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GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
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[REDACTED]  
[REDACTED], MI [REDACTED]

Date Mailed: June 26, 2024  
MOAHR Docket No.: 24-004980  
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 June 12, 2024. Petitioner participated and was unrepresented.<sup>1</sup> Petitioner's spouse, [REDACTED] [REDACTED] (hereinafter, "Spouse"), testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Princess Ogundipe, supervisor.

### **ISSUES**

The first issue is whether MDHHS properly determined Petitioner's Medicaid eligibility.

The second issue is whether MDHHS properly terminated Petitioner's Medicare Savings Program (MSP) eligibility.

### **FINDINGS OF FACT**

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

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<sup>1</sup> During the hearing, Petitioner requested an adjournment due to not having a hearing packet. Petitioner's request was denied for three reasons. First, there were no documents in the packet needed to determine whether MDHHS took proper actions; to appease Petitioner, the hearing packet was reduced to MDHHS's Hearing Summary which was read into the record and Petitioner's hearing request. Secondly, Petitioner stated recurrent problems with mail delivery and there was no guarantee that another hearing packet mailing would be successful. Thirdly, the same issues were addressed in a recent hearing concerning Spouse's MA eligibility. (see MOAHR docket# 24-000549).

1. In 2019, Petitioner reported to MDHHS that she was marrying Spouse; MDHHS congratulated Petitioner without stating the consequences of the marriage on MA benefits.
2. During 2023, Spouse received gross monthly Retirement, Survivors and Disability Insurance (RSDI) of \$1,122.
3. During 2023, Petitioner received gross monthly RSDI of \$1,142.
4. As of January 2024, Petitioner was over the age of 65 years, married to Spouse, a Medicare recipient, not a caretaker to minor children, and not pregnant.
5. Beginning January 2024, Petitioner received \$1,179 in gross monthly RSDI.
6. Beginning January 2024, Spouse received \$1,158 in gross monthly RSDI.
7. On April 8, 2024, MDHHS determined that Petitioner was eligible for the limited-coverage category of Plan First effective May 2024. MDHHS also determined that Petitioner was ineligible for MSP benefits beginning May 2024 due to excess income.
8. On April 30, 2024, Petitioner requested a hearing to dispute Medicaid and MSP eligibility.
9. On May 7, 2024, MDHHS determined Petitioner were eligible to receive Medicaid subject to a monthly deductible of \$1,601 beginning May 2024.

### **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 requested a hearing, in part, to dispute a termination of MSP benefits. Exhibit A, pp. 4-5. A Health Care Coverage Determination Notice dated April 8, 2024, stated that Petitioner was ineligible for MSP beginning May 2024 due to excess income.<sup>2</sup>

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<sup>2</sup> Multiple Health Care Coverage Determination Notices were included in MDHHS's hearing packet. Only because Petitioner objected to their admission, the documents were excluded as exhibits.

MSP is an SSI-related Medicaid category. BEM 165 (October 2022) p. 1. One of three different subprograms are available under MSP. Qualified Medicare Beneficiaries (QMB) coverage pays for a client's Medicare premiums, coinsurances, and deductibles. *Id.* Specified Low Income Beneficiaries (SLMB) coverage pays for a client's Medicare Part B premium. *Id.* Additional Low-Income Beneficiaries (ALMB) coverage pays for a client's Medicare Part B premium if MDHHS funding is available. *Id.* The client's income determines the MSP subprogram issued (see RFT 242).

For MSP, MDHHS is to determine countable income according to the SSI-related MA policies in BEM 165, 500, 501, 502, 503, 504 and 530. BEM 165 (October 2022) p. 8. MDHHS is to apply the deductions in BEM 540 (for children) and 541 (for adults) to determine a client's net income for MSP. *Id.*

It was not disputed that Petitioner was married. As a married individual, Petitioner's MSP benefit group size is two persons.<sup>3</sup>

It was not disputed that Petitioner and Spouse received respective gross monthly RSDI of \$1,179 and \$1,158. Generally, MDHHS counts the gross amount of RSDI in determining MA eligibility.<sup>4</sup> BEM 503 (April 2019), p. 28. For MSP, Petitioner's benefit group's monthly countable income totals \$2,337.

For SSI-related MA categories such as MSP, MDHHS allows a standard \$20 disregard for unearned income, disregards for employment income, guardianship/conservatorship expense credits, and a disregard for cost-of-living adjustments (January through March only). The only applicable disregard and/or credit is the standard \$20 disregard for unearned income. Applying the disregard to Petitioner's group's RSDI results in a net income is \$2,317.

To be eligible for the lowest level of MSP, income must not exceed 135% of the Federal Poverty Level (FPL). The FPL for a group of two residing in Michigan is \$20,440.<sup>5</sup> Multiplying the FPL by 1.35 results in an income limit of \$27,594 (\$2,299.50 per month). The same income limit is found in MDHHS policy.<sup>6</sup>

Petitioner's group's countable net income exceeds the highest income limit for MSP eligibility.<sup>7</sup> Thus, MDHHS properly terminated Petitioner's application for MSP benefits due to excess income.

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<sup>3</sup> See BEM 211 for determining the group size for MA benefits.

<sup>4</sup> 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.

<sup>5</sup> <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

<sup>6</sup> MDHHS policy lists an income limit of \$2,319.50 while noting that the \$20 disregard is already factored. RFT 242 (April 2024) p. 1.

<sup>7</sup> The group's income was excessive by only \$1.50. Despite the paltry amount of excess income, the result is total MSP ineligibility.

Petitioner also requested a hearing to dispute a determination of Group 1 Medicaid benefits Exhibit A, pp. 4-5. A Health Care Coverage Determination Notice dated April 8, 2024, stated that Petitioner was eligible for the limited-coverage category of Plan First beginning May 2024. A later notice added that Petitioner was also eligible for Medicaid subject to a monthly deductible of \$1,601 beginning April 2024.<sup>8</sup> To determine if MDHHS properly determined Petitioner's Medicaid eligibility, a consideration of MA categories must be undertaken.

Medicaid is also known as MA. BEM 105 (January 2024) 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 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.*

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 for aged or disabled persons. BEM 163 (July 2017) p. 1.

As of the disputed benefit month, Petitioner was disabled and/or aged, not pregnant, a Medicare recipient, and not a caretaker to minor children. Under the circumstances, Petitioner is ineligible for all full-coverage MAGI-related categories. As a disabled and/or aged individual, Petitioner is potentially eligible to receive MA under the SSI-related category of Aged/Disability-Care (AD-Care).

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

As concluded in the MSP analysis, Petitioner's, and Spouse's combined RSDI in 2024 totaled \$2,337. Because AD-Care is an SSI-related MA category, Petitioner is entitled to the \$20 unearned income deduction. Petitioner's group's net income for AD-Care is \$2,317.

MDHHS gives AD-Care budget credits for employment income, guardianship expenses, and/or conservator expenses. Cost of living adjustments (COLA) are applicable for the

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<sup>8</sup> The notice also stated that Spouse was also eligible for Medicaid subject to a \$1,601 deductible beginning May 2024.

benefit months of January through March only. BEM 503 (January 2019) p. 29. Petitioner did not allege any relevant budget expenses or credits.

Net income for AD-Care cannot exceed 100% of the federal poverty level.<sup>9</sup> BEM 163 (July 2017) p. 2. In 2024, the annual federal poverty level for a 2-person group residing in Michigan is \$20,440.<sup>10</sup> Dividing the annual amount by 12 results in a monthly income limit of \$1,703.50 (rounding to nearest half dollar). The same income limit is found in policy.<sup>11</sup> RFT 242 (April 2024) p. 1. Petitioner's group's countable income exceeds the AD-Care income limit.<sup>12</sup> Given the evidence, MDHHS properly determined Petitioner to be ineligible for MA under AD-Care.

Though Petitioner is ineligible for MA benefits under AD-Care or any other Group 1 category offering unlimited MA coverage, Petitioner 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).

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 (July 2022) p. 10. 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.*

Petitioner's countable income of \$2,337 from the AD-Care analysis is unchanged for G2S. The G2S budget additionally allows deductions for ongoing medical expenses (which are applied towards a deductible), insurance premiums, and remedial services. Additional expenses were not factored other than a \$175 credit for insurance premiums.<sup>13</sup>

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

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<sup>9</sup> Spouse contended the Medicaid income limit for a group size of two persons is \$28,207 which is 138% of the FPL. An income limit of \$28,207 is applicable for HMP eligibility. Neither Petitioner nor Spouse are eligible for HMP due to being over 65 years and/or status as Medicare recipients (see BEM 137).

<sup>10</sup> <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

<sup>11</sup> MDHHS policy lists an income limit of \$1,723.50 while noting that the \$20 disregard is already factored.

<sup>12</sup> Presumably, the group's income is within the income guidelines of the limited coverage MA category of Plan First (see BEM 124).

<sup>13</sup> If Petitioner and Spouse are ineligible for MSP, insurance premiums totaling \$350 should be factored. MDHHS explained that as of the disputed benefit month, only Petitioner or Spouse were ineligible for MSP. Thus, in future benefits months \$350 in expenses would be factored and each person's deductible would be decreased by an additional \$175. Because a specific deductible amount is not being disputed, MDHHS's testimony will be accepted.

as shelter, food, and incidental expenses. The PIL for Petitioner's shelter area and group size is \$541. RFT 240 (December 2013) p. 1.

Subtracting the PIL (\$541), \$20 disregard, and insurance premiums (\$175) from Petitioner's group's countable income (\$2,337) results in a monthly deductible of \$1,601: the same deductible calculated by MDHHS.

Petitioner and Spouse testified they became married in 2019 and suggested that each had Medicaid eligibility until their marriage. Each testified that MDHHS congratulated them on their marriage but contended that MDHHS should have warned them that marriage would jeopardize their Medicaid eligibility. It is highly unfortunate for Petitioner and Spouse that marriage may have resulted in a reduction in MA benefits; however, MDHHS has no obligation to forewarn clients of the consequences of marriage on benefit eligibility.

Petitioner and Spouse credibly testified that their marriage reported was reported to MDHHS in 2019. The evidence suggested that MDHHS delayed processing the reporting of Petitioner's and Spouse's marriage until 2022. Any neglect by MDHHS only resulted in Petitioner and Spouse receiving over-issued MA benefits. Such neglect is not a persuasive argument for continuing the over-issuance of MA benefits. Given the evidence, MDHHS properly determined Petitioner's MA eligibility.

### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly terminated Petitioner's MSP eligibility beginning May 2024. MDHHS additionally properly determined Petitioner's Medicaid eligibility beginning April 2024. The actions of MDHHS are **AFFIRMED**.

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**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 :**

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