



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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Date Mailed: May 16, 2022
MOAHR Docket No.: 22-000348
Agency No.: ██████████
Petitioner: ██████████ ██████████

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 April 25, 2022. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Sonya Reynolds, Eligibility Specialist.

ISSUE

Did the Department properly determine Petitioner's Medical Assistance (MA) Program 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 received a Veteran Compensation Benefit (VCB) of \$██████████ per month.
2. Petitioner received a Retirement Survivors Disability Insurance (RSDI) benefit of \$██████████ per month.
3. Petitioner was originally enrolled in the Healthy Michigan Plan (HMP), but then he became eligible for Medicare effective ██████████ 2021 and was no longer eligible for HMP.
4. Petitioner was enrolled in Group 2-Aged, Blind, Disabled (G2S) with a deductible of \$1,431.00 which has increased to \$1,501.00 due to cost-of-living adjustments.

5. On January 28, 2022, the Department received Petitioner's request for hearing disputing his placement in and calculation of the deductible for G2S.

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 recipient of MA benefits in the HMP category but lost his eligibility for HMP and was placed in the G2S category. Medicaid (also known as MA) is available (i) under Supplemental Security Income (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, and (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage. BEM 105 (January 2021), p. 1.

Petitioner is not under age 21 or pregnant. No evidence was presented that Petitioner was a parent or caretaker of a minor child, or former foster child. Therefore, the programs for each of these groups are inapplicable to the Petitioner.

HMP provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income at or below 133% of the federal poverty level (FPL) under the Modified Adjusted Gross Income (MAGI) methodology; (iii) do not qualify for or are not enrolled in Medicare; (iv) do not qualify for or are not enrolled in other MA programs; (v) are not pregnant at the time of application; and (vi) are residents of the State of Michigan. BEM 137 (June 2020), p. 1; MPM, Healthy Michigan Plan, § 1.1. Since Petitioner is eligible for Medicare, he is not eligible for HMP.

However, at the hearing there was substantial review of MA policies during the COVID-19 pandemic. Effective [REDACTED] 2021, MA programs may be closed if any of the following occur: death, moving out of state, client requests closure, or if the client has an invalid enrollment. An invalid enrollment occurs when MDHHS made a mistake in their **initial** eligibility determination, or if they are found to have committed fraud or abuse. In addition, effective October 11, 2021, an individual who is actively receiving HMP and becomes eligible for Medicare may have their MA coverage category changed from

HMP to Ad-Care (a greater coverage category) or G2S (a lesser coverage category). If HMP is closing based on Medicare eligibility, in order for the client to be placed in G2S, the client must be approved for Medicare Savings Program (MSP). If the client is not approved for MSP, HMP should remain active and the client should not be placed in G2S.

In reviewing the evidence presented, the State Online Query (SOLQ), an interface with the Social Security Administration accessible by the Department to aid it in determining a client's Social Security Benefit and Medicare participation, shows that Petitioner is eligible for Medicare. However, it also shows that Petitioner has not been receiving MSP coverage as seen by the line which states "Part B Buy-In Indicate: No." If Petitioner had been receiving MSP coverage, that line would indicate "Yes." In addition to the information seen on the SOLQ, the Department's budget also shows that Petitioner is responsible for insurance premiums of \$148.50. Testimony from DHHS indicated that Petitioner had not submitted proofs of any other insurance premiums; therefore, the only premium which could have been budgeted is a Medicare premium. If Petitioner was approved for MSP, no insurance premium should have been budgeted. Given the information presented by the SOLQ and the Department's G2S budget, Petitioner was not approved for MSP. Since Petitioner was not approved for MSP, he could not be transitioned from HMP to G2S and HMP should remain open.

If additional review shows that Petitioner was in fact approved for HMP, a review of Petitioner's placement in G2S and calculation of the deductible follows below:

In determining the SSI-related MA category Petitioner is eligible to receive, if he is approved for MSP and can be moved out of HMP to another category, the Department must determine Petitioner's MA fiscal group size and net income. Petitioner has a group size for SSI-related MA purposes of one as there was no evidence that he is married. BEM 211 (July 2019), p. 8. Petitioner has two sources of income. His first source of income is his Retirement Survivors Disability Insurance (RSDI) of \$864.10 per month. Petitioner's second source of income is his VCB of \$1,229.00. Pursuant to policy and federal regulations, SSI-related MA categories or MA categories involving individuals who are blind or disabled do not use the MAGI methodology to determine eligibility. 42 CFR 435.603(a)(2) & (j); BEM 163 (July 2017). Instead, income eligibility is determined by following 42 CFR 435.601 and 42 CFR 435.602. *Id.*

The Ad-Care program, an SSI-related MA category, requires that net group income cannot exceed one hundred percent of the federal poverty level plus \$20.00. BEM 163, pp. 1-2. The 2021 federal poverty level for a one-person household is \$12,880.00 annually or \$1,073.33 per month. <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines/prior-hhs-poverty-guidelines-federal-register-references>. The 2022 FPL effective January 12, 2022 for a group size of one is \$13,590.00 annually or \$1,132.50 monthly. <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>. The net income limit is established adding \$20.00 to the FPL as seen in RFT 242, \$1,094.00 for a group size of one effective April 1, 2021. RFT 242 (November 2021), p. 1.

Effective April 1, 2022, the limit increased to \$1,153.00 for a group size of one. RFT 242 (April 2022), p. 1.

Countable income is calculated by adding the amounts of income actually received or reasonably anticipated within the month. BEM 530 (April 2020), p. 2. In determining Petitioner's countable income, SSI-Related MA categories, because they are not MAGI MA categories, require consideration of Petitioner's RSDI as well as VCB to determine eligibility. BEM 503 (April 2022), pp. 20, 39; 42 CFR 435.831(b)(2); https://www.open.ssa.gov/OACT/ssir/SSI21/V_B_Exclusions.html - 39817. Petitioner had gross RSDI income of \$[REDACTED] and a gross VCB of \$[REDACTED] for a total of \$[REDACTED]. Next, \$20.00 is subtracted for the general exclusion and Petitioner's Net Income is \$[REDACTED]. BEM 541 (January 2022), p. 3. Therefore, Petitioner's Net Income is greater than the net income limit and the FPL. Petitioner is not eligible for the full coverage Ad-Care program.

Since Petitioner has excess income for eligibility under the Ad-Care program, the full coverage SSI-related MA program, an evaluation of Petitioner's eligibility for MA coverage under the Group 2 program follows. Group 2 provides MA coverage with a deductible. BEM 105, p. 1.

The deductible is the amount that the client's net income (less any allowable deductions) exceeds the applicable Group 2 MA protected income level (PIL). PIL is a set allowance for non-medical need items such as shelter, food, and incidental expenses. BEM 544 (January 2020), p. 1. It is based on the client's MA fiscal group size and the county in which the client resides. *Id.* Petitioner resides in Wayne County and has a group size of one; therefore, he is in shelter area IV, and his PIL is \$375.00. RFT 200 (April 2017), p. 3; RFT 240 (December 2013), p. 1. Thus, if Petitioner's monthly net income (less allowable needs deductions) is in excess of \$375.00, Petitioner is eligible for MA assistance under the G2S program with a deductible equal to the amount of income remaining after the appropriate and allowed deductions which is greater than \$375.00.

As discussed above, Petitioner's net income was \$[REDACTED]. In calculating the deductible, allowances are made for health insurance premiums and remedial services. BEM 544, pp. 1-2. Petitioner is responsible for his Medicare Part B premium of \$170.10. Therefore, Petitioner's PIL and insurance premium are subtracted to reach a deductible of \$1,528.00. The amount of Petitioner's deductible as calculated by the Department is less than that calculated here and therefore more beneficial to Petitioner. As a result, no changes will be made to Petitioner's deductible.

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 proof that it properly changed Petitioner's MA coverage from HMP to G2S.

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. Reprocess Petitioner's MA and MSP eligibility;
2. If otherwise eligible, issue supplements to Petitioner or on his behalf for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.

AM/mp



Amanda M. T. Marler
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

Email Recipients:

MDHHS-Wayne-17-hearings
EQAD Hearings
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First-Class Mail Recipient:

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