



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

Date Mailed: October 10, 2016
MAHS Docket No.: 16-012580
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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; 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 on [REDACTED], from Detroit, Michigan. The Petitioner was represented by [REDACTED] (Petitioner). The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator. [REDACTED], an Eligibility Specialist from the Department, served as translator during the hearing.

ISSUE

Did the Department properly determine that Petitioner's three children were not eligible for Medical Assistance (MA) – MICHild coverage effective [REDACTED]?

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's three children were ongoing recipients of MICHild coverage.
2. Petitioner is the biological father to the following children at issue:
 - a. Child A, date of birth: [REDACTED];
 - b. Child B, date of birth: [REDACTED]; and
 - c. Child C, date of birth [REDACTED].

Exhibit A, pp. 9-11.

3. Petitioner was due for his annual redetermination; but rather than submit a redetermination and/or renewal packet, he submitted an application instead, which was dated [REDACTED]. Exhibit A, pp. 5-23.
4. The Department accepted the submission of the online application in lieu of the redetermination and/or renewal packet.
5. In the application, Petitioner reported the following: (i) his household composition is five (Petitioner, spouse, Child A, Child B, and Child C); and (ii) he reported income for himself, his spouse, and Child A. Exhibit A, pp. 6-11 and 18-20.
6. On [REDACTED], Petitioner provided the Department check stubs for himself and his spouse. Exhibit A, pp. 25-28.
7. Petitioner's household tax composition is five as well.
8. As a result of Petitioner and his spouse's reported earnings, the Department determined that their budgetable income exceeded the MICHild income limits for a household size of five and converted the children's MICHild coverage to a deductible program. Exhibit A, pp. 1 and 32-37.
9. On [REDACTED], the Department sent Petitioner a Health Care Coverage Determination Notice (determination notice) notifying him that his three children were eligible for MICHild for [REDACTED], but were not eligible effective [REDACTED], ongoing; and instead, they would receive MA – Group 2 Persons Under Age 21 (G2U) coverage effective [REDACTED], ongoing (with a \$ [REDACTED] monthly deductible). Exhibit A, pp. 32-37.
10. On [REDACTED], Petitioner filed a hearing request protesting the Department's action that the children were not eligible for MICHild coverage. Exhibit A, pp. 2-3.

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).

The Medical Assistance (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. The Department (formerly known as the Department

of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

MA is available (i) under Supplemental Security Income (SSI)-related categories to individuals who are aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled or (ii) for children under 19, parents or caretakers of children, pregnant or recently pregnant women, former foster children, MOMS, MICHild and Healthy Michigan Plan based on the Modified Adjusted Gross Income (MAGI) methodology. BEM 105 (July 2016), p. 1. The evidence at the hearing established that the best MA category available to the three children was MICHild, if not, then G2U would be the following best available MA category to them.

MICHild is a MAGI-related Medicaid Expansion program for children who are under 19 years of age and who have no other health coverage. BEM 130 (July 2016), p. 1. MICHild income eligibility for children aged 0-1 year ranges from 195-212% of the Federal Poverty Level (FPL). BEM 130, p. 1. MICHild income eligibility for children 1 through 18 years of age ranges from 160-212% of the FPL. BEM 130, p. 1. Other eligibility criteria for MICHild is the same as Children under 19 (U19) with the exception of comprehensive insurance and premium payments. BEM 130, p. 1.

Household composition follows tax rules. BEM 130, p. 2. Also, income eligibility is determined according to MAGI rules. BEM 130, p. 3. Countable income as determined by MAGI rules cannot exceed 212 % of the FPL. BEM 130, p. 3.

Beneficiaries remain eligible for 12 months of continuous eligibility for MICHild unless the person meets one of the following criteria:

- Reaches age 19.
- Moves out of state.
- Is ineligible due to Institutional Status; see BEM 265.
- Dies.
- Fails to pay the monthly premium.
- Is enrolled in other comprehensive insurance

BEM 130, p. 3. Note: If eligibility was granted based on incorrect or fraudulent information, continuous eligibility may be interrupted. BEM 130, p. 3.

In the present case, the issue was whether the MA group's income was at or below 212% of the FPL in order for the children to be eligible for MICHild coverage. It was undisputed that Petitioner's household composition was five for purposes of MAGI related coverage, which is determined by the principles of tax dependency. MAGI Related Eligibility Manual, *Michigan Department of Community Health* (DCH), May 2014, p. 14.

Available at http://michigan.gov/documents/mdch/MAGI_Manual_457706_7.pdf. The 2016 Poverty Guidelines for the 48 Contiguous States and the District of Columbia indicated that the poverty guidelines for persons in family/household size of five is \$ [REDACTED] 2016 Poverty Guidelines, U.S. Department of Health & Human Services, January 25, 2016, p. 1. Available at: <https://aspe.hhs.gov/poverty-guidelines>. However, the poverty guidelines for a household size of five must be multiplied by 2.12 to obtain the 212% FPL calculation. The result is that MA group's annual income must be at or below \$ [REDACTED] (\$ [REDACTED] multiplied by 2.12) of the FPL for a household size of five or must be at or below \$ [REDACTED] (\$ [REDACTED] divided by 12 months) when determining the children's monthly eligibility. It should be noted that throughout the hearing the Department appeared to be referencing the 2014 poverty guidelines; however, the 2016 poverty guidelines are applicable in this case. Exhibit A, pp. 1 and 29.

Then, it must be determined whether Petitioner and his spouse's income is countable. MAGI is a methodology for how income is counted and how household composition and family size are determined. MAGI Related Eligibility Manual, p. 16. It is based on federal tax rules for determining adjusted gross income. MAGI Related Eligibility Manual, p. 16. Every individual is evaluated for eligibility based on MAGI rules. MAGI Related Eligibility Manual, p. 16. The MAGI rules are aligned with the income rules that will be applied for determination of eligibility for premium tax credits and cost-sharing reductions through exchanges. MAGI Related Eligibility Manual, p. 16. Common sources of income which are countable in a MAGI related determination includes wages/salary. See MAGI Related Eligibility Manual, p. 16. As such, Petitioner and his spouse's wages/salary income are countable for MICHild purposes. It should be noted that Petitioner indicated in his application that Child A also had employment earnings, but the Department did not appear to take Child A's income into consideration. Exhibit A, p. 20.

Next, the Department indicated that Petitioner and his spouse's monthly earnings of \$ [REDACTED] (Petitioner) plus \$ [REDACTED] (the spouse's) equaled a total income of \$ [REDACTED] per month. Exhibit A, pp. 1 and 30. And then, when the Department multiplied this amount by 12, to obtain an annual income, this resulted in a total annual income of \$ [REDACTED] Exhibit A, p. 1. Thus, the Department argued that their annual income of \$ [REDACTED] exceeded the annual income limit of \$ [REDACTED] (household size of five) in order for the children to be eligible for MICHild coverage. Instead, the Department indicated that they would only be eligible for G2U, subject to a deductible. The Department based these calculations on Petitioner and his spouse's submitted check stubs. Petitioner submitted the following two check stubs as follows: (i) pay date of [REDACTED], gross earnings of \$ [REDACTED] (including overtime), net income of \$ [REDACTED] and there is a deduction of \$ [REDACTED] for his medical insurance; and (ii) pay date of [REDACTED], gross earnings of \$ [REDACTED] (including overtime), net income of \$ [REDACTED] and there is a deduction of \$ [REDACTED] for his medical insurance. Exhibit A, pp. 27-28. The spouse submitted the following two check stubs as follows: (i) pay date of [REDACTED], gross earnings of \$ [REDACTED] (including overtime), net income of \$ [REDACTED] and there is a deduction of \$ [REDACTED] for her medical insurance and life insurance; and (ii) pay date of [REDACTED], gross earnings of \$ [REDACTED] (no overtime),

net income of \$ [REDACTED] and there were no deductions. Exhibit A, pp. 25-26. The Department used these incomes from the check stubs to calculate their monthly earnings of \$ [REDACTED] (Petitioner) plus \$ [REDACTED] (the spouse's), which resulted in the Department claiming the income exceeded the MIChild limits. See Exhibit A, p. 30.

In response, Petitioner argued that his children should be eligible for MIChild. Moreover, Petitioner testified that his income was higher for the summer, but is now lower.

Medicaid eligibility is determined on a calendar month basis. BEM 105, p. 2. Unless policy specifies otherwise, circumstances that existed, or are expected to exist, during the calendar month being tested are used to determine eligibility for that month. BEM 105, p. 2. When determining eligibility for a future month, assume circumstances as of the processing date will continue unchanged unless you have information that indicates otherwise. BEM 105, p. 2.

MAGI for purposes of Medicaid eligibility is a methodology which state agencies and the federally facilitated marketplace (FFM) must use to determine financial eligibility. BEM 500 (January 2016), p. 3. It is based on Internal Revenue Service (IRS) rules and relies on federal tax information to determine adjusted gross income. BEM 500, pp. 3-4. It eliminates asset tests and special deductions or disregards. BEM 500, p. 4. Every individual is evaluated for eligibility based on MAGI rules. BEM 500, p. 4. The MAGI rules are aligned with the income rules that will be applied for determination of eligibility for premium tax credits and cost-sharing reductions through exchanges. BEM 500, p. 4.

Additionally, federal law provides further guidance in the determination of an individual's financial eligibility for MAGI related categories. Specifically, in determining an individual's financial eligibility for a budget period, 42 CFR 435.603(h)(2) states for current beneficiaries:

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.

Also, 42 CFR 435.603(h)(3) states:

In determining current monthly or projected annual household income and family size under paragraphs (h)(1) or (h)(2) of this section, the agency may adopt a reasonable method to include a prorated portion of reasonably predictable future income, to account for a reasonably predictable increase or decrease in future income, or both . . .

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that the children were no longer eligible for MIChild coverage. As stated

above, the Department used the reported earnings from Petitioner and his spouse's check stubs to determine the children were not eligible for MICHild due to excess income. However, the undersigned found discrepancies in how Department calculated Petitioner and his spouse's income. When the undersigned takes the gross income of both Petitioner's checks stubs, the resulting total monthly income is \$ [REDACTED] (including the overtime). Exhibit A, pp. 27-28. But, the Department calculated a total income of \$ [REDACTED] for Petitioner, which is \$ [REDACTED] more than what the undersigned calculated. Exhibit A, p. 30. Furthermore, as to the spouse's income, the undersigned calculated a total income of \$ [REDACTED] (including overtime). Exhibit A, pp. 25-26. But, the Department calculated a total income of \$ [REDACTED] for the spouse, which is \$ [REDACTED] less than what the undersigned calculated. Exhibit A, p. 30. Based on this information, there were clearly discrepancies the undersigned found as to calculation of the incomes. As such, the Department failed to establish whether the MA group's income actually exceeded the MICHild income limits. The Department failed to provide sufficient evidence and testimony to show how it calculated Petitioner's and his spouse's income, when the undersigned came to different calculations. Therefore, the Department will redetermine the children's MA eligibility from September 1, 2016, which includes determining whether they are eligible for MICHild. Now, the undersigned is not concluding one way or another the children are eligible for MICHild. The Department will have to redetermine the children's eligibility for the most beneficial MA coverage they are eligible to receive from [REDACTED], in accordance with Department policy. BEM 105, pp. 1-2; BEM 500, pp. 1-5; 42 CFR 435.603(h)(2)-(3); and MAGI Related Eligibility Manual, p. 16.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that Child A, Child B, and Child C were no longer eligible for MICHild coverage effective [REDACTED].

Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Redetermine Child A's, Child B's, and Child C's eligibility for the most beneficial MA coverage they are eligible to receive from [REDACTED];
2. Issue supplements to Child A, Child B, and Child C for any MA benefits they were eligible to receive but did not from [REDACTED], ongoing; and

3. Notify Petitioner of its decision.

EJF/jaf



Eric J. Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

[REDACTED]

Petitioner

[REDACTED]

Via email

[REDACTED]