



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: October 9, 2019
MOAHR Docket No.: 19-008574
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 telephone hearing was held on September 11, 2019, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. Petitioner called [REDACTED], her husband as a witness. The Department of Health and Human Services (Department) was represented by Amber Gibson, Hearing Facilitator.

ISSUE

Did the Department properly close the Medical Assistance (MA) case for Petitioner's two children?

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 children were ongoing recipients of full coverage MA benefits under the Modified Adjusted Gross Income (MAGI)-related Under Age 19 (U-19) category.
2. In connection with a [REDACTED] 2019 redetermination, MA eligibility for the children was reviewed.
3. Section 1 of the redetermination is Members of Household. The instructions/explanation for that section indicate "[b]elow are the names of people we show living in your household. Cross out incorrect information and write the correct information in the space provided." A column in that section also allows

clients the option to report the date a person moved into or out of a home. (Exhibit A, pp. 4-11)

4. Based on the information on file, the Department included Petitioner, her husband [REDACTED], and two children as members of the household. Petitioner completed the redetermination and did not make any changes or report that Mr. [REDACTED] was no longer in the household. She also did not identify the date in which he moved out of her home. (Exhibit A, p. 5)
5. Section 5 of the redetermination is Federal Tax Filing Information. The redetermination was prepopulated with the following information: Petitioner does not plan to file a federal income tax return next year; Petitioner's husband does intend to file a federal income tax return next year and will file jointly with his spouse, Petitioner; Petitioner's two children (who are non-tax filers) were identified as being related to the tax filer (Mr. [REDACTED]) as daughters; and Petitioner's daughters were not identified as being claimed as dependents on someone's tax return. (Exhibit A, p. 6)
 - a. Petitioner did not make or report any changes to the federal tax filing information identified on the redetermination. (Exhibit A, p. 6)
6. On the redetermination, Petitioner reported that she has gross monthly income of \$[REDACTED]. She also reported that her husband has income of \$[REDACTED]. (Exhibit A, p.8)
7. On July 2, 2019, the Department sent Petitioner a Verification Checklist (VCL) instructing her to submit proof of income for herself and for her husband by July 12, 2019. (Exhibit A, pp. 12-13)
8. On or around July 9, 2019, Petitioner provided the Department with her husband's income information; however, the Department determined that it was illegible. On July 15, 2019, Petitioner resubmitted the same illegible pay stubs. (Exhibit A, pp. 14-23)
9. On July 18, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice (Notice) advising her that the MA cases for her two children would be closed effective August 1, 2019.
 - a. Although the Hearing Summary indicates that the MA cases were closed for failure to provide income verifications, the Notice makes no reference to a failure to verify requested information, and instead informs Petitioner that the children were found ineligible for MA under the U-19 and MIChild categories because countable income exceeds the income limit for their group size. (Exhibit A, pp. 24-28)
10. On July 29, 2019, Petitioner requested a hearing disputing the Department's actions with respect to the closure of her children's MA cases. Petitioner's hearing

request indicates that her husband is not in the household and his income should not be counted towards the children's MA eligibility. (Exhibit A, pp. 2-3)

11. In response to Petitioner's hearing request, the Department's Office of Inspector General (OIG) completed a FEE Investigation Report on September 9, 2019, finding that Mr. [REDACTED] was a member of Petitioner's household.

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.

Petitioner requested a hearing disputing the Department's closure of MA benefits for her two children effective August 1, 2019.

MA is available (i) to individuals who are aged (65 or older), blind or disabled under SSI-related categories, (ii) to individuals who are under age 19, parents or caretakers of children, or pregnant or recently pregnant women, and (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage, which provides health care coverage for a category of eligibility authorized under the Patient Protection and Affordable Care Act and Michigan Public Act 107 of 2013 effective April 1, 2014. BEM 105 (April 2017), p. 1; BEM 137 (January 2019), p. 1.

The Department testified that Petitioner's children were previously receiving MA under the MAGI-related U19 category and that after processing the redetermination, the Department determined that they were not eligible for MAGI-related MA under either the U19 or MICHild categories due to excess income. The Department testified that the case worker relied on Petitioner's client statement as it related to the income information reported on her redetermination and concluded that the household had monthly income of \$4,500, which was in excess of the income limits for a household size of four under the full coverage MAGI-related MA categories available to the children.

At the hearing, Petitioner asserted that she is legally separated from her husband and he does not live in her home. Petitioner and her husband testified that he had been outside of the home for about one year and returned for only the month of March 2019.

Their testimony at the hearing indicated that he has not returned to the home since April 2019, as he is currently living with his boss until he finds a more permanent residence. Petitioner did not dispute that when completing the June 2019 redetermination, she did not report or disclose that Mr. [REDACTED] had moved out of the household. Petitioner asserted that she was informed by her case worker that the Department would not process the redetermination or any reported change in household composition, as the case worker was of the opinion that Petitioner and her husband were still living together, based on the information from a FEE investigation completed in 2017. Much of the testimony presented at the hearing from both the Department representative present and Petitioner centered around the outcome of the 2019 FEE Investigation Report and the disagreement with OIG's finding that Mr. [REDACTED] was a member of Petitioner's household.

The Department representative noted the failure of the OIG to interview Petitioner during the investigation and the failure to conduct an assessment of Petitioner's home to determine if evidence indicated Mr. [REDACTED] lived there. It was established however, that the 2019 FEE Investigation was not initiated until after Petitioner filed a hearing request and the Department's notification to Petitioner of the closure of her children's MA case for excess income. The Department then maintained that if Mr. [REDACTED] was not a household member, the Department would not have been required to ask Petitioner to verify his earnings or to include his income in the children's MA eligibility. However, this argument fails to address the Department policy that income eligibility for MA under MAGI-related categories including U-19 and MICHild requires consideration of a client's tax filing status and dependents.

A determination of group size under the MAGI methodology requires consideration of the client's tax status and dependents. In the majority of cases, parents, children and siblings are included in the same household. Parents and stepparents are treated the same. BEM 211 (July 2019), p.1. The Department policy applicable to Petitioner's children states:

The household for a non-tax filer who is not claimed as a tax dependent, consists of the individual and, if living with the individual:

* * *

If the individual is under the age of 19 (or under 21 if a full time student), the group consists of individual's natural, adopted and step parents and natural, adoptive and step siblings under the age of 19 (or under 21 if a full time student).

The household for an individual who is a tax dependent of someone else, consists of:

- The household of the tax filer claiming the individual as a tax dependent, except that the individual's group must be considered as non-filer/non-dependent if:

- The individual is not the spouse or a biological, adopted, or step child of the taxpayer claiming them; or
- The individual is under the age of 19 (or under 21 if a full time student) and expects to be claimed by one parent as a tax dependent and are living with both parents but the parents do not expect to file a joint tax return; or
- The individual is under the age of 19 (or under 21 if a full time student) and expects to be claimed as a tax dependent by a non-custodial parent,
- The individual's group consists of the parent who has a court order or binding separation, divorce, or custody agreement establishing physical custody controls, or
- If there is no such order or agreement or in the event of a shared custody agreement, the custodial parent is the parent with whom the child spends most nights.

BEM 211, pp. 2-3. Notwithstanding the testimony provided by Petitioner and her husband during the hearing, based on the information provided by Petitioner on the redetermination that she completed in June 2019, the Department was authorized to request income information from Petitioner's husband, as he was identified as a household member. Additionally, the information provided by Petitioner on the redetermination with respect to federal tax filing indicates that she and Mr. [REDACTED] will be filing a joint income tax return. There was no evidence to indicate that the children would be claimed as tax dependents on another individual's tax return. Therefore, the Department properly applied the policy identified above and concluded that based on the information available at the time the redetermination was completed, the children's household for MAGI-related MA purposes consisted of Petitioner, her husband, and the two children.

An individual is eligible for MICHild MA coverage if her household's income does not exceed 212% of the federal poverty level (FPL) applicable to the individual's group size. BEM 130 (January 2016), pp. 1-3. 212% of the annual FPL in 2019 for a household with four members is \$54,590, or \$4,549.16 monthly, as the children were current MA beneficiaries. <https://aspe.hhs.gov/poverty-guidelines>. An individual is eligible for U-19 MA coverage if her household's income does not exceed 160% of the FPL applicable to the individual's group size. BEM 131 (June 2015), pp. 1-3. 160% of the annual FPL in 2019 for a household with four members is \$41,200, or \$3,433.33, monthly. Therefore, to be income eligible for MAGI-related MA, the income of the children's household cannot exceed the income limits identified above. Additionally, Department policy provides that

if an individual's group's income is within 5% of the FPL for the applicable group size, a disregard is applied, making the person eligible for MA. MREM, § 7.2; BEM 500 (July 2017), pp. 3-5.

To determine financial eligibility under MICHild and U-19 categories, income must be calculated in accordance with MAGI under federal tax law. MAGI, for purposes of Medicaid eligibility is a methodology which state agencies and the federally facilitated marketplace (FFM) must use to determine financial eligibility. It is based on Internal Revenue Service rules and relies on federal tax information to determine adjusted gross income, eliminating the asset test and special deductions or disregards. BEM 500, pp. 3-4. Income is verified via electronic federal data sources in compliance with MAGI methodology. MREM, § 1. In determining an individual's eligibility for MAGI-related MA, 42 CFR 435.603(h)(2) provides that for current beneficiaries and "for individuals who have been determined financially-eligible for Medicaid using the MAGI-based methods . . . , a State may elect in its State plan to base financial eligibility either on current monthly household income . . . or income based on projected annual household income . . . for the remainder of the current calendar year."

When determining financial eligibility of current beneficiaries for MAGI-related MA, the State of Michigan has elected to base eligibility on current monthly household income and family size. The State has also elected to use reasonable methods to include a prorated portion of a reasonably predictable increase in future income and/or family size and to account for a reasonably predictable decrease in future income and/or family size. (Medicaid State Plan Amendment Transmittal No.: MI-17-██████)

As referenced above, the Department testified that based on the self-attested income of \$██████ monthly as reported on the redetermination, Petitioner's children were ineligible for MAGI-related MA based on excess income. However, upon thorough review, although the Department properly determined that applicable household size was four and Mr. ████████ income was countable for MAGI purposes at the time of the redetermination, the Department failed to establish that the household's income exceeded the income limit identified above for MICHild eligibility. Additionally, there was no evidence that the Department considered the children's eligibility for MICHild or other MAGI-related MA categories by applying the 5% disregard applicable to the household size of four.

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 because of the errors identified above, the Department did not act in accordance with Department policy when it closed Petitioner's children's MA case effective August 1, 2019 due to excess income.

DECISION AND ORDER

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. Reinstate the MA cases for Petitioner's children effective August 1, 2019, and determine their MA eligibility under the most beneficial category from August 1, 2019, ongoing;
2. Provide Petitioner's children with MA coverage under the most beneficial category from August 1, 2019, ongoing, if otherwise eligible in accordance with Department policy;
3. Supplement Petitioner and/or the children's providers for any eligible missed MA benefits from August 1, 2019, ongoing; and
4. Notify Petitioner in writing of its decision.

ZB/tlf



Zainab A. Baydoun
Administrative Law Judge
for Robert Gordon, 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 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 Email:

MDHHS-Ingham-Hearings
BSC2 Hearing Decisions
EQAD
D. Smith
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]