



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

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Date Mailed: January 22, 2025
MOAHR Docket No.: 24-012949
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 on January 8, 2025, the parties participated by telephone Petitioner did not participate. ██████████ ██████████ Petitioner’s spouse (hereinafter, “Spouse”), participated and testified. ██████████ ██████████ Petitioner’s son, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Lori Turner, specialist.

ISSUES

The first issue is whether MDHHS properly determined Spouse’s eligibility for Medicaid.

The second issue is whether MDHHS properly terminated 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 MA benefits for Spouse and reported a household which included Spouse and two minor children.
2. As of October 2024, Spouse was married to Petitioner, disabled, a caretaker to two minor children, not pregnant, and a Medicare recipient.

3. As of October 2024, Spouse received \$1,963.70 in gross monthly Retirement, Survivors, Disability Insurance (RSDI) benefits.
4. As of October 2024, Petitioner and her two minor children with Spouse each received \$327 in gross monthly RSDI.
5. As of October 2024, Spouse had no guardianship or conservator expenses.
6. On November 12, 2024, MDHHS determined Spouse to be eligible for Medicaid subject to a monthly deductible of \$833 beginning October 2024.
7. On November 19, 2024, Spouse requested a hearing to dispute Medicaid and Medicare Savings Program (MSP) eligibility.
8. On December 18, 2024, MDHHS determined Petitioner to be eligible for SLMB beginning December 2024.

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 a determination of MA benefits. Exhibit A, pp. 3-4. MDHHS testified that a Health Care Coverage Determination Notice dated November 12, 2024, stated that Petitioner was eligible beginning October 2024 for Medicaid subject to an \$833 monthly deductible.¹ To determine if the determination was correct, a consideration of Medicaid categories is required.

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.² *Id.*

¹ MDHHS testified that a notice dated December 13, 2024 decreased Petitioner's deductible beginning January 2025 to \$785.

² Eligibility factors for all MA categories are found in the Bridges Eligibility Manual from BEM 105 through BEM 174.

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 [REDACTED] 2024, and reported her spouse as a disabled individual aged 21-65 years, not pregnant, a Medicare recipient, and a caretaker to minor children. Exhibit A, pp. 7-13. As a non-pregnant Medicare recipient above the age of 21 and a caretaker to minor children, Spouse is ineligible for all full-coverage MAGI-related categories other than Low-Income Family (LIF). As a disabled individual, Spouse is potentially eligible to receive full-coverage MA under the Group 1 SSI-related category of Aged/Disabled Care (AD Care). BEM 163 (July 2017) p. 1. Consideration for AD-Care will be first considered.

At all relevant times, Spouse was married. For purposes of AD-Care, 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. 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.*

As of the disputed benefit month, Spouse received gross monthly income of \$1,963 (dropping cents); Petitioner received \$327 in RSDI. Generally, MDHHS counts the gross amount of RSDI in determining Medicaid eligibility.³ BEM 503 (January 2023) p. 29. The group's countable income for AD-Care is \$2,290.

A \$20 disregard is given for unearned income. BEM 541 (July 2019) p. 3. AD-Care budget credits are also given 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 (January 2023) p. 29. No applicable expenses were alleged. Subtracting the \$20 disregard results in a net countable monthly income of \$2,270.

³ 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.

Net income for AD-Care cannot exceed 100% of the federal poverty level (FPL). BEM 163 (July 2017) p. 2. In 2024, the annual federal poverty level for a 2-person group residing in Michigan is \$20,440.⁴ Dividing the annual FPL by 12 results in a monthly income limit of \$1,703.50 (rounding to nearest half dollar). The same income limit is found in policy.⁵ RFT 242 (April 2023) p. 1. Petitioner's group's countable income exceeds the AD-Care income limit. Given the evidence, MDHHS properly determined Spouse to be ineligible for MA under any Group 1 MA category.

Concerning the MAGI category of LIF, group members include the applicant and tax dependents. BEM 211 (October 2023) p. 1. Presumably Petitioner's two children were tax dependents resulting in a benefit group of four persons after including Petitioner and Spouse.

MAGI-based income means income calculated using the same financial methodologies used to determine modified adjusted gross income as defined in section 36B(d)(2)(B) of the Code.⁶ 42 CFR 435.603(e). For individuals who have been determined financially-eligible for Medicaid using the MAGI-based methods set forth in this section, a State may elect in its State plan to base financial eligibility either on current monthly household income and family size or income based on projected annual household income and family size for the remainder of the current calendar year. 42 CFR 435.603(h). MDHHS has chosen to determine HMP eligibility based on current monthly income.⁷

Modified adjusted gross income can be defined as a household's adjusted gross income with any tax-exempt interest income and certain deductions added back.⁸ Common deductions and disregards which should be factored in determining a person's adjusted gross income include alimony payments, unreimbursed business expenses, Health Savings Account (e.g., 401k) payments, and student loan interest.⁹

Spouse's RSDI of \$1,963 is countable for MAGI (see BEM 503). Also countable is the RSDI of \$327 for Petitioner and two children. No relevant expenses were alleged. The total RSDI for the group is \$2,944.

Adults with a dependent child and income under 54% of the FPL will be considered LIF eligible. Also, MDHHS applies a 5% disregard to the income limit when the disregard is the difference between eligibility and non-eligibility. BEM 500 (July 2017) p. 5. Thus, LIF income limits are functionally 59% of the FPL. The 2024 FPL for a 4-person group

⁴ <https://www.healthcare.gov/glossary/federal-poverty-level-fpl/>

⁵ MDHHS policy lists an income limit of \$1,723.50 while noting the \$20 disregard is factored into the limit.

⁶ Income exceptions are made for lump-sums which are counted as income only in the month received; scholarships, awards, or fellowship grants used for education purposes and not for living expenses; and various exceptions for American Indians and Alaska natives. No known exceptions are applicable to the present case.

⁷ https://www.michigan.gov/documents/mdhhs/SPA_17-0100_Approved_638230_7.pdf

⁸ <https://www.investopedia.com/terms/a/agi.asp>

⁹ *Id.*

residing in Michigan is \$32,150.¹⁰ Multiplying the FPL by 59% results in an income limit of \$18,968.50 (\$1,581 per month). Spouse's benefit group's MAGI exceeded the income limit.

Though Spouse is ineligible for MA benefits under AD-Care, LIF, or any other unlimited coverage Group 1 category, Spouse 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 caretakers of children, G2C is the applicable Group 2 MA category (see BEM 135).¹¹

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.*

BEM 536 outlines a 16-step procedure for determining a client's income for purposes of G2C eligibility:

- Step 1 Determine countable employment income using BEM 500 and BEM 530.
- Step 2 Deduct \$90 from each member's employment income.
- Step 3 Subtract \$30 + 1/3 of a group member's employment income if the person received FIP or LIF benefits in any one of the four previous months.
- Step 4 Subtract \$200 from any remaining employment income if member has dependent care expenses.
- Step 5 Determine countable child support income using BEM 500 and BEM 530.
- Step 6 Subtract \$50 for countable child support income.
- Step 7 Determine countable unearned income using BEM 500 and BEM 530.
- Step 8 Add countable earned and unearned income.
- Step 9 Subtract child support paid by a group member (not to exceed the monthly obligation).
- Step 10 Subtract \$83 if client has court-appointed guardian paid by a group member. The result is the group's total net income.
- Step 11 Determine the number of dependents. A spouse and children under 18 are dependents.
- Step 12 Add 2.9 to the number of dependents to determine the prorated divisor.
- Step 13 Divide the prorated divisor into each group member's income to determine each member's prorated share of income.
- Steps 14-16 Applicable for non-parent caretakers.

¹⁰ <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>

¹¹ As a disabled individual, Petitioner is potentially eligible for a Group 2-Spenddown deductible (G2S). G2S eligibility will not be considered because the estimated deductible (\$1,770) is substantially higher than the G2C deductible.

The adult's net income for purposes of G2C is calculated by adding the following and subtracting insurance premiums, remedial services, and ongoing medical expenses:

- 2.9 x adult's prorated income (if adult has dependents)
- 3.9 x spouse's prorated income
- Prorated share of adult's income

Spouse's only income derived from gross monthly RSDI of \$1,963. No child support or guardian expenses were applicable. Spouse was married and a caretaker to two minor children resulting in a prorated divisor of 5.9. Dividing 5.9 into the countable income of \$1,963 results in \$332 (dropping cents) for Spouse's prorated share of income. Petitioner had RSDI of \$327. Dividing Petitioner's income by 5.9 results in \$55 in Petitioner's prorated share of income.

Spouse's net income is the sum of the adult's prorated share of income x 2.9 (\$962), Petitioner's prorated income x 3.9 (\$214), and Spouse's prorated income (\$332): the result is \$1,508. Deductions are given for insurance premiums; MDHHS counted insurance premiums of \$175 (rounding up to nearest dollar) for Medicare. Subtracting insurance premiums results in a net income of \$1,333.

A client's G2C 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 \$500. RFT 240 (December 2013) p. 1.

Subtracting the PIL from a net income of \$1,333 results in a deductible of \$833: MDHHS calculated the same deductible.¹² Exhibit B, pp. 1-2. The evidence established that MDHHS properly calculated Petitioner's MA eligibility.

Spouse also requested a hearing to dispute MSP eligibility. Exhibit A, pp. 3-4. Petitioner applied for MSP benefits on July 15, 2024. As of the hearing request date of November 19, 2024, MDHHS still had not processed Petitioner's MSP eligibility. A Health Care Coverage Determination Notice dated December 18, 2024, stated that Spouse was approved for MSP benefits beginning December 2024; SLMB was specifically approved. Exhibit C, pp. 1-4.

MSP is an SSI-related Medicaid category. BEM 165 (July 2024) p. 1. One of three different subprograms are available under MSP. Qualified Medicare Beneficiaries (QMB) coverage pays for a client's Medicare premiums, coinsurances, and deductibles. *Id.*, p. 2. Specified Low Income Beneficiaries (SLMB) coverage pays for a client's Medicare Part B premium. *Id.* Additional Low-Income Beneficiaries (ALMB) coverage pays for a client's Medicare Part B premium if MDHHS funding is available. *Id.* The

¹² A second G2C budget for Petitioner verified a deductible of \$785 beginning January 2025. Exhibit B, pp. 3-4.

client's income determines the MSP subprogram issued (see RFT 242).¹³ When processing SLMB approval, it is available for retro MA months and later months. *Id.*, p. 3.

Presumably, Spouse accepts the approval of MSP benefits beginning December 2024. MDHHS testified that Spouse was not eligible for MSP benefits before December 2024. Presumably, Spouse disputes the absence of MSP benefits from July through November 2024.

Despite SLMB being potentially available in the application month of July 2024, MDHHS inexplicably approved Spouse's SLMB beginning five months after Petitioner applied. Given the evidence, MDHHS failed to establish it properly denied Spouse's MSP eligibility from July through November 2024. As a remedy, MDHHS will be ordered to reprocess Petitioner's MSP application for benefit months through November 2024.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined Spouse's Medicaid eligibility. Concerning Spouse's Medicaid eligibility, the actions taken by MDHHS are **AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish it properly determined 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 MSP application dated [REDACTED] [REDACTED] 2024 subject to the finding that MDHHS failed to establish it properly failed to determine Spouse's MSP eligibility through November 2024; and
- (2) Issue notice and supplements, if any, in accordance with policy.

Concerning Spouse's MSP eligibility, the actions taken by MDHHS are **REVERSED**.

CG/nr



Christian Gardocki

Administrative Law Judge

¹³ Since April 2024, MDHHS added a fourth category, Non-Categorically Eligible Michigan Beneficiaries (NMB). BEM 165 (July 2024) p. 1. The category is applicable only when Medicaid is issued despite income or assets exceeding the MA category limits. *Id*

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
Tara Roland 82-17
Wayne-Greenfield/Joy-DHHS
8655 Greenfield
Detroit, MI 48228
MDHHS-Wayne-17-hearings@michigan.gov

Interested Parties

BSC4
M. Schaefer
EQAD
MOAHR

Via-First Class Mail :

Authorized Hearing Rep.

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██████████
██████████, MI ██████████

Petitioner

██████████
██████████
██████████ MI ██████████