



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR



Date Mailed: October 26, 2023
MOAHR Docket No.: 23-006362
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION

On August 9, 2023, Petitioner, [REDACTED] requested a hearing to dispute a Medical Assistance (MA) determination. As a result, a hearing was scheduled to be held on October 25, 2023, pursuant to MCL 400.9; 42 CFR 431.200 to 431.250; and Mich Admin Code, R 792.11002. Petitioner appeared at the hearing and represented himself. Respondent, Department of Health and Human Services (Department), had Susan Derseweh, Hearings Coordinator, appear as its representative. Neither party had any additional witnesses.

Two exhibits were admitted into evidence during the hearing. A 73-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A, and a four-page packet of documents provided by Petitioner was admitted collectively as Petitioner's Exhibit 1.

ISSUE

Did the Department properly determine Petitioner's 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 is aged or disabled.
2. Petitioner has Medicare Part B coverage.

3. Petitioner received full-coverage MA from the Department through the Healthy Michigan Plan, and Petitioner received Medicare Cost Share coverage for his Medicare premium.
4. On June 22, 2023, Petitioner submitted information to the Department to renew his eligibility for MA. Petitioner reported to the Department that he is the only member of his household, he has Medicare coverage, he receives gross monthly income from social security RSDI of [REDACTED], and he receives rental income.
5. Petitioner subsequently provided a copy of his 2022 Federal income tax return. Petitioner's tax return shows that Petitioner received gross rents of [REDACTED], Petitioner claimed an expense of \$2,121 for cleaning and maintenance, Petitioner claimed an expense of \$2,878 for insurance, Petitioner claimed an expense of \$125 for legal and professional fees, Petitioner claimed an expense of \$1,467 for mortgage interest, Petitioner claimed an expense of \$5,862 for repairs, Petitioner claimed an expense of \$2,445 for supplies, Petitioner claimed an expense of \$6,403 for taxes, Petitioner claimed an expense of \$2,440 for utilities, and Petitioner claimed an expense of \$13,111 for depreciation.
6. The Department reviewed Petitioner's case and determined that Petitioner was no longer eligible for full-coverage MA through the Healthy Michigan Plan because Petitioner qualifies for Medicare, and an individual who qualifies for Medicare is ineligible for coverage through the Healthy Michigan Plan. The Department calculated Petitioner's income and determined that Petitioner's income was over the limit for full-coverage AD Care coverage, and Petitioner's income was over the limit for Medicare Cost Share coverage. The Department determined that the best MA coverage that Petitioner was eligible for was MA with a deductible.
7. On August 1, 2023, the Department mailed a health care coverage determination to Petitioner to notify Petitioner that he was ineligible for Medicare Cost Share coverage effective September 1, 2023.
8. On August 23, 2023, the Department mailed a health care coverage determination to Petitioner to notify Petitioner that he is eligible for MA coverage with a \$1,483.00 monthly deductible effective September 1, 2023.
9. Petitioner requested a hearing to dispute the Department's MA eligibility determinations.
10. On September 29, 2023, the Department spoke with Petitioner regarding his income, and the Department discovered that it had not budgeted all of Petitioner's rentals. The Department had only budgeted two rental units when Petitioner had five rental units.

11. The Department revised the budget with the rental income from all five rental units, and the Department determined that Petitioner's monthly deductible should be \$1,950.00.
12. On October 7, 2023, the Department mailed a health care coverage determination to Petitioner to notify Petitioner that he is eligible for MA coverage with a \$1,950.00 monthly deductible effective November 1, 2023.

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 administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Petitioner is disputing his health care coverage because he has a deductible, and he would like to have health care coverage without a deductible. Health care coverage is available without a deductible for those who meet program requirements. One of the programs that provides health care coverage without a deductible is the Healthy Michigan Plan. Petitioner previously had coverage through the Healthy Michigan Plan. However, Petitioner does not meet the program requirements for Healthy Michigan because Petitioner has Medicare, and coverage through the Healthy Michigan Plan is limited to individuals who do not qualify for Medicare. BEM 137 (June 1, 2020), p.1.

Another program that provides health care coverage without a deductible is AD Care. In order for a client to be eligible for full-coverage AD Care, the client must be aged or disabled, and the client's group's net income must not exceed 100% of the Federal Poverty Limit (FPL). BEM 163 (July 1, 2017), p. 1-2. For AD Care, the client's group size consists of the client and the client's spouse. BEM 211 (July 1, 2019), p. 8. In this case, Petitioner's group just consists of Petitioner because Petitioner does not have a spouse. The FPL for a household size of one in 2023 is \$14,580.00. 88 FR 3424 (January 19, 2023). This is equal to a monthly income of \$1,215.00.

When group members receive income from social security RSDI, the gross amount received from RSDI is countable. BEM 163 at p. 2. However, \$20.00 is disregarded from social security RSDI income. BEM 541 (January 1, 2023), p. 1. In this case, Petitioner received [REDACTED] per month from social security RSDI. After the \$20.00 disregard, the countable amount was [REDACTED] per month.

In addition to the income from social security RSDI, Petitioner also receives rental income. In 2022, the gross rents that Petitioner received totaled [REDACTED]. The gross rents minus allowable expenses are countable income. BEM 504 (October 1, 2019), p. 3. The allowable expenses are the higher of 65% of the gross rents or actual rental expenses verified by the client. *Id.* Expenses must be the client's obligation and must solely be expenses of the rental property to be allowed. *Id.* Allowable expenses may include insurance, repairs, utilities, property taxes, lawn and snow care, advertising, and interest and escrow portions of payments. *Id.* at p. 3-4. The Department will not consider a rental loss; expenses exceeding gross rents are disallowed. *Id.* at p. 4. The Department considered Petitioner's insurance, repairs, taxes, and utilities as allowable expenses. The Department disallowed Petitioner's cleaning and maintenance, legal and professional services, mortgage interest, supplies, and depreciation.

The Department should have allowed Petitioner's cleaning and maintenance, legal and professional services, mortgage interest, and supplies. However, the Department properly disallowed Petitioner's depreciation. When all of Petitioner's rental expenses on his 2022 Federal income tax return are considered, the total of Petitioner's allowable expenses was \$23,741.00, which is greater than 65%, so \$23,741.00 is the proper amount to use for Petitioner's rental expenses. This results in a net rental income of [REDACTED] which equals [REDACTED] per month.

Petitioner's countable RSDI income of [REDACTED] per month plus Petitioner's countable net rental income of [REDACTED] per month equals a total countable monthly income of [REDACTED]. Although the income limit states that it is based on "net income," this refers to gross income after allowable deductions. BEM 541 (January 1, 2023). Petitioner was not eligible for any of the allowable deductions other than the \$20.00 disregard for social security RSDI. Thus, Petitioner's net income exceeded the limit for Petitioner to be eligible for full-coverage AD Care because the income limit was \$1,215.00 per month, and Petitioner's income was [REDACTED] per month. Therefore, the Department properly found that Petitioner was not eligible for full-coverage AD Care.

Since the Department found Petitioner ineligible for health care coverage without a deductible under the Healthy Michigan Plan and AD Care, the Department determined that the best available coverage for Petitioner was Group 2 MA. Group 2 MA provides health care coverage for any month that (a) an individual's countable income does not exceed the individual's needs as defined in policy, or (b) an individual's allowable medical expenses equal or exceed the amount of the individual's income that exceeds the individual's needs. BEM 166 (April 1, 2017), p. 2.

To determine whether an individual's income exceeds his needs, the Department determines the individual's countable income and needs. Countable income is the same as the income that is used to determine eligibility for AD Care without a deductible. Needs consist of a protected income limit set by policy, the cost of health insurance premiums, and the cost of remedial services. BEM 544 (January 1, 2020), p. 1-3.

The Department calculated Petitioner's excess income by subtracting the protected income limit from Petitioner's countable monthly income. As stated above, Petitioner's countable monthly income is [REDACTED]. The protected income limit for a household of one in Genesee County is \$408.00 per month. RFT 200 (April 1, 2017) and RFT 240 (December 1, 2013). There was no evidence that Petitioner paid a medical insurance premium, and there was no evidence that Petitioner had to pay for remedial care. Thus, Petitioner's excess income is [REDACTED] minus \$408.00, which equals [REDACTED] per month. The deductible amount determined by the Department is less than this amount, so it is more favorable to Petitioner. Therefore, the Department's deductible will be upheld.

Since Petitioner has a deductible, Petitioner will only be eligible for health care coverage for any month that his allowable medical expenses equal or exceed his deductible amount. Petitioner did not present any evidence to establish that he had allowable medical expenses that equaled or exceeded his deductible amount. If Petitioner has outstanding medical expenses that equal or exceed his deductible amount, Petitioner should provide documentation of those expenses to the Department to obtain health care coverage.

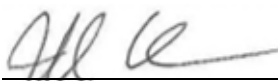
The Department also found Petitioner ineligible for Medicare Cost Share coverage, and Petitioner is disputing that determination. Medicare Cost Share coverage is available to assist individuals with Medicare premiums. BEM 165 (October 1, 2022), p. 2. There are three types of Medicare Cost Share coverage: QMB, SLMB, and ALMB. *Id.* at 1-2. To be eligible for Medicare Cost Share coverage, an individual must meet the income requirements. *Id.* at 8. Medicare Cost Share coverage type ALMB has the highest income limit. *Id.* at 1. The income limit for ALMB is 135% of the Federal Poverty Limit (FPL). *Id.* Thus, the income limit for ALMB is \$19,683.00. This is equal to a monthly income of \$1,640.25. As discussed above, Petitioner's countable income was [REDACTED] per month, so Petitioner's income exceeded the limit to be eligible for Medicare Cost Share.

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 did act in accordance with its policies and the applicable law when it determined Petitioner's Medical Assistance eligibility.

IT IS ORDERED the Department's decision is **AFFIRMED**.

JK/ml



Jeffrey Kemm
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
Susan Derseweh
Genesee County DHHS Clio Rd Dist.
4809 Clio Road
Flint, MI 48504
MDHHS-Genesee-Clio-Hearings@michigan.gov

Interested Parties
BSC2
M Schaefer
EQAD
MOAHR

Via First Class Mail:

Petitioner
[REDACTED]
MI [REDACTED]