



GRETCHEN WHITMER
GOVERNOR

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

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DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: March 22, 2024
MOAHR Docket No.: 24-001213
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 hearing was held via telephone conference on March 13, 2024. Petitioner participated in the hearing and did not testify. [REDACTED] [REDACTED] Petitioner's daughter, testified and participated as Petitioner's authorized hearing representative (AHR). The Michigan Department of Health and Human Services (MDHHS) was represented by Avery Smith, manager.

ISSUES

The first issue is whether MDHHS properly determined Petitioner's spouse's Medical Assistance (MA) eligibility.

The second issue is whether MDHHS properly processed documentation of medical expenses towards Petitioner's Food Assistance Program (FAP) eligibility and Spouse's Medicaid deductible.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. As of December 2023, Petitioner and his spouse, [REDACTED] [REDACTED] (hereinafter, "Spouse") were ongoing recipients of MA and FAP benefits.
2. As of December 2023, Petitioner and Spouse were both over the age of 65 years, Medicare recipients, not pregnant, and not a caretaker to a minor child.

3. As of December 2023, Spouse received Medicaid subject to a monthly deductible of \$1,375.
4. As of December 2023, Petitioner and Spouse received \$1,326 and \$553 in respective gross monthly Retirement, Survivors, Disability Insurance (RSDI).
5. On December 19, 2023, MDHHS sent Petitioner notice of a FAP benefit determination of \$212 beginning February 2024 based on \$0 medical expenses.
6. As of December 2023, Spouse received Medicaid subject to a monthly deductible of \$1,375.
7. On December 28, 2023, Petitioner submitted to MDHHS documentation of Spouse's personal care expenses performed by Petitioner's AHR.
8. On January 17, 2024, MDHHS sent Petitioner a Quick Note stating that proof of medical expenses was rejected and that requirements included separating the personal care activities between Petitioner and Spouse and proof of payment.
9. On February 15, 2024, Petitioner requested a hearing to dispute medical expenses not being budgeted in FAP eligibility or Spouse's monthly deductible.

CONCLUSIONS OF LAW

The 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. MDHHS administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MA policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner's AHR requested a hearing, in part, to dispute MA benefits. AHR testimony specified that she only disputed the MA eligibility of Spouse.¹ MDHHS did not present a notice verifying Spouse's MA eligibility, but it was not disputed that Spouse received ongoing Medicaid subject to a monthly deductible of \$1,375.

Medicaid is also known as MA. BEM 105 (October 2023) p. 1. The MA program includes several sub-programs or categories. *Id.* To receive MA under a Supplemental Security Income (SSI)-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Medicaid eligibility for children under 19, parents or caretakers of children, pregnant or recently pregnant

¹ Petitioner testified that Father receives MA benefits under PACE, and she had no dispute concerning his eligibility.

women, former foster children, MOMS, MICHild and Healthy Michigan Plan is based on Modified Adjusted Gross Income (MAGI) methodology. *Id.*

Persons may qualify under more than one MA category. *Id.*, p. 2. Federal law gives them the right to the most beneficial category. *Id.* The most beneficial category is the one that results in eligibility, the least amount of excess income or the lowest cost share. *Id.*

As of the disputed benefit month, Spouse was disabled and/or aged, at least 19 years of age, not pregnant, a Medicare recipient, and not a caretaker to minor children.² Given the circumstances, Spouse is ineligible for all MAGI-related categories. As a disabled and/or aged individual, Spouse is potentially eligible to receive MA under the SSI-related category of Aged/Disability-Care (AD-Care).

MA categories are also split into categories of Group 1 and Group 2. *Id.*, p. 1. For Group 1, a group's net income must be at or below a certain income level for eligibility. *Id.* AD-Care is a Group 1 category. BEM 163 outlines the procedures for determining income eligibility under AD-Care.

At all relevant times, Spouse was without minor children and resided with her spouse. For purposes of AD-Care, Spouse's group size is two. BEM 211 (July 2019) p. 8.

As of the disputed benefit month, Spouse received gross monthly income of \$553 and Petitioner received \$1,326. Generally, MDHHS counts the gross amount of RSDI in determining Medicaid eligibility.³ BEM 503 (January 2023) p. 29. Spouse's countable income for AD-Care is \$1,879.

MDHHS gives AD-Care budget credits for employment income, guardianship expenses, and/or conservator expenses. Cost of living adjustments (COLA) are applicable for the benefit months of January through March only. BEM 503 (January 2019) p. 29. Petitioner's AHR did not allege any relevant budget expenses or credits.

For SSI-Related MA categories, MDHHS is to apply the deductions allowed in BEM 541 for adults. BEM 163 (July 2017) p. 2. A \$20 disregard is given for unearned income. BEM 541 (July 2019) p. 3. Subtracting the \$20 disregard results in countable income of \$1,859.

Net income for AD-Care cannot exceed 100% of the federal poverty level. BEM 163 (July 2017) p. 2. In 2023, the annual federal poverty level for a 2-person group in

² Petitioner circumstances were consistent with redetermination documents submitted to MDHHS on August 14, 2023. Exhibit A, pp. 11-16.

³ Exceptions to counting gross RSDI include the following: certain former SSI recipients (e.g., disabled-adult children, 503 individuals, and early widowers), retroactive RSDI benefits, Medicare premium refunds, fee deductions made by qualified organizations acting as payee, and "returned benefits" (see BAM 500). No exceptions were applicable to the present case.

Michigan is \$19,720.⁴ Dividing the annual amount by 12 results in a monthly income limit of \$1,643.33. The same income limit is found in policy.⁵ RFT 242 (April 2023) p. 1. Spouse's group's countable income exceeds the AD-Care income limit. Thus, MDHHS properly determined Spouse to be ineligible for MA under AD-Care.

Though Spouse is ineligible for MA benefits under AD-Care or any other Group 1 category, Spouse may still receive MA under a Group 2 category. For Group 2 categories, eligibility is possible even when net income exceeds the income limit for a Group 1 category; this is possible because incurred medical expenses are used when determining eligibility. BEM 105 (January 2023) p. 1. Group 2 categories are considered a limited MA benefit because a deductible is possible. *Id.* For aged/disabled persons, G2S is the applicable Group 2 MA category (see BEM 166).

Clients with a deductible may receive MA if sufficient allowable medical expenses are incurred.⁶ BEM 545 (April 2018) p. 11. Each calendar month is a separate deductible period. *Id.* The fiscal group's monthly excess income is called the deductible amount. *Id.* Meeting a deductible means reporting and verifying allowable medical expenses that equal or exceed the deductible amount for the calendar month. *Id.*

Spouse's group's gross countable income of \$ [REDACTED] is unchanged for G2S. MDHHS testified it calculated RSDI totaling \$1,861 due to Spouse's RSDI being incorrectly inputted as \$535. MDHHS also applied a \$58 COLA. For purposes of this decision, it will be accepted that MDHHS correctly calculated the benefit group's income as \$ [REDACTED]

The G2S budget allows a \$20 disregard for unearned income and various employment income disregards. The G2S budget also factors ongoing medical expenses (which are applied toward a deductible), insurance premiums, and remedial services. Petitioner's AHR did not allege any relevant credits or expenses.

A client's deductible is calculated by subtracting the protected income level (PIL) from the client's net income. A PIL is a standard allowance for non-medical need items such as shelter, food, and incidental expenses. The PIL for Petitioner's shelter area and group size is \$408. RFT 240 (December 2013) p. 1.

Subtracting the PIL (\$408) and \$20 disregard from Spouse's group's countable income results in a monthly deductible of \$1,375; MDHHS calculated the same deductible. Given the evidence, MDHHS properly determined Spouse's MA eligibility.

Concerning MA, Petitioner's AHR also disputed the processing of medical expenses towards Spouse's MA deductible. The dispute was intertwined with the dispute over FAP benefits.

⁴ <https://www.healthcare.gov/glossary/federal-poverty-level-fpl/>

⁵ MDHHS policy lists an income limit of \$1,663.33 while noting that the \$20 disregard is already factored.

⁶ Clients should be aware that medical expenses need only be incurred, and not necessarily paid, to meet a deductible/spenddown.

The FAP (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 the FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. FAP policies are contained in the BAM, BEM, and RFT.

Petitioner's AHR also requested a hearing to dispute a reduction in FAP benefits. Exhibit A, pp. 3-4. MDHHS testified that a Notice of Case Action dated December 9, 2023, stated that Petitioner's FAP eligibility would be reduced to \$212 beginning February 2024. During the hearing, MDHHS provided the benefit group's income and expenses factored in determining FAP eligibility.⁷ Petitioner's AHR had no disagreement to FAP budget factors other than the budgeting of \$0 medical expenses.

Petitioner's FAP and MA disputes each stemmed from the same medical expense documentation. Petitioner's AHR testified she performs personal care services (PCS) for her parents. Petitioner's AHR also testified that she has submitted proof of those expenses to MDHHS for several months and that MDHHS, until recently, has regularly accepted the documents as proof of medical expenses for credit in the FAP budget and for Spouse's MA deductible. Petitioner's AHR additionally testified that she requested a hearing after MDHHS rejected her documentation as acceptable verification of medical expenses beginning January 2024.

MDHHS presented no examples of the unacceptable verification. MDHHS did present a document submitted by Petitioner in response to a Quick Note sent to Petitioner on January 17, 2024. Exhibit A, p. 6. The Quick Note stated that submitted PCS expense documentation failed to provide dates of services, failed to distinguish for whom the services were performed, and failed to show proof of payment. Exhibit A, p. 6. In response to the Quick Note, Petitioner submitted to MDHHS on February 16, 2024, a document stating she performs PCS for her parents such as bathing her father, cleaning their house, meal preparation, laundry, and preparing medication trays. Exhibit A, p. 5. The letter also stated she performs the activities weekly and charges \$1,400 per month.⁸ MDHHS contended that it was unable to credit Spouse's FAP budget or MA deductible because medical expenses were insufficiently verified.

For FAP benefits, MDHHS is to verify allowable medical expenses, including the amount of reimbursement, at initial application and redetermination. BEM 554 (January 2024) p. 13. Groups that continue to have a medical expense(s) that allow them to receive the standard medical deduction of \$200 will not need to reverify the expense at redetermination, unless questionable. *Id.* MDHHS is to also verify reported changes in the source or amount of medical expenses if the change would result in an increase in benefits. *Id.* MDHHS need not verify other factors, unless questionable. *Id.* Other factors include things like the allowability of the service or the eligibility of the person incurring the cost. *Id.*

⁷ See BEM 556 for how FAP benefits are calculated.

⁸ The evidence suggested that Petitioner's AHR performs the activities daily rather than weekly. However, the evidence did not clarify if she cooked for her parents every day or once per week.

For MA benefits, PCS verification must include the following:

- Date the service was provided.
- The charge for that day for the services provided.
- That the services rendered are services related to activities of daily living.
- That household services rendered in the beneficiary's home are services essential to the ill person's health and comfort.⁹ BEM 545 (July 2022) p. 23

For all programs, MDHHS is to tell the client what verification is required, how to obtain it, and the due date. BAM 130 (January 2023) p. 3. MDHHS is to use the DHS-3503, Verification Checklist (VCL), to request verification. *Id.* MDHHS is to allow the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. *Id.*, p. 7. MDHHS is to send a negative action notice when:

- The client indicates refusal to provide a verification, or
- The time period given has elapsed and the client has not made a reasonable effort to provide it. *Id.*

MDHHS requested verification of medical expenses from Petitioner using a Quick Note rather than a VCL. Though the Quick Note provided Petitioner with some guidance concerning medical expenses, it cannot substitute as a VCL, in part because no due date is specified.

Furthermore, MDHHS failed to establish why or how Spouse's PCS expense verifications were insufficient. MDHHS failed to provide any of Petitioner's PCS expense documents that were rejected as inadequate. MDHHS failed to explain why the PCS document returned by Petitioner's AHR after requesting a hearing failed to meet medical expense requirements for FAP and MA. Given the evidence, MDHHS failed to establish that it properly requested proof of PCS expenses; MDHHS additionally failed to establish that it properly rejected PCS expenses.

⁹ Furthermore, clients with a deductible may be eligible for ongoing coverage if certain conditions are met. *Id.*, pp. 23-24. Conditions include the cost of personal care services exceeding the deductible and an active Adult Services case authorizing payment of PCS. *Id.*

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined Spouse to be eligible for a monthly MA deductible of \$1,375. Concerning the determination of MA benefits, the actions of MDHHS are **AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly requested verification of Spouse's medical expenses concerning FAP and MA eligibility. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Request verification of Spouse's medical expenses for January 2024 using a VCL subject; and
- (2) Process PCS expense verification in accordance with policy; and
- (3) Issue supplements and notice, if any, in accordance with policy

The actions taken by MDHHS are **REVERSED**.

CG/nr



Christian Gardocki
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

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Interested Parties

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Via-First Class Mail :

Authorized Hearing Rep.

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