



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

MARLON I. BROWN, DPA  
DIRECTOR

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Date Mailed: January 8, 2025  
MOAHR Docket No.: 24-011318  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm**

**HEARING DECISION**

On ██████████, 2024, Petitioner ██████████ requested a hearing to dispute her Medicaid eligibility. As a result, a hearing was scheduled to be held on January 7, 2025. Public assistance hearings are held 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; 45 CFR 205.10; and Mich Admin Code, R 792.11002.

The parties appeared for the scheduled hearing. Petitioner’s authorized hearing representative, ██████████, appeared for Petitioner. Petitioner had two witnesses: ██████████ and ██████████. Respondent Michigan Department of Health and Human Services (Department) had Assistance Payments Worker Tracy Nguyen appear as its representative. Neither party had any additional witnesses.

Both parties provided sworn testimony, and two exhibits were admitted into evidence. A 27-page packet of documents provided by the Department was admittedly collectively as Exhibit A, and a 114-page packet of documents provided by Petitioner was admitted collectively as Exhibit 1.

**ISSUE**

Did the Department properly determine 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. Petitioner is not married.
2. Petitioner is a resident of Livingston County.
3. Petitioner is disabled.

4. Petitioner started receiving Social Security SSI at a young age, and then Petitioner started receiving Social Security RSDI when she became eligible for RSDI benefits.
5. In 2016, the Department considered Petitioner's eligibility for Medicaid for disabled adult children (DAC), and the Department determined that Petitioner was ineligible because her SSI stopped due to an increase in her parent's income rather than due to DAC RSDI.
6. Petitioner lives at home with help from caregivers.
7. Petitioner has been receiving Medicaid services through a Habilitation Supports Waiver (HSW).
8. Petitioner is not a participant in the MI Choice wavier program.
9. In 2024, Petitioner's gross RSDI benefit was [REDACTED] per month.
10. The Department reviewed Petitioner's Medicaid eligibility, and the Department determined that the best Medicaid coverage that Petitioner was eligible for was Medicaid with a \$1,103.00 monthly deductible, effective April 1, 2024.
11. Petitioner requested a hearing to dispute the Department's determination, and a hearing was held before an administrative law judge in Docket No. 24-004039.
12. On August 8, 2024, the administrative law judge issued a hearing decision in Docket No. 24-004039 and ordered the Department to consider Petitioner's eligibility for extended care Medicaid under BEM 164.
13. The Department reviewed Petitioner's eligibility for extended care Medicaid under BEM 164, and the Department determined that Petitioner was not eligible because Petitioner was neither living in a long-term care facility nor a waiver client.
14. On August 28, 2024, the Department mailed a benefit notice to Petitioner to notify her that she was not eligible for extended care Medicaid under BEM 164. The Department notified Petitioner that she was eligible for Medicaid with a \$1,103.00 monthly deductible, effective April 1, 2024.
15. Petitioner requested a hearing to dispute the Department's decision.
16. Petitioner asserted that she should be eligible for Medicaid under the Pickle Amendment (BEM 155).
17. The Department reviewed Petitioner's eligibility for Medicaid under the Pickle Amendment, and the Department determined that Petitioner was not eligible because she was not eligible for SSI and RSDI concurrently as required.

## 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).

Medicaid is known as Medical Assistance. The Medical Assistance 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 administers the Medical Assistance program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

There are various types of Medicaid programs. In this case, the Department determined that the best Medicaid program that Petitioner was eligible for was Medicaid with a monthly deductible. Petitioner is disputing the Department's decision because Petitioner believes that she should be eligible for Medicaid without a deductible.

The AD Care program provides Medicaid without a deductible for aged or disabled individuals who meet the program requirements. The client must be aged or disabled, and the client's group's net income must not exceed 100% of the Federal Poverty Level (FPL). BEM 163 (July 1, 2017), p. 1-2. For AD Care, the client's group size consists of the client and the client's spouse. BEM 211 (October 1, 2023), p. 8. In this case, Petitioner's group consists of one because Petitioner does not have a spouse. The FPL for a household size of one in 2024 was \$15,060.00. 89 FR 2961 (January 17, 2024). Thus, the applicable FPL is equal to a monthly income of \$1,255.00.

When group members receive income from Social Security RSDI, the gross amount received from RSDI is countable. BEM 163 at 2. However, \$20.00 is disregarded from unearned income such as Social Security RSDI income. BEM 541 (January 1, 2024), p. 1. In this case, Petitioner received [REDACTED] per month from Social Security RSDI. After the \$20.00 disregard, the countable amount of Petitioner's Social Security RSDI was [REDACTED] per month.

Although the income limit for AD Care states that it is based on "net income," this refers to gross income after allowable deductions. BEM 163 at 2. The allowable deductions are set forth in BEM 541 for adults, and Petitioner was not eligible for any of the allowable deductions other than the \$20.00 unearned income disregard. Petitioner's net income exceeded the limit for Petitioner to be eligible for Medicaid through the AD Care program because the income limit was \$1,255.00 per month, and Petitioner's income was [REDACTED] per month. Therefore, the Department properly found that Petitioner was ineligible for Medicaid through the AD Care program.

Since the Department found Petitioner ineligible for Medicaid through the AD Care program, the Department determined that the best Medicaid coverage that Petitioner was eligible for was Group 2 Medicaid. Group 2 Medicaid is Medicaid with a monthly deductible, and it is available to clients who are aged or disabled and ineligible for Medicaid through the AD Care program. BEM 166 (April 1, 2017), p. 1. Group 2 Medicaid provides coverage for any month that (a) an individual's countable income does not exceed the individual's needs as defined in policy, or (b) an individual's allowable medical expenses equal or exceed the amount of the individual's income that exceeds the individual's needs. *Id.* at 2.

To determine whether an individual's income exceeds her needs, the Department determines the individual's countable income and needs. Countable income is the same as the income that is used to determine eligibility for Medicaid through the AD Care program. Needs consist of a protected income limit set by policy, the cost of health insurance premiums, and the cost of remedial services. BEM 544 (January 1, 2020), p. 1-3.

The Department calculated Petitioner's excess income by subtracting the protected income limit from Petitioner's countable monthly income. As stated above, Petitioner's countable monthly income was [REDACTED]. The protected income limit for a household of one in Livingston County was \$408.00 per month. RFT 200 (April 1, 2017) and RFT 240 (December 1, 2013). There was no evidence that Petitioner paid any other health insurance premiums or allowable remedial care expenses. Thus, Petitioner's excess income was [REDACTED] minus \$408.00, which equals [REDACTED] per month. This is the same amount determined by the Department, so the Department properly determined Petitioner's deductible amount.

Petitioner asserted that she should be eligible for DAC Medicaid pursuant to BEM 158. The Department previously considered Petitioner's eligibility for DAC Medicaid in 2016, and the Department determined that Petitioner was ineligible because her SSI stopped due to an increase in her parent's income rather than due to DAC RSDI. Petitioner did not present sufficient evidence to establish that she is eligible for DAC Medicaid.

Petitioner asserted that she should be eligible for extended care Medicaid pursuant to BEM 164. The Department considered Petitioner's eligibility for extended care Medicaid after Petitioner's hearing in Docket No. 24-004039, and the Department determined that Petitioner was not eligible because Petitioner was neither living in a long-term care facility nor a waiver client. One of the requirements to be eligible for extended care Medicaid is that the client must be an L/H client or waiver client. BEM 164 (July 1, 2020), p. 1.

An L/H client is a Medicaid client who was in the hospital and/or long-term care facility (LTC) in a hospital and/or long-term care facility (L/H) month. BPG (June 1, 2024), p. 39. A long-term care facility means a nursing home that provides nursing care; a county medical care facility that provides nursing care; a hospital long-term care unit; an MDHHS facility that provides active psychiatric treatment; a special MR nursing home; or an MDHHS facility for individuals with intellectual disability that provides ICF/ID nursing care.

*Id.* at 42. Petitioner was not in a hospital or any of the long-term care facilities. Therefore, Petitioner was not an L/H client.

A waiver client is a client who was approved for a MI Choice waiver during the waiver month. *Id.* at 75. The MI Choice waiver program is a program that provides home and community-based services to eligible individuals. BEM 106 (October 1, 2022), p. 1. Petitioner was not a participant in the MI Choice waiver program. Therefore, Petitioner was not a waiver client.

Since Petitioner was neither a L/H client nor waiver client, Petitioner was not eligible for extended care Medicaid under BEM 164. Accordingly, the Department properly determined that Petitioner was ineligible for extended care Medicaid.

Petitioner asserted that she should be eligible for Medicaid under the Pickle Amendment. The Department considered Petitioner's eligibility for Medicaid under the Pickle Amendment, and the Department determined that Petitioner was not eligible because Petitioner was not eligible for SSI and RSDI concurrently. One of the requirements to be eligible for Medicaid under the Pickle Amendment is that the client must have been entitled to RSDI benefits in the last month the client was eligible for and received SSI benefits. BEM 155 (July 1, 2013), p. 1. The purpose of the Pickle Amendment is to protect Medicaid eligibility for SSI recipients who lost SSI eligibility because of RSDI cost-of-living adjustments. It does not appear that Petitioner lost SSI eligibility because of RSDI cost-of-living adjustments. Petitioner's father testified that Petitioner stopped receiving SSI benefits when she became eligible for RSDI benefits. Thus, it appears that Petitioner lost her SSI eligibility because her RSDI benefit amount was greater than the SSI income limit when Petitioner became eligible for RSDI benefits. Regardless, it is unclear when Petitioner's SSI eligibility stopped and when her RSDI eligibility began, and it is not possible to determine Petitioner's eligibility for Medicaid under the Pickle Amendment without that information. Therefore, the Department must redetermine Petitioner's eligibility for Medicaid under the Pickle Amendment.

The Department must obtain all necessary information to determine Petitioner's eligibility for Medicaid under the Pickle Amendment. The Department must first determine when Petitioner's SSI eligibility stopped and when her RSDI eligibility began, either through BENDEX or by contacting the Social Security Administration directly. The Department must then determine if Petitioner was concurrently eligible for SSI and RSDI in the last month that Petitioner received SSI. If the Department determines that Petitioner was concurrently eligible for SSI and RSDI in the last month that Petitioner received SSI, then the Department must determine Petitioner's countable income under the Pickle Amendment pursuant to BEM 155, and the Department must determine whether it is within the income limit for Medicaid under the Pickle Amendment. The income limits for Medicaid under the Pickle Amendment are found in RFT 245. If the Department determines that Petitioner's countable income under the Pickle Amendment is within the income limit, then the Department must determine if Petitioner meets all other eligibility requirements for Medicaid under the Pickle Amendment.

If the Department determines that Petitioner is ineligible for Medicaid under the Pickle Amendment, then the best Medicaid coverage that Petitioner will be eligible for is Medicaid with a monthly deductible. Petitioner may pursue home and community-based Medicaid services through the MI Choice waiver program, or Petitioner may continue to satisfy her monthly deductible and receive home and community-based Medicaid services through a Habilitation Supports Waiver (as long as she meets the requirements).

### **DECISION AND ORDER**

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 acted in accordance with its policies and the applicable law when it determined Petitioner was ineligible for Medicaid through the AD Care program, and the Department acted in accordance with its policies and the applicable law when it determined Petitioner was ineligible for extended care Medicaid. The Department did not act in accordance with its policies and the applicable law when it determined Petitioner was ineligible for Medicaid under the Pickle Amendment.

**IT IS ORDERED** the Department's decision is **AFFIRMED IN PART and REVERSED IN PART**. The Department's decision to find Petitioner ineligible for Medicaid through the AD Care program is affirmed. The Department's decision to find Petitioner ineligible for extended care Medicaid is affirmed. The Department's decision to find Petitioner ineligible for Medicaid under the Pickle Amendment is reversed. The Department shall redetermine Petitioner's eligibility for Medicaid under the Pickle Amendment consistent with this decision. The Department shall begin to implement this decision within 10 days of the date of mailing of this decision and order.

JK/pe



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**Jeffrey Kemm**  
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 and First Class Mail :**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] MI 48116  
[REDACTED]

**Authorized Hearing Representative**

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

**Via Electronic Mail:**

**DHHS**  
Lisa Keough  
Livingston County DHHS  
2300 E Grand River, Ste. 1  
Howell, MI 48843  
**MDHHS-Livingston-  
Hearings@michigan.gov**

**Interested Parties**

BSC4  
M. Schaefer  
EQAD  
MOAHR