

██████████,

APPELLANT

v.

MARYLAND DEPARTMENT

OF HEALTH

\* BEFORE JEROME WOODS, II,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: MDH-MCP-11B-21-21633

\* \* \* \* \*

**DECISION**

STATEMENT OF THE CASE  
ISSUE  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSION OF LAW  
ORDER

**STATEMENT OF THE CASE**

On April 27, 2021, the Appellant applied for Medical Assistance (MA) benefits under the Home and Community-Based Waiver Program (HCB Waiver)<sup>1</sup> of the Maryland Department of Health (MDH or Department). On August 25, 2021, the Department’s Eligibility Determination Division (EDD) notified the Appellant that it had denied the application because her income and resources exceeded the maximum allowable limit for the HCB Waiver. On behalf of the Appellant, ██████████, the authorized representative, filed this appeal on September 3, 2021. COMAR 10.01.04.02A.

I held a hearing on October 26, 2021, at the Office of Administrative Hearings (OAH) in ██████████, Maryland. COMAR 10.01.04.06. Ms. ██████████ the authorized representative, represented the Appellant, who was not present. COMAR 10.01.04.12B(3)(e). ██████████

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<sup>1</sup> The “Home and Community-Based Options Waiver . . . authorizes the waiver of certain specified statutory requirements limiting coverage for home and community-based services under the Maryland Medical Assistance Program.” Code of Maryland Regulations (COMAR) 10.09.54.01B(10).

██████████, Medical Care Programs (MCP) Supervisor for the EDD, represented the Department.

The Administrative Procedure Act, the Procedures for Fair Hearing Appeals under the Maryland State MA Program, and the OAH Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 10.01.04; COMAR 28.02.01.

### **ISSUE**

Did the Department properly determine that the Appellant was ineligible for the HCB Waiver due to income exceeding the applicable limit?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the Personal Financial Power of Attorney, dated November 24, 2020, signed by the Appellant, indicating ██████████ as her representative, and the Planning for Future Health Care Decisions Authorization, dated November 22, 2020, as Appellant's Exhibit 1.

I admitted the following exhibit on the Department's behalf:

MDH Ex. 1 - Local Department Summary for Appeal Hearing, dated October 20, 2021, (pp. 1-2), and the following documents:

- Notice of Remote Hearing, dated October 8, 2021 (p. 3)
- Letter of Appeal, dated September 1, 2021, received September 3, 2021 (pp. 4-5)
- MDH EDD Denial Letters, dated August 25, 2021 (pp. 6-12)
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- Benefit Notice, dated June 2, 2020 (p. 14)
- ██████████ Statement, dated February 27, through March 31, 2021 (p. 15)
- ██████████ Statement, dated March 20, through April 19, 2021 (p. 16)
- Asset Verification Services Results Report, dated August 25, 2021 (p. 17-23)
- Supplemental Security Income (SSI) and Spousal Impoverishment Standards, undated (p. 24)
- Maryland Code Health General Article, Section 15-132, undated (pp. 25-30)
- COMAR 10.09.24.08, undated (pp. 31-39)
- COMAR 10.09.24.07, undated (pp. 40-46)

Testimony

Mr. [REDACTED] testified and read the Department's Summary for Appeal Hearing into the record. The MDH did not present additional witnesses.

Ms. [REDACTED] testified.

**FINDINGS OF FACT**

Based on the evidence presented, I find the following facts by a preponderance of the evidence:

1. The Appellant is eighty years old and has multiple health ailments. Ms. [REDACTED], who is the Appellant's authorized representative, assists in caring for the Appellant.
2. On April 27, 2021, the Appellant applied for MA services under the HCB Waiver program. The Appellant receives a monthly annuity of \$2,033.00 and \$419.00 in SSI.
3. On April 23, 2021, the Appellant's monthly income was \$2,452.00. The Appellant is entitled to a \$20.00 disregard resulting in a net monthly income of \$2,432.00.
4. The Appellant's [REDACTED] account ([REDACTED]) had a balance of \$1,008.88 on April 1, 2021, and a [REDACTED] Checking account balance of \$2,558.86 ([REDACTED]) on April 1, 2021.
5. The [REDACTED] checking account ([REDACTED]) contained a one-time government stimulus payment of \$1,400.00 deposited on March 31, 2021. This amount was not used to determine the Appellant's assets of \$2,558.86, as it was a stimulus and not taxable income.
6. The Appellant's second [REDACTED] Account ([REDACTED]) had a balance of \$20.01 on April 1, 2021, and the [REDACTED] Savings account ([REDACTED]) had a balance of \$5.00 on April 1, 2021.

7. The Appellant's combined resources totaled \$3,592.75 (\$2,558.86.00 + \$1,008.88 + \$20.01 + \$5.00).

8. On August 25, 2021, the MDH denied the Appellant for the HCB Waiver program due to exceeding the SSI and Spousal Impoverishment Standards for maximum income of \$2,382.00 and for having resources over \$2,000.00.

## **DISCUSSION**

### **Burden of Proof**

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim. Md. Code Ann., State Gov't § 10-217 (2021); COMAR 28.02.01.21K. To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered.

*Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

In this case, the Appellant bears the burden to show entitlement to receive the HCB Waiver by a preponderance of the evidence. COMAR 28.02.01.21K(1)-(2)(a).

### **Analysis**

The Health-General Article defines "waiver" as a HCB Waiver, Md. Code Ann., Health-Gen. § 15-132(a)(9) (2019), and "waiver services" as services that:

- (i) Are needed and chosen by an eligible waiver participant as an alternative to admission to or continued stay in a nursing facility;
  - (ii) Are part of a plan of service approved by the program;
  - (iii) Assure the waiver participant's health and safety in the community;
- and

(iv) Cost no more per capita to receive services in the community than in a nursing facility.

Health-Gen. § 15-132(a)(10).<sup>2</sup>

Section 15-132 also sets forth specific eligibility criteria for the HCB Waiver, which include in pertinent part:

(b) (1) If permitted by the Centers for Medicare and Medicaid Services, an individual shall be determined medically eligible to receive services if the individual requires:

(i) Skilled nursing care or other related services;

...

(c) The Department's waiver shall include the following:

...

(3) Financial eligibility criteria which include: ...

(iii) Categorically needy individuals with income up to 300% of the applicable payment rate for supplemental security income . . . .

Health-Gen. § 15-132(b)(1), (c)(3)(iii).

Under the HCB Waiver, therefore, certain services are provided to adults in the community as an alternative to the recipient's admission to a nursing facility. *See* COMAR 10.09.54.03B. An applicant must meet financial criteria in order to be eligible for an HCB Waiver, and with certain exceptions not relevant here, "[a]ll provisions of COMAR 10.09.24 which are applicable to aged, blind, or disabled institutionalized persons are applicable to waiver applicants and participants." COMAR 10.09.54.03C(2).

Title 10, Subtitle 09, Chapter 24 of COMAR governs eligibility for the Maryland MA Program. The eligibility of an aged, blind, or disabled (ABD) individual is determined under the criteria for "MAGI Exempt"<sup>3</sup> coverage groups, COMAR 10.09.24.01B(2), whose financial

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<sup>2</sup> Unless otherwise noted, all references to the Health-General Article hereinafter cite the 2019 Replacement Volume.

<sup>3</sup> "'MAGI' means modified adjusted gross income, as calculated for purposes of determining eligibility for insurance affordability programs under the Affordable Care Act." COMAR 10.09.24.02-1B(5). "'MAGI exempt coverage group' means a coverage group as described under Regulation .03 of this chapter whose eligibility is not determined by MAGI or by the Maryland Health Benefit Exchange." COMAR 10.09.24.02-1B(6).

eligibility is based on the income and resources of the applicant's assistant unit. COMAR 10.09.24.06A.

Pursuant to COMAR 10.09.24.02B(23) income is defined as any property or service received by a person in cash or in-kind which can be applied directly, or by sale or conversion, to meet basic needs for food, shelter, and medical expenses. To determine eligibility, income includes all earned and unearned income that is not excluded by regulation. COMAR 10.09.24.07G. Unearned income includes both Social Security and Veterans Affairs benefits. COMAR 10.09.24.07I.

The statutory income requirements for the HCB Waiver include alternative standards for categorically needy and medically needy persons. “‘Categorically needy’ means aged, blind, or disabled persons, or families and children, who are otherwise eligible for Medical Assistance and who meet the financial eligibility requirements for FIP, SSI, or Optional State Supplement.” COMAR 10.09.24.02B(11). An applicant meets the income limits as a categorically needy individual if his or her income does not exceed 300 percent of the payment rate for SSI benefits. Health-Gen. § 15-132(c)(3)(iii). The 2021 SSI rounded monthly rate for an individual is \$794.00;<sup>4</sup> 300 percent of that amount is \$2,382.00 per month.

The Appellant's authorized representative, Ms. [REDACTED] argued that the Appellant should be eligible for the HCB because she is a senior citizen with many health ailments, has numerous bills, and has been a long-time resident of [REDACTED] County, Maryland. Ms. [REDACTED] presented as a very loving niece who cares about her aunt, the Appellant. After clarification during the hearing from Mr. [REDACTED], Ms. [REDACTED] did not argue that the income calculation was incorrect and did not offer any evidence to call into question the calculations used by the Department.

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<sup>4</sup> *SSI Federal Payment Amounts*, SOC. SEC. ADMIN., <https://www.ssa.gov/oact/cola/SSI.html> (last visited November 22, 2021).

Mr. [REDACTED], MCP Supervisor, testified on behalf of the MDH. He read the hearing summary and explained that the MDH denied the Appellant for HCB Waiver due to being overscale.<sup>5</sup> Mr. [REDACTED] stated the Appellant exceeded the maximum income amount of \$2,382.00. Mr. [REDACTED] testified that after all allowable deductions, the Appellant's net monthly income was \$2,432.00.

Based on the evidence presented I find that the Appellant did not meet the burden to show that the MDH improperly denied the HCB Waiver application as a result of the Appellant being overscale. The Appellant is an eighty-year-old woman who resides at home and receives care. The Appellant applied for the HCB Waiver program. When submitting the application, the Appellant reported social security income of \$419.00 per month and an annuity of \$2,432.00 per month. To be eligible for the HCB Waiver and based on the SSI and Spousal Impoverishment Standards, the Appellant must have a monthly income at or below \$2,382.00.

Based on the review, the MDH properly determined that the Appellant exceeded the income limit. Even with the \$20.00 standard disregard<sup>6</sup> for income, the Appellant had a total net income of \$2,432.00, which exceeded the income standard of \$2,382.00. The Appellant's representative did not dispute the Appellant's income amount or that it exceeded the maximum allowable income. Therefore, I find that the Appellant applied for HCB Waiver and reported income from SSI and an annuity. After the \$20.00 standard disregard, the Appellant had a net income of \$2,432.00. This income exceeded the maximum allowable income of \$2,382.00.

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<sup>5</sup> The Appellant was also denied because she exceeds the resource limit of \$2,000.00. An individual is not eligible for HCB Waiver services if her assets exceed the applicable resource limit of \$2,000.00, as set forth in Schedule MA-2A. COMAR 10.09.24.08N. Upon clarification (i.e., that the stimulus payment of \$1,400.00 was not determined in ascertaining the Appellant's resources), the parties agree that the resources and amounts were determined accurately. The Appellant's representative made it clear that she simply disagrees with the \$2,000.00 as the resource limit but does not dispute the calculations. Consequently, there is no dispute regarding the Appellant's excess resources.

<sup>6</sup> COMAR 10.09.24.07B(1). Disregard is the amount specified by regulation that can be subtracted from countable income.

Additionally, as noted in the footnote, there is no dispute regarding the Appellant's resources which exceeds the standard of \$2,000.00.

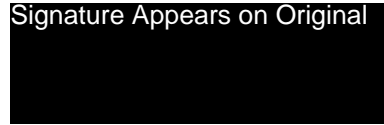
### **CONCLUSION OF LAW**

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Department's Eligibility Determination Division properly determined that the Appellant is not eligible for a Home and Community-Based Options Waiver. Md. Code Ann., Health Gen. § 15-132(c)(3)(iii) (2019); COMAR 10.09.24.07.

### **ORDER**

I hereby **ORDER** that the decision of the Maryland Department of Health to deny the Appellant's application for a Home and Community-Based Options Waiver is **AFFIRMED**.

Signature Appears on Original




Jerome Woods, II  
Administrative Law Judge

November 23, 2021  
Date Decision Mailed

JW/cj  
#195446

### **REVIEW RIGHTS**

This is the final decision of the Maryland Department of Health. A party aggrieved by this final decision may file a written petition for judicial review with the Circuit Court for Baltimore City, if any party resides in Baltimore City or has a principal place of business there, or with the circuit court for the county where any party resides or has a principal place of business. Md. Code Ann., State Gov't § 10-222(c) (2021). The original petition must be filed in the circuit court within thirty (30) days of the date of this decision, with a copy to , Office of the Attorney General, Suite 302, 300 W. Preston St., Baltimore, MD 21201. Md. Rules 7-201 through 7-210. The petition for judicial review should identify the Maryland Department of Health, which administers the Medicaid program, as the agency that made the decision for which judicial review is sought. The address of the Maryland Department of Health should be included on the petition: 201 W. Preston St., Room 511C, Baltimore, MD 21201. A separate petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. No fees may be charged to Medical Assistance Program recipients, applicants, or authorized representatives for transcription costs or for preparation or delivery of the record to the circuit court. The Office of Administrative Hearings is not a party to the judicial review process.



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**FILE EXHIBIT LIST**

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