



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

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██████████, MI ██████████

Date Mailed: November 20, 2024  
MOAHR Docket No.: 24-010475  
Agency No.: ██████████  
Petitioner: ██████████ ██████████

**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 telephone hearing was held via Microsoft Teams on October 21, 2024. Petitioner testified and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Ryan Kennedy, hearings facilitator.

**ISSUES**

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

The second issue is whether MDHHS properly terminated Petitioner's and her spouse'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:

1. On ██████████ ██████████ 2024, Petitioner applied for Medical Assistance (MA) benefits for herself.
2. As of May 2024, Petitioner and her spouse, ██████████ ██████████ (hereinafter, "Spouse") received \$3,118 in combined Retirement, Survivors, Disability Insurance (RSDI).

3. As of May 2024, Petitioner and Spouse were Medicare recipients, disabled, non-caretakers to a minor child, not pregnant, and not below the age of 21 years.
4. On June 18, 2024, MDHHS terminated MSP benefits beginning April 2024 for Spouse due to failing to verify information. Spouse was also determined ineligible for MSP beginning June 2024 due to not meeting basic criteria to receive MSP benefits.
5. On August 30, 2024, Petitioner requested a hearing to dispute MA eligibility for herself, Spouse, and her son, [REDACTED] [REDACTED] (hereinafter, "Son").
6. On October 21, 2024, during an administrative hearing, Petitioner withdrew the MA dispute concerning MA benefits for Son.

### **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 MA benefits for Son. Exhibit A, pp. 3-6. During the administrative hearing, Petitioner stated that MDHHS eventually resolved her dispute favorably and that a hearing was no longer needed concerning Son's MA eligibility. Accordingly, Petitioner's dispute over Son's MA eligibility will be dismissed.

Petitioner also requested a hearing to dispute a determination of Medicaid eligibility concerning herself and Spouse.<sup>1</sup> Exhibit A, pp. 3-6. MDHHS testified that Petitioner and Spouse were eligible, at most, for Medicaid subject to a monthly deductible of \$2,421 beginning April 2024.<sup>2</sup>

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,

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<sup>1</sup> Petitioner testified that she and Spouse had full Medicaid for four years before it abruptly ended. Petitioner should be aware that from March 2020 through at least February 2023, MA income limits were lax due to the COVID-19 pandemic. Since February 2023, MDHHS applied its strict income limits to all MA cases.

<sup>2</sup> MDHHS testified that Petitioner and Spouse are pending eligibility for a deductible. MDHHS explained that policy requires a wait of several days to allow for the detection of assets before eligibility is official (see BEM 400). For purposes of the analysis, it will be accepted that the deductible determination was finalized.

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.<sup>3</sup> *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.* Group 2 categories are considered a limited benefit (not limited coverage) because a deductible is possible. *Id.*

Petitioner applied for MA benefits on May 3, 2024. Exhibit A, pp. 8-14. Petitioner's application reported that Petitioner and Spouse were over 21 years of age, disabled, Medicare recipients, not pregnant, and not caretakers to a minor child. Under the circumstances, Petitioner and Spouse are ineligible for all MAGI-related categories. As disabled individuals, Petitioner and Spouse are potentially eligible to receive MA under the SSI-related category of Aged/Disability-Care (AD-Care). AD-Care policies are found in BEM 163.

At all relevant times, Petitioner and spouse resided together. For purposes of AD-Care, Petitioner's and Spouse's group size is two. BEM 211 (October 2023) p. 8.

For AD-Care, MDHHS is to determine countable income according to SSI-related MA policies in BEM 500, 501, 502, 503, 504 and 530, except for RSDI.<sup>4</sup> BEM 163 (July 2017) p. 2. For RSDI, MDHHS is to count gross RSDI from the benefit month except from January through March in which gross RSDI from the most recent December is counted. *Id.* For AD-Care, MDHHS is to apply the deductions in BEM 540 (for children) or 541 (for adults). *Id.*

For SSI-Related MA categories, a \$20 disregard is given for unearned income. BEM 541 (July 2019) p. 3. 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 (April 2024) p. 29 Petitioner did not allege any relevant budget expenses or credits other than the standard \$20 unearned income credit.

Petitioner testified that Spouse received \$2,600 in RSDI and that she received gross RSDI of \$518. Adding the RSDI results in a total RSDI of \$3,118. Generally, MDHHS

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<sup>3</sup> Eligibility factors for all MA categories are found in the Bridges Eligibility Manual from BEM 105 through BEM 174.

counts the gross amount of RSDI in determining Medicaid eligibility.<sup>5</sup> BEM 503 (January 2023) p. 29. Subtracting the \$20 disregard results in countable income of \$3,098.

Net income for AD-Care cannot exceed 100% of the federal poverty level 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>6</sup> Dividing the annual FPL by 12 results in a monthly income limit of \$1,703.50 (rounding up to nearest half dollar). The same income limit is found in policy.<sup>7</sup> RFT 242 (April 2024) p. 1. Petitioner's and Spouse's monthly countable income of \$3,098 exceeds the AD-Care income limit. Given the evidence, MDHHS properly determined Petitioner and Spouse to be ineligible for MA under AD-Care or any other Group 1 MA category with unlimited coverage.

Though Petitioner and Spouse are 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.*

G2S is an SSI-related MA category. BEM 166 (April 2017) p. 1. As such, Petitioner's and Spouse's RSDI of \$3,118 remains unchanged for G2S. In addition to AD-Care disregards, the G2S budget factors ongoing medical expenses (which are applied toward a deductible), insurance premiums, and remedial services. No other credits were applicable other than the standard \$20 disregard for unearned income.<sup>8</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 as shelter, food, and incidental expenses. The PIL for Petitioner's shelter area and group size is \$541. RFT 240 (December 2013) p. 1.

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<sup>5</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 BEM 503). No exceptions were applicable to the present case.

<sup>6</sup> <https://www.healthcare.gov/glossary/federal-poverty-level-fpl/>

<sup>7</sup> MDHHS policy lists an income limit of \$1,275 was noting the \$20 disregard is factored into the limit.

<sup>8</sup> Petitioner and Spouse may be eligible for Medicare premiums if not eligible for MSP.

Subtracting the PIL of \$541 and \$20 disregard from income of \$3,118 results in a monthly deductible of \$2,557. MDHHS calculated a lower deductible of \$2,421. Given the evidence, MDHHS did not unfairly determine Petitioner's and Spouse's Medicaid eligibility.

Petitioner also requested a hearing to dispute a termination of MSP benefits. Exhibit A, pp. 3-6. A Health Care Coverage Determination Notice dated June 18, 2024, stated that Spouse's MSP eligibility ended April 2024 due to a failure to verify information and June 2024 due to not meeting the basic criteria to receive MSP benefits. Exhibit A, pp. 15-17.

To receive MSP, a person must be entitled to Medicare Part A. BEM 165 (July 2024) p. 1. Financial (income and assets) and other nonfinancial eligibility factors (residency, citizenship, identity...) must also be met. *Id.*, p. 2.

During the hearing, MDHHS did not present any evidence that Petitioner or Spouse were ineligible for MSP due to not meeting the basic criteria. Thus, MDHHS failed to establish that Petitioner and/or Spouse were ineligible for MSP due to not meeting the basic criteria.

MDHHS alleged that Petitioner's application for MSP dated [REDACTED] 2024, while Spouse did not apply. Yet, MDHHS sent written notice of denial concerning Spouse, but not for Petitioner. Without evidence of proper written notice, the apparent denial of MSP to Petitioner is aptly reversed. As a remedy, MDHHS will be ordered to reprocess Petitioner's application.

The analysis will continue to consider if Spouse was ineligible for MSP due to failing to verify information. MSO for Spouse was denied in part due to an alleged failure to verify assets.

Assets are relevant to determining MA under SSI-related categories. For purposes of this decision, it will be assumed that Petitioner is eligible only for MA benefits under SSI-related categories.<sup>9</sup>

For all programs, MDHHS is to inform the client what verification is required, how to obtain it, and the due date. BAM 130 (January 2023) p. 2. MDHHS is to use the DHS-3503, Verification Checklist (VCL), to request verification. *Id.* For MA, MDHHS is to allow the client 10 calendar days to provide the verification that is requested. *Id.*, p. 7. MDHHS may send a negative action notice when:

- The client indicates refusal to provide a verification, or
- The time period given has elapsed. *Id.*

MDHHS testified it mailed Petitioner a VCL on May 3, 2024, requesting verification of assets. MDHHS acknowledged that Petitioner verified balances for five different accounts but failed to verify assets for one savings account.

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<sup>9</sup> See BAM 105 for an explanation of MA categories.

Notably, MDHHS did not present the VCL as evidence. Without the VCL, it is not certain that MDHHS properly informed Petitioner of the verifications needed. Furthermore, MDHHS acknowledged that Petitioner did verify all assets. Though the evidence did not verify whether Petitioner timely verified assets, the evidence also did not establish that Petitioner's assets were untimely verified. As it is MDHHS's burden to prove a failure by Petitioner, it is proper to reverse the MDHHS denial of MSP benefits. As with the remedy for Spouse, a reprocessing of MSP eligibility is proper.<sup>10</sup>

### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner withdrew the dispute over Son's MA benefit eligibility. Concerning Son's MA eligibility, Petitioner's hearing request is **DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined Petitioner's and Spouse's Medicaid eligibility since April 2024. Concerning Medicaid for Petitioner and Spouse, 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 determined Petitioner's and Spouse's MSP eligibility. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reprocess Petitioner's and Spouse's MSP eligibility effective April 2024 subject to the finding it sent proper written notice of Petitioner's denial for MSP benefits, and subject to the finding it properly denied MSP to Spouse due to a failure to verify assets; and
- (2) Issue notice and supplements, if any, in accordance with policy.

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

CG/nr



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**Christian Gardocki**  
Administrative Law Judge

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<sup>10</sup> Petitioner should be aware that a reprocessing does not equate to a finding of eligibility. In fact, given the household income, Petitioner and Spouse both appear to be ineligible for MSP due to excess income. However, that is for MDHHS to determine.

**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**  
Vivian Worden  
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44777 Gratiot  
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**MDHHS-Macomb-12-Hearings@michigan.gov**

**Interested Parties**

BSC4  
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EQAD  
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**Via-First Class Mail :**

**Petitioner**

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