI) is added to any tax-exempt foreign income, 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 2023 to estimate income for the year. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>. For MAGI MA benefits, all RSDI income is countable to tax-filers and adults not claimed as dependents. BEM 503 (January 2019), p. 29.

Effective November 1, 2017, when determining eligibility for ongoing recipients of MAGI related MA, the State of Michigan has elected to base financial eligibility on current monthly income and family size. See:

https://www.michigan.gov/documents/mdhhs/MAGI-Based_Income_Methodologies_SPA_17-0100_-_Submission_615009_7.pdf

The Department presented Petitioner's and Petitioner's husband's State Online Query (SOLQ) reports showing Petitioner's gross monthly RSDI benefit amount was \$ [REDACTED]

and her husband's gross RSDI benefit amount was \$[REDACTED]. Petitioner's and Petitioner's husband's total RSDI benefit amount alone exceeded the income limit for a group size of two under the HMP program. Therefore, the Department acted in accordance with policy when it closed Petitioner's MA benefit case.

As a disabled and/or aged individual, Petitioner's husband is potentially eligible to receive MA benefits through AD-Care. Ad-Care is an SSI-related full-coverage MA program. BEM 163 (July 2017), p. 1. It was not disputed that Petitioner's husband receives \$[REDACTED] per month in RSDI benefits and Petitioner receives \$[REDACTED] in RSDI benefits. The total household income is \$[REDACTED]. As Petitioner and her husband are married, per policy, Petitioner's husband's fiscal group size for SSI-related MA benefits is two. BEM 211 (January 2016), p. 8. The Department gives AD-Care budget credits for employment income, guardianship and/or conservator expenses and cost of living adjustments (COLA) (for January through March only). Petitioner did not allege any such factors were applicable. Income eligibility for AD-Care exists when countable income does not exceed the income limit for the program. BEM 163 (July 2017), p. 2. The income limit for AD-Care for a two-person MA group is \$1,663.50. RFT 242 (April 2023), p. 1. Because Petitioner's husband's monthly household income exceeds \$1,663.50, the Department properly determined Petitioner to be ineligible for MA benefits under AD-Care.

Petitioner's husband may still receive MA benefits subject to a monthly deductible through a Group 2 Medicaid category. Petitioner's husband is not the caretaker of any minor children, and therefore, does not qualify for MA through the Group 2-Caretaker MA program.

Petitioner's husband may still receive MA benefits subject to a monthly deductible through the G2S program. G2S is an SSI-related MA category. BEM 166 (April 2017), p.1. As stated above, Petitioner's husband's SSI-related MA group size is two. Petitioner's net income is \$[REDACTED] (Petitioner's and Petitioner's husband's gross RSDI reduced by a \$20 disregard). BEM 541 (April 2017), p. 3. The deductible is in the amount that the client's net income (less any allowable needs deductions) exceeds the applicable Group 2 MA protected income levels (PIL); the PIL is based on the client's MA fiscal group size and the county in which he resides. BEM 105, p. 1; BEM 166 (April 2017), pp. 1-2; BEM 544 (July 2016), p. 1; RFT 240 (December 2013), p. 1; RFT 200 (April 2017), p. 2. The monthly PIL for a client in Petitioner's husband's position, with an MA fiscal group size of two living in [REDACTED] County, is \$541 per month. RFT 200, p. 3; RFT 240, p. 1. Thus, if Petitioner's husband's monthly net income (less allowable needs deductions) is in excess of \$541, he is eligible for MA assistance under the deductible program, with the deductible equal to the amount that his monthly net income, less allowable deductions, exceeds \$541. BEM 545 (January 2017), pp. 2-3. The Department did not present a deductible budget showing the calculation of Petitioner's husband's deductible.

In determining the monthly deductible, net income is reduced by health insurance premiums paid by the MA group and remedial service allowances for individuals in adult

foster care or homes for the aged. BEM 544, pp. 1-3. In this case, there was no evidence that Petitioner's husband resides in an adult foster care home or home for the aged. Therefore, Petitioner's husband is not eligible for any remedial service allowances. There was evidence that Petitioner's husband was paying his Medicare Part B premium of \$164.90. Additionally, Petitioner testified that Petitioner's husband also paid for Medicare Part C and Medicare Part D. At the hearing, the Department was unsure as to whether Petitioner's husband received a deduction for all of his insurance premiums when calculating his deductible amount. As the Department also did not submit a G2S deductible budget showing the calculation of his deductible, the Department failed to establish that it properly determined Petitioner's husband's MA eligibility.

In this case, Petitioner's husband was an ongoing MSP recipient. The Department testified that Petitioner's husband's MSP benefit case was closed, as he exceeded the income limit for MSP benefits.

MSP are SSI-related MA categories. There are three MSP categories: Qualified Medicare Beneficiaries (QMB); Specified Low-Income Medicare Beneficiaries (SLMB); and Additional Low Income Beneficiaries (ALMB). BEM 165 (January 2018), p. 1. QMB is a full coverage MSP that pays: Medicare premiums (Medicare Part B premiums and Part A premiums for those few people who have them); Medicare coinsurances; and Medicare deductibles. SLMB pays Medicare Part B premiums and ALMB pays Medicare Part B premiums provided funding is available. BEM 165, pp. 1-2. Income eligibility for MSP benefits exists when net income is within the limits in RFT 242 or 247. The Department is to determine countable income according to the SSI-related MA policies in BEM 500 and 530, except as otherwise explained in BEM 165. RFT 242, pp1-2; BEM 165, pp. 7-8.

The Department testified that based on Petitioner's husband's household income, he was not eligible for MSP benefits under any of the three categories. Effective April 1, 2023, for QMB, the monthly income limit for a group size of two is \$1,663.50, which is 100 percent of the Federal Poverty Level, plus the \$20 disregard. RFT 242, p. 1. For SLMB the monthly income limit for Petitioner's group size of two is \$1,992, which is 120 percent of the Federal Poverty Level, plus the \$20 disregard. RFT 242, p. 2. For ALMB, the monthly income limit for Petitioner's group size of two is \$2,238.50, which is 135 percent of the Federal Poverty Level, plus the \$20 disregard. RFT 242, pp. 1-3. RFT 242, p. 3.

Petitioner and Petitioner's husband's countable RSDI income alone was \$[REDACTED]. Therefore, Petitioner's husband's income exceeds the income limit for MSP benefits. Thus, the Department acted in accordance with policy when it closed Petitioner's MSP benefit case.

DECISION AND ORDER

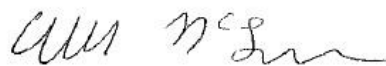
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it closed Petitioner's MA and Petitioner's husband's MSP benefit cases. The Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's husband's MA eligibility.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the closure of Petitioner's MA benefit case and Petitioner's husband's MSP benefit case and **REVERSED IN PART** with respect to Petitioner's husband's MA eligibility.

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. Redetermine Petitioner's husband's MA eligibility as of October 1, 2023, ongoing;
2. If Petitioner's husband is eligible for MA benefits, provide him with coverage he is entitled to receive; and
3. Notify Petitioner of its decision in writing.

EM/tm



Ellen McLemore
Administrative Law Judge

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-Electronic Mail :

DHHS
Tracy Felder
Wayne-Southwest-DHHS
2524 Clark Street
Detroit, MI 48209
**MDHHS-Wayne-41-
Hearings@michigan.gov**

Interested Parties
M. Schaefer
EQADHearings
BSC4

Via-First Class Mail :

Petitioner
[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]