



GRETCHEN WHITMER  
GOVERNOR

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

MARLON I. BROWN, DPA  
DIRECTOR



Date Mailed: July 10, 2024  
MOAHR Docket No.: 24-004327  
Agency No.: [REDACTED]  
Petitioner: [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, an in-person hearing was held on June 13, 2024, from Detroit, Michigan. Petitioner appeared for the hearing with her caregiver [REDACTED] and represented herself. The Department of Health and Human Services (Department) was represented by Sunshine Simonson, 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 Group 2 Aged, Blind, Disabled (G2S) subject to a monthly deductible of \$889. (Exhibit A, p.9)
2. Under the Families First Coronavirus Response Act (FFCRA), PL 116-127, Michigan received additional federal MA funding during the COVID-19 pandemic health emergency (PHE).
3. As a condition for receiving the increased funding, § 6008 of the FFCRA required that the Department provide continuous MA coverage for individuals who were enrolled in MA on or after March 18, 2020, even if those individuals became ineligible for MA for reasons other than death, residing outside of Michigan, or requesting that MA be discontinued.

4. The MA continuous coverage requirement under § 6008 of the FFCRA was not indefinite.
5. The Consolidated Appropriations Act, 2023 (CAA, 2023), PL 117-328, terminated the continuous coverage requirement effective March 31, 2023.
6. Beginning April 1, 2023, the CAA, 2023 required the Department to reevaluate almost all MA recipients' eligibility for ongoing MA.
7. In connection with a redetermination, Petitioner's eligibility for MA benefits was reviewed.
8. On or around February 15, 2024, the Department sent Petitioner a Health Care Coverage Determination Notice (Notice) advising Petitioner that effective March 1, 2024, she was eligible for MA subject to a monthly deductible of \$1,018. (Exhibit A, pp. 16-21)
9. On or around April 2, 2024, Petitioner requested a hearing disputing the Department's actions with respect to her MA benefits. (Exhibit A, pp. 3-5)

### **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 disputed the Department's determination that she was eligible for MA under a deductible based program.

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.

HMP is a MAGI-related MA category that provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income under the MAGI methodology at or below 133% of the federal poverty level (FPL); (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, p. 1; 42 CFR 435.603.

Because Petitioner is over age 64 and enrolled in Medicare, she is not eligible for full coverage MA under the HMP. Thus, 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.

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 in the amount of [REDACTED] and a monthly retirement pension of [REDACTED]. The Department properly considered the unearned income general exclusion of \$20 and for the months of January, February, and March, the Department considers a cost of living adjustment (COLA) deduction which in this case was \$29. BEM 503 (January 2023), pp. 29-30. Therefore, the Department determined that Petitioner had countable income of [REDACTED].

Petitioner confirmed that she has a monthly pension of [REDACTED] and that the gross amount of her RSDI/Social Security is [REDACTED]. However, Petitioner testified that her monthly benefit is reduced due to an overpayment and that she only receives [REDACTED] monthly. The Department reviewed the State Online Query (SOLQ) during the hearing and confirmed that [REDACTED] is reduced from Petitioner's monthly federal benefit and the net amount she receives is [REDACTED]. It was unclear whether this overpayment was with respect to Petitioner's previous receipt of Supplemental Security Income (SSI) or her RSDI/Social Security. Although the Department is generally to include the gross amount of income earned from SSI and RSDI in the calculation of unearned income, the Department is to exclude the amount deducted by an issuing agency to recover a previous overpayment. BEM 503 (January 2023), pp. 28-32; BEM 500 (April 2022), pp. 4-7. Upon review, Petitioner's unearned income is [REDACTED] and not the [REDACTED] calculated by the Department. Therefore, in consideration of the \$20 unearned income general exclusion and the \$29 COLA deduction, Petitioner's countable income is [REDACTED].

After further review of Department policy and based on the testimony provided at the hearing, despite the incorrect unearned income calculation, because Petitioner's [REDACTED] countable income exceeds the net income limit for the Ad-Care program, the Department acted in accordance with Department policy when it determined that Petitioner was ineligible for full coverage MA benefits under the Ad-Care program without a deductible and determined that she would be eligible for MA under the Group 2 Aged Blind Disabled (G2S) program with a monthly deductible.

Additionally, 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. Individuals are eligible for Group 2 MA coverage when net income (countable income minus allowable income deductions) does not exceed the applicable Group 2 MA protected income levels (PIL), which is based on shelter area and fiscal group size. BEM 105, pp. 1-2; BEM 166, pp. 1-2; BEM 544 (January 2020), p. 1; RFT 240 (December 2013), p. 1. The PIL is a set allowance for non-medical need items such as shelter, food and incidental expenses. BEM 544, p. 1. The monthly PIL for an MA group of one living in [REDACTED] County is [REDACTED] per month. RFT 200 (April 2017), pp. 1-2; RFT 240, p. 1. Thus, if Petitioner's net monthly income is in excess of the [REDACTED] she may become eligible for assistance under the deductible program, with the deductible being equal to the amount that her monthly income exceeds [REDACTED]. BEM 545, p. 1. To meet a deductible, a MA client must report and verify allowable medical expenses (defined in Exhibit I) that equal or exceed the deductible amount for the calendar month being tested. The group must report expenses by the last day of the third month following the month in which client wants MA coverage. BEM 545, p. 11. The Department is to add periods of MA coverage each time the group meets its deductible. BEM 545, p.11.

The Department determined that effective March 1, 2024, Petitioner was eligible for MA under the G2S category with a monthly deductible of \$1,018. At the hearing, the Department representative presented the SSI-Related Medicaid Income Budget to

explain the \$1,018 deductible calculation. (Exhibit B). As referenced above, the Department considered unearned income from pension and RSDI/Social Security in the gross total amount of [REDACTED]. However, Petitioner's unearned income should have been calculated to be [REDACTED].

The Department did properly apply the \$20 unearned income exclusion. Petitioner confirmed that she is not responsible for monthly insurance premiums, as the Department is paying her Medicare premiums through the Medicare Savings Program. Although there was some evidence that Petitioner had some medical expenses for consideration including copays for medications and medical supplies, there was no evidence presented that Petitioner submitted any verification of ongoing medical expenses to the Department prior to the hearing. Petitioner was informed that should she submit the expenses to the Department in accordance with BEM 545, the Department would review the expenses and determine their applicability to Petitioner's monthly deductible. There was no evidence that Petitioner was entitled to any additional deductions to income such as guardianship/conservator expenses or remedial services.

Although it was established that the Department properly determined that Petitioner would be eligible for MA under the G2S with a monthly deductible, and that it properly took into consideration the appropriate deductions to income, because of the errors in the calculation of unearned income, the Department failed to establish that Petitioner's monthly deductible was correctly calculated to be \$1,018 for the month of March 1, 2024, ongoing. Thus, the Department will be ordered to recalculate Petitioner's MA deductible for March 1, 2024, ongoing, taking into consideration the reduction in her monthly unearned income due to the overpayment.

At the hearing, Petitioner raised additional concerns about her chore provider not being paid for services beginning in March 2024. Petitioner was advised that any dispute concerning chore provider payment needed to be addressed with the adult medical services district within the Department, as Petitioner would have received some type of eligibility notice regarding her chore provider case. The Department representative explained that because Petitioner's MA case is subject to a monthly deductible, Petitioner is required to submit verification showing that she incurred medical expenses that were sufficient to meet or exceed her deductible each month.

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 not act in accordance with Department policy when it determined that Petitioner's MA deductible was \$1,018.


**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. Recalculate Petitioner's MA deductible effective March 1, 2024, and apply all verified/allowable medical expenses;
2. Provide MA coverage to Petitioner for MA benefits she was entitled to receive but did not from March 1, 2024, ongoing; and
3. Notify Petitioner in writing of its decisions.

ZB/ml

  
**Zarnab 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:**

**Respondent**

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**Interested Party**

BSC4

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EQAD

MOAHR

**Via First Class Mail:**

**Petitioner**

[REDACTED]  
[REDACTED] MI [REDACTED]