



GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: November 8, 2024
MOAHR Docket No.: 24-009737
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, a telephone hearing was held on October 10, 2024, from Detroit, Michigan. Petitioner was represented by [REDACTED] Authorized Hearing Representative (AHR). The Department of Health and Human Services (Department) was represented by Rebecca Scott, 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 previously a recipient of MA benefits under the Foster Care Transition Medicaid (FCTMA) category. In connection with a redetermination, Petitioner's eligibility to receive MA benefits was reviewed.
2. On or around May 6, 2024, Petitioner submitted a redetermination to the Department. (Exhibit A, pp. 18-24)
3. Petitioner resides in an adult foster care home and pays \$1,100.50 a month to the facility, which is applied towards 24/7 monitoring, medication administration, transportation to appointments, and other services. (Exhibit A, pp. 13-15)
4. On June 18, 2024, the Department sent Petitioner a Health Care Coverage Determination Notice, advising that from June 1, 2024, to July 31, 2024, he was

eligible for full coverage MA benefits and that effective August 1, 2024, ongoing, he was eligible for MA subject to a monthly deductible of \$610. (Exhibit A, pp. 33-36)

5. On or around August 16, 2024, a hearing was requested on Petitioner's behalf, disputing the Department's actions with respect to his MA benefits.

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 he was eligible for MA under a deductible based program. The Department representative testified that Petitioner was previously a recipient of MA benefits under the Foster Care Transition Medicaid (FCTMA) category, which provides MA coverage to individuals transitioning from foster care to adulthood, from age 18 until their 26th birthday. BEM 118 (January 2023). The Department testified that in connection with a redetermination, Petitioner's MA eligibility was reviewed and after processing the redetermination, it was determined that he was no longer eligible for MA under the FCTMA category, as he turned ■ years old. The Department concluded that effective August 1, 2024, Petitioner was eligible for MA under the Group 2 Aged, Blind, Disabled (G2S) subject to a monthly deductible of \$610.

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 disabled and enrolled in Medicare, he is not eligible for full coverage MA under the HMP. There was also no evidence that Petitioner was the parent or caretaker of any minor children. 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, 2024, 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 \$1,275, 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 \$1,255.

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 his receipt of gross monthly RSDI/Social Security benefits. Petitioner's AHR did not dispute that Petitioner receives monthly unearned income in the amount identified by the Department. The Department properly considered the unearned income general exclusion of \$20. BEM 503 (January 2023), pp. 29-30. Therefore, the Department determined that Petitioner had countable income of [REDACTED]

After further review of Department policy and based on the testimony provided at the hearing, 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 he 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 ██████ County is \$375 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 \$375, he may become eligible for assistance under the deductible program, with the deductible being equal to the amount that his monthly income exceeds \$375. 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 August 1, 2024, Petitioner was eligible for MA under the G2S category with a monthly deductible of \$610. At the hearing, the Department representative presented the SSI-Related Medicaid Income Budget to explain the \$610 deductible calculation. As referenced above, the Department properly considered unearned income from RSDI/Social Security in the gross total amount of ██████ and properly applied the \$20 unearned income exclusion. Although the evidence showed that Petitioner had a court appointed guardian and/or conservator, the budget does not reflect the \$83 deduction as an expense. This was unexplained by the Department. Because Petitioner was enrolled in the Medicare Savings Program, and did not present a responsibility for any additional insurance premiums, there was no applicable insurance premium deduction on the budget. Additionally, the budget reflects a \$457 remedial services deduction, which is based on Petitioner's residence in an adult foster care home and the amount of which is a correct standard pursuant to RFT 241. BEM 544, pp. 1-3.

Petitioner's AHR asserted that Petitioner pays \$1,100.50 a month to the AFC facility where he resides. She testified that the amount is applied towards 24/7 monitoring, medication administration, transportation to appointments, and other personal care services. (Exhibit A, pp. 13-15). The Department could not explain whether these additional expenses would qualify as personal care expenses to be applied to Petitioner's monthly deductible on an ongoing basis.

Group 2 MA income eligibility exists for the calendar month tested when there is no excess income or the allowable medical expenses (defined in Exhibit 1) equal or exceed the excess income. When personal care services (defined in Exhibit ID) equal or exceeds the group's excess income for the month tested, income eligibility exists for the entire month. Income eligibility may be ongoing unless a change is projected; see Exhibit II in BEM 545. BEM 545 (July 2022), pp. 1-4. Exhibit ID of BEM 545 indicates that allowable medical expenses include amounts the medical group incurs for personal care services

in their home or AFC. Personal care expenses are incurred monthly regardless of when services are paid for. The list of allowable personal care services is identified in BEM 545, pp. 22-23. Additionally, although it was unknown whether Petitioner has an active adult home help services (HHS) case through the Department, if available, the Department can use the verifications obtained by the Adult Services specialist for the Home Help eligibility determination. Clients with excess income for MA and receiving personal care Home Help Services (HHS) may be eligible for ongoing MA coverage which can be authorized or continued at the client's requested option, provided all conditions outlined in BEM 545 Exhibit II are met, under the personal care option. See BEM 545, at pp. 23-26.

Although the Department applied the remedial services deduction on the budget, Department policy provides that remedial services do not include personal care services which are explained in BEM 545, EXHIBIT ID. BEM 544, pp. 1-3. Thus, it appears that Petitioner may also be entitled to use the cost of personal care services in order to become income eligible for MA. Therefore, while the Department properly considered Petitioner's unearned income and some deductions including the remedial services deduction, because of the errors identified above with respect to the failure to include the court appointed guardian/conservator deduction and Petitioner's potential eligibility for ongoing monthly medical expenses resulting from the costs of personal care services, the Department failed to establish that it properly determined Petitioner's MA eligibility with a monthly deductible of \$610.

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 Petitioner's MA eligibility for August 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 eligibility effective August 1, 2024, specifically, considering application of the guardian and/or conservator deduction and personal care services to the monthly deductible, coordinating with the adult services worker if necessary;
2. Process any remaining medical expenses incurred and apply them towards Petitioner's MA deductible for the applicable months;
3. Provide MA coverage to Petitioner for the months in which his MA deductible was met, in accordance with the above and in accordance with Department policy; and;
4. Notify Petitioner and his AHR of its decision in writing.

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:

DHHS

Tracy Felder
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Interested Parties

BSC4
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Via First Class Mail:

Authorized Hearing Rep.

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Petitioner

[REDACTED]
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