



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
DIRECTOR

Date Mailed: April 3, 2024
MOAHR Docket No.: 24-000258
Agency No.: [REDACTED]
Petitioner: [REDACTED]

[REDACTED]
MI [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 6, 2024, from Detroit, Michigan. Petitioner appeared for the hearing with her daughter [REDACTED] and represented herself. The Department of Health and Human Services (Department) was represented by Callie Jones, Eligibility Specialist.

ISSUE

Did the Department properly determine Petitioner's eligibility for Medical Assistance (MA) benefits?

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 recipient of MA benefits under the Ad-care program and Medicare Savings Program (MSP) benefits under the Qualified Medicare Beneficiaries (QMB) category.
2. The Department became aware through a Wage Match that Petitioner had gained employment with [REDACTED] and was earning income. (Exhibit A, pp. 12-23)

3. On or around December 14, 2023, the Department received a completed Wage Match as well as paystubs from Petitioner's employment with [REDACTED]. According to the documentation provided, Petitioner was employed part time and expected to work 20 hours per week at a rate of pay of [REDACTED] per hour and was paid biweekly. Payment details were provided through the December 8, 2023, pay date. (Exhibit A, pp. 12-23)
4. The Department also obtained verification of Petitioner's earnings through the Work Number. (Exhibit A, pp. 26-28)
5. Petitioner received gross monthly RSDI/Social Security benefits of [REDACTED]. (Exhibit A, pp. 29-31)
6. The Department redetermined Petitioner's eligibility for MA and MSP benefits, as she now had earned income.
7. On or around December 15, 2023, the Department sent Petitioner a Health Care Coverage Determination Notice (Notice) informing her that effective January 1, 2024, she was eligible for MA under the Freedom-to-Work (FTW) category subject to a monthly premium of [REDACTED]. The Notice further advises petitioner that effective January 1, 2024, she was ineligible for MSP benefits. (Exhibit A, pp. 34 – 37)
8. On or around January 4, 2024, Petitioner requested a hearing disputing the Department's actions with respect to her MA case.
9. On or around January 17, 2024, the Department sent Petitioner a Notice informing her that effective February 1, 2024, she was eligible for MSP benefits under the Specified Low-Income Medicare Beneficiaries (SLMB) category and that effective February 1, 2024, she was eligible for MA under the FTW category subject to a monthly premium of [REDACTED]. (Exhibit A, pp.38 – 40)

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.

MA is available (i) under SSI-related categories to individuals who are aged (65 or older), blind or disabled, (ii) to individuals who are under age 19, parents or caretakers of children, or pregnant or recently pregnant women, (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage, and (iv) to individuals who meet the eligibility criteria for Plan First Medicaid (PF-MA) coverage. 42 CFR 435.911; 42 CFR 435.100 to 435.172; BEM 105 (October 2023), p. 1; BEM 137 (June 2020), p. 1; BEM 124 (July 2023), p. 1. Under federal law, an individual eligible under more than one MA category must have eligibility determined for the category selected and is entitled to the most beneficial coverage available, which is the one that results in eligibility and the least amount of excess income or the lowest cost share. BEM 105, p. 2; 42 CFR 435.404.

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 (October 2022), 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.

In this case, Petitioner disputed the Department's determination that she was eligible for MA under the FTW subject to a monthly premium and the closure of her MSP case effective January 1, 2024. The Department representative testified that Petitioner had previously been receiving MA under the Ad-Care category and MSP benefits under the QMB category. However, when the Department became aware through a Wage Match that Petitioner had gained employment, the Department was required to redetermine her MA eligibility. Because Petitioner had increased earnings, she was no longer eligible for Ad-Care coverage and the Department determined that she was eligible for MA under the FTW subject to a monthly premium.

Because Petitioner is enrolled in Medicare, the Department properly concluded that Petitioner was eligible for SSI-related MA, which is MA for individuals who are blind, disabled or over age 65. BEM 105, 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 (October 2023), pp. 5-8. Effective April 1, 2023, 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 \$1,235, which is 100 percent of the Federal Poverty Level, plus the \$20 disregard. RFT 242 (April 2023), p. 1. Thus, the income limit for Ad-Care eligibility is \$1,215.

The Department 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. The Department 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.

FTW is an SSI-related group 1 MA category available to clients with disabilities age 16-64 who also have earned income. As a condition of eligibility, the client must be employed. There are no premiums for individuals with MAGI (Modified Adjusted Gross Income) less than 138% of the federal poverty level (FPL). BEM 174 (January 2020), p. 1-3. A premium of 2.5 percent of the client's income will be charged for an individual with MAGI income between 138% of the FPL and \$75,000 annually. A client eligible for MA under FTW is not eligible for MSP benefits under the Additional Low-Income Beneficiaries (ALMB).

The Department asserted that Petitioner had excess income for the Ad-Care program. The Department representative testified that it considered Petitioner's unearned income which totaled [REDACTED] and was based on her receipt of gross monthly RSDI/Social Security benefits. The unearned income was verified using the State Online Query (SOLQ). The Department also considered Petitioner's earnings from employment, which were verified using the Work Number. The Work Number was presented for review and included pay dates and pay amounts through January 5, 2024. (Exhibit A, pp. 26-28). Although the Department did not identify the exact pay dates considered, at the time the review was completed, Petitioner was employed part time and had total earnings of [REDACTED] in November 2023 and [REDACTED] in December 2023. (Exhibit A, pp. 26-28). The Department should have also considered the unearned income general exclusion of \$20 and for the months of January, February, and March, the Department should have applied a COLA deduction which in this case was \$32. BEM 503 (January 2023), pp. 29-30.

After further review of Department policy and based on the testimony provided at the hearing, Petitioner's countable income exceeds the \$1,215 net income limit for the Ad-Care program. Thus, because coverage under the FTW is more beneficial than MA under the Group 2 Aged Blind Disabled (G2S) program with a monthly deductible, the Department acted in accordance with Department policy when it determined that Petitioner was eligible for FTW MA subject to a monthly premium.

At the hearing, the Department presented a FTW Income Budget to show how the monthly premium of [REDACTED] was calculated. (Exhibit A, p. 32). The Budget for January 2024 reflects unearned income of [REDACTED] and earned income of [REDACTED]. However, the Department was unable to explain the figures relied upon on the budget for unearned income or to identify the exact pay amounts/pay dates for Petitioner's earned income calculation. The Department representative acknowledged that she was unable to

explain the premium calculation. Therefore, although the Department properly determined that Petitioner was eligible for MA under the FTW for January 2024, the Department failed to establish that it properly calculated her monthly premium.

Additionally, Petitioner disputed the closure of her MSP case effective January 1, 2024. Petitioner raised concerns that the Social Security Administration (SSA) had began withholding Medicare premiums from her monthly RSDI/Social Security benefit. Petitioner was informed that because the Department found her ineligible for MSP benefits, she was now responsible for her own Medicare premiums of \$174.70, as the State would no longer cover the costs of her Medicare premiums.

For the MSP, income is the major determiner of category. The monthly income limits for Petitioner's fiscal group size of one are identified in RFT 242 (April 2023). For QMB eligibility, net income cannot exceed \$1,235, which is 100% of the poverty level, plus the \$20 disregard for RSDI income. For SLMB eligibility, net income is between \$1,235.01 and \$1,478, which is over 100% but not over 120% of the poverty level, plus the \$20 disregard for RSDI income. For ALMB eligibility, net income must be between \$1,478.01 and \$1,660.25, which is over 120% but not over 135% of the poverty level, plus the \$20 disregard for RSDI income. RFT 242, p.1; BEM 165, pp. 1-2, 8-10. Thus, to be eligible for MSP benefits, Petitioner's income cannot exceed \$1,640.25. The Department is to determine countable income according to the SSI-related MA policies in BEM 500, 501, 502, 503, 504, and 530, except as otherwise explained in BEM 165. RFT 242, pp. 1-2; BEM 165, pp. 8-10. The Department will also apply the deductions in BEM 540 (for children) and BEM 541 (for adults) to countable income to determine net income. BEM 165, pp. 8-10.

Although it was established the Department reinstated Petitioner's MSP case effective February 1, 2024, and approved her for benefits under the SLMB category, it was unclear why Petitioner was ineligible for MSP benefits under the SLMB category for January 2024. While it is noted that a client eligible for MA under FTW is not eligible for MSP benefits under the ALMB, the Department did not present any evidence that Petitioner was only income eligible for ALMB benefits and thus, because of her status as a FTW recipient, could not receive MSP coverage for January 2024. There was also no evidence presented by the Department that Petitioner had excess income for all MSP categories for the month of January 2024. Thus, the Department will be ordered to redetermine Petitioner's MSP eligibility for January 2024, ongoing as the Department failed to establish that Petitioner was not eligible for any MSP coverage January 2024.

While Petitioner asserted that she is no longer working the number of hours that she did at the time of the review, Petitioner was advised that the Department's determination was based on her earnings at the time the review was completed. Petitioner was informed that she is entitled to submit updated paystubs to the Department for her currently eligibility to be redetermined.

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 failed to

satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's MA and MSP eligibility for January 1, 2024, ongoing.


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. Redetermine Petitioner's MA/MSP eligibility under the most beneficial category for January 1, 2024, ongoing;
2. If eligible, provide MA and/or MSP coverage to Petitioner for any MA and/or MSP benefits that she was entitled to receive but did not, if any, from January 1, 2024, ongoing, and
3. Notify Petitioner in writing of its decision.

ZB/ml



Zainab A. Baydoun
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:

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Interested Parties

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