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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

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DIRECTOR

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██████, MI ██████

Date Mailed: November 8, 2024
MOAHR Docket No.: 24-010636
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 hearing was held via Microsoft Teams (audio only) on October 24, 2024. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Princess Ogundipe, supervisor.

ISSUES

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

The second issue is whether MDHHS properly determined Petitioner's Medicaid 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 October 20, 2023, MDHHS terminated Petitioner's MA eligibility beginning November 2023 due to Petitioner's failure to return redetermination documents.
2. On ██████████ ██████ 2023, Petitioner applied for cash, Medical Assistance (MA), and State Emergency Relief (SER) benefits.
3. On November 28, 2023, MDHHS approved Petitioner for the limited-coverage MA category of Plan First beginning November 2023.

4. On [REDACTED] [REDACTED] 2023, Petitioner applied for cash, MA, and SER benefits.
5. On January 10, 2024, MDHHS sent Petitioner notice of a denial of MSP benefits beginning December 2023.
6. On January 10, 2024, MDHHS sent Petitioner notice of cash benefit denial beginning December 16, 2023.
7. On [REDACTED] [REDACTED] 2024, Petitioner applied for MA benefits.
8. On [REDACTED] [REDACTED] 2024, Petitioner applied for MA and SER benefits.
9. On March 11, 2024, MDHHS sent Petitioner notice of a denial of MSP benefits beginning February 2024.
10. On April 25, 2024, MDHHS sent Petitioner notice of MSP denial beginning March 2024 and MSP approval beginning June 2024.
11. On [REDACTED] [REDACTED] 2024, Petitioner applied for MA benefits and reported being disabled, a Medicare recipient not pregnant, not a caretaker of a minor child.
12. As of June 2024, Petitioner was eligible to receive \$1,535 in gross monthly Retirement, Survivors, Disability Insurance (RSDI).
13. On July 11, 2024, MDHHS sent Petitioner notice of MSP denial beginning June 2024 due to Petitioner not meeting basic criteria for the program.
14. On September 13, 2024, Petitioner requested a hearing to dispute MA, cash assistance, and a "car".

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180. SDA policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing on September 13, 2024, in part, concerning cash assistance. Exhibit A, pp. 6-7. Petitioner's most recently known applications for cash assistance were dated [REDACTED] [REDACTED] 2023 and [REDACTED] [REDACTED] 2023. Exhibit A, pp. 8-16 and 104-118. A Notice of Case Action dated January 10, 2024, informed Petitioner that the cash assistance applications were denied. Exhibit A, pp. 91-96.

Generally, a client's request for hearing must be received in the MDHHS local office within 90 days of the date of the written notice of case action. BAM 600 (February 2024) p. 6. If MDHHS receives the request on a non-business day, the day of receipt is the next MDHHS business day. *Id.*

MDHHS received Petitioner's hearing request 247 days after MDHHS issued written notice of cash ineligibility. Because Petitioner took longer than 90 days from the issuance of written notice, there is no administrative hearing jurisdiction to hear Petitioner's cash dispute. Accordingly, Petitioner's dispute concerning cash assistance is properly dismissed.

Petitioner also requested a hearing concerning a "car". Exhibit A, pp. 6-7. Petitioner testified that she lost her driver's license in 2019 and that her vehicle was impounded in December 2023. Petitioner seemingly contended that MDHHS should pay the costs of regaining her driver's license through the SER program.

Petitioner applied for SER on [REDACTED] 2023, [REDACTED] 2023, and [REDACTED] 2024. Exhibit A, pp. 8-16, 29-36, and 104-118. None of the SER applications referred to a need for a car or a driver's license. Presumably the absence of a specific request for assistance with a car or license is because SER does not assist with vehicle costs or tickets.¹

Regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 792.10101 to R 792.10137 and R 792.11001 to R 792.11020. Rule 792.11002(1) that an opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance is denied or is not acted upon with reasonable promptness, has received notice of a suspension or reduction in benefits, or exclusion from a service program, or has experienced a failure of the agency to consider the recipient's choice of service.

There was no evidence that Petitioner requested vehicle services from MDHHS before requesting a hearing. Thus, there is no adverse action taken by MDHHS concerning a "car" entitling Petitioner to an administrative hearing remedy. Accordingly, Petitioner's hearing request concerning a car is aptly dismissed.

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

¹ See Emergency Resource Manual 401 for services covered by SER. See also BEM 232 for when vehicle-related costs may be covered.

Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner also requested a hearing to dispute MSP eligibility. Exhibit A, pp. 6-7. Petitioner testified she seeks a remedy of MSP benefits since November 2023. Again, the timeliness of Petitioner's hearing request must be considered.

MDHHS issued a Health Care Coverage Determination Notice on January 10, 2024 denying MSP benefits beginning December 2023. Exhibit A, pp. 76-78. Petitioner reapplied for MA benefits on [REDACTED] 2024 and [REDACTED] 2024. Exhibit A, pp. 29-44. MDHHS sent Petitioner notice of denial of MSP beginning February 2024 on March 11, 2024. Exhibit A, pp. 79-82. MDHHS also sent Petitioner a notice of MSP ineligibility beginning March 2024 on April 25, 2024. Exhibit A, pp. 83-86. Notably, the written notices dated February 1, March 11, and April 25, 2024, are more than 90 days from Petitioner's hearing request dated September 13, 2024. Thus, there is no administrative hearing jurisdiction to address the corresponding MDHHS actions.

The only evidence of a written action concerning MSP benefits within the 90 days before Petitioner requested a hearing stemmed from Petitioner's MA application dated [REDACTED] 2024. Exhibit A, pp. 17-24. A Health Care Coverage Determination dated July 11, 2024, stated that Petitioner was ineligible for MSP beginning June 2024 due to not meeting basic criteria for the program. Exhibit A, pp. 87-90. However, MDHHS testified that the basis for denying MSP benefits was Petitioner's failure to verify assets.

MSP is an SSI-related MA category. BEM 105 (January 2021) p. 5. MDHHS is to consider assets at application when determining MA eligibility for SSI-Related categories. *Id.*, p. 61.

For all programs, MDHHS is to inform the client what verification is required, how to obtain it, and the due date. BAM 130 (January 2022) p. 3. 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. 8. MDHHS may send a negative action notice when the client indicates refusal to provide a verification, or the time period given has elapsed. *Id.*

Petitioner had a prepaid vendor account. MDHHS sent Petitioner a VCL on June 18, 2024, giving Petitioner until June 18, 2024, to verify the account. Exhibit A, pp. 70-72. MDHHS contended that Petitioner failed to return verification of the account and properly denied Petitioner's application for MSP benefits.

Petitioner responded that she verified the account multiple times over. For example, Petitioner testified she emailed her worker several times. However, Petitioner provided no documentary evidence of the email; Petitioner could not even state from which email address she sent verification. Petitioner also contended that two agencies, a housing commission and Easter Seals, sent MDHHS verification; again, Petitioner provided no corroborating evidence of the submission. Petitioner additionally stated that she

received a voicemail from the testifying MDHHS supervisor (who denied Petitioner's statement) that Petitioner returned requested verification of assets; Petitioner was unable to corroborate her testimony by playing the voicemail during the hearing.

The evidence established that Petitioner did not verify assets. However, Petitioner's failure may be excused due to MDHHS failing to issue proper written notice of denial.

Upon certification of eligibility results, MDHHS's database automatically notifies the client in writing of positive and negative actions by generating the appropriate notice of case action. BAM 220 (November 2023) p. 2. Notices of Case Action must include the reason for the negative action and the specific manual item citing the legal basis for an action.² *Id.*, pp. 2-3.

As indicated above, the written notice sent to Petitioner stated that MSP was denied due to Petitioner's alleged failure to meet basic criteria for MSP.³ During the hearing, MDHHS did not present any evidence that Petitioner was ineligible for MSP due to not meeting the basic criteria. Thus, MDHHS failed to establish that Petitioner was ineligible for the stated reason on the notice. Though evidence may have supported a proper basis for denial due to a failure to verify assets, MDHHS did not issue written notice stating that Petitioner failed to verify assets. As an administrative hearing remedy, Petitioner is entitled to a reprocessing of the MSP benefit application dated [REDACTED] 2024.⁴

Petitioner testified she also wanted a hearing to dispute Medicaid eligibility. Hearing jurisdiction over a dispute of Medicaid is questionable as Petitioner's written hearing request included no narrative of a Medicaid dispute- only MSP. Exhibit A, pp. 6-7. However, because Petitioner checked a dispute over MA benefits and Medicaid falls within the MA program, hearing jurisdiction will be extended to allow for a dispute over Petitioner's ongoing Medicaid eligibility.⁵ MDHHS credibly testified that Petitioner was eligible beginning June 2024 for Medicaid subject to a deductible; MDHHS also testified that a Health Care Coverage Determination Notice dated October 7, 2024, stated that Petitioner's deductible was \$932.

² The actions taken by MDHHS, a right to a hearing, and the conditions required to continue benefits pending the hearing are other required inclusions of notices.

³ 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. Presumably, a failure to meet basic criteria refers to not being entitled to Medicare Part A rather than income, asset, residential or some other specific eligibility factor.

⁴ MDHHS sent Petitioner a Verification Checklist on September 16, 2024, requesting verification of the pre-paid vendor account by September 26, 2024. Exhibit A, pp. 61-62. Despite Petitioner's claims to the contrary, MDHHS testified it still has not yet received verification from Petitioner. Though the issue of asset verification is outside of the hearing jurisdiction of the present case, Petitioner was advised to submit account verification as soon as possible to avoid another denial.

⁵ A notice dated October 20, 2023 stating Petitioner's MA eligibility would end November 2023 due to a failure to timely return redetermination documents. Exhibit A, pp. 48-50. A notice dated November 28, 2023 approved Petitioner for the limited MA coverage of Plan First beginning November 2023. Exhibit A, pp. 73-75. Again, jurisdiction will not be extended back to November 2023 due to Petitioner's failure to specify such a dispute.

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, 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.⁶ *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 June 18, 2024 and reported being disabled and/or over 65 years of age, a Medicare recipient, not a caretaker to minor children, and not pregnant. Exhibit A, pp. 17-24. Given the circumstances, Petitioner is ineligible for all MAGI-related categories. As a disabled and/or aged individual, Petitioner is potentially eligible to receive MA under the SSI-related Group 1 category of Aged/Disability-Care (AD-Care). AD-Care policies are found in BEM 163.

At all relevant times, Petitioner was without minor children and did not reside with a spouse. For purposes of AD-Care, Petitioner's group size is one. 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. 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. For AD-Care, MDHHS is to apply the deductions in BEM 540 (for children) or 541 (for adults).

As of the disputed benefit month, Petitioner received gross monthly income of \$1,535 (dropping cents). Generally, MDHHS counts the gross amount of RSDI in determining Medicaid eligibility.⁷ BEM 503 (January 2023) p. 29. Petitioner's countable income for AD-Care is \$1,535.

⁶ Eligibility factors for all MA categories are found in the Bridges Eligibility Manual from BEM 105 through BEM 174.

⁷ 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.

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. No other disregards or expenses were applicable. Subtracting the disregard from Petitioner's countable RSDI results in a net income of \$1,515.

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 1-person group residing in Michigan is \$15,060.⁸ Dividing the annual FPL by 12 results in a monthly income limit of \$1,255. The same income limit is found in policy.⁹ RFT 242 (April 2023) p. 1. Petitioner's countable income of \$1,515 exceeds the AD-Care income limit. Given the evidence, MDHHS properly determined Petitioner to be ineligible for MA under AD-Care or any other Group 1 MA category.¹⁰

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 RSDI of \$1,535 is unchanged for G2S. The G2S budget allows a \$20 disregard for unearned income and various employment income disregards. COLA is also applicable for January, February, and March budget months. In addition to AD-Care disregards, the G2S budget factors ongoing medical expenses (which are applied toward a deductible), insurance premiums, and remedial services. MDHHS credited Petitioner with a \$20 disregard and a \$175 Medicare premium.

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 \$408. RFT 240 (December 2013) p. 1.

⁸ <https://www.healthcare.gov/glossary/federal-poverty-level-fpl/>

⁹ MDHHS policy lists an income limit of \$1,275 was noting the \$20 disregard is factored into the limit.

¹⁰ Petitioner's caretaker testified she recently became Petitioner's guardian. If any guardianship expense can be verified, an \$83 budget credit could result in full Medicaid eligibility.

Subtracting the PIL of \$408, \$175 Medicare premium, and \$20 unearned income disregard from Petitioner's countable RSDI of \$1,535 results in a monthly deductible of \$932. MDHHS calculated the same deductible.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner failed to timely request a hearing to dispute MSP eligibility before June 2024. Petitioner additionally failed to establish hearing jurisdiction for a dispute over a "car" Concerning Petitioner's disputes of MSP eligibility before June 2024 and a "car" 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 to be eligible for Medicaid subject to an ongoing monthly deductible of \$932. Concerning Petitioner's dispute over Medicaid, 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 terminated Petitioner's MSP eligibility. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reregister and initiate reprocessing of Petitioner's MSP application dated [REDACTED] 2024, subject to the finding that MDHHS failed to issue proper written notice denying MSP benefits; and
- (2) Issue notice and supplements, if any, in accordance with policy.

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

CG/nr



Christian Gardocki

Administrative Law Judge

