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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: February 11, 2020
MOAHR Docket No.: 19-013492
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 January 30, 2020 from Detroit, Michigan. The Petitioner was self-represented and had her husband, ██████████ (Husband), and daughter, ██████████ appear as witnesses. The Department of Health and Human Services (Department) was represented by Eric Murphy, Eligibility Specialist. Interpretation services were provided by a third party, Meher Emeie.

ISSUE

Did the Department properly determine Petitioner's children's Medical Assistance (MA) Program 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 or about November 11, 2019, the Department received verification of Husband's wages for the following pay dates: September 5, 2019; September 12, 2019; September 19, 2019; September 26, 2019; October 03, 2019; October 10, 2019; October 17, 2019; and October 24, 2019.
2. On December 2, 2019, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner informing her that her son and daughter were eligible for MA benefits with a deductible of \$3,564.00 per month

effective October 1, 2019 and a deductible of \$3,618.00 per month effective November 1, 2019.

3. On December 16, 2019, the Department received Petitioner's request for hearing disputing her children's placement in the MA deductible program as well as the amount of the deductible.

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.

In this case, Petitioner disputes the Department's determination of her children's MA eligibility. Children over age one and under age 19 are potentially eligible for three programs: (1) the Under Age 19 (U19) program; (2) the MiChild program; and (3) the Group 2 Under 21 (G2U) program. BEM 105 (April 2017), pp. 1, 3-4; BEM 130 (October 2019), p. 1; BEM 131 (June 2015), p. 1; BEM 132 (April 2018), p. 1. The U19 program is a Modified Adjusted Gross Income (MAGI)-related Group 1 MA category, meaning that it provides full-coverage MA without a deductible for children whose household's income, calculated in accordance with MAGI rules, meets the income eligibility limits. BEM 131, p. 1. Income eligibility for MiChild is also determined according to MAGI rules. BEM 130, p. 1. Children whose household income exceeds the income limit for U19 or MiChild eligibility are eligible for MA under the G2U category, with a deductible equal to the amount the child's net income (countable income minus allowable income deductions) which exceeds the applicable Group 2 MA protected income level (PIL) based on the county in which the child resides and child's fiscal group size. BEM 132, p. 2; BEM 544 (July 2016), p. 1; RFT 240 (December 2013), p. 1. Under federal law, the child is entitled to the most beneficial category, which is the one that results in eligibility, the least amount of excess income, or the lowest cost share. BEM 105, p. 2.

The Department concluded that Petitioner's children were income-ineligible for full-coverage MA benefits. There are three U19 categories for children over age 6: the Low Income Families (LIF) program applies when the household's income does not exceed

54% of the federal poverty level (FPL); the Other Healthy Kids (OHK) program applies when the household's income is between 54% and 143% of the FPL; and the Healthy Kids Expansion (HKE) program applies when the household's income is between 109% and 160% of the FPL. BEM 131, p. 1. A child between ages 1 through 18 whose household income is between 160% and 212% of the FPL is income eligible for MICHild subject to a monthly \$10.00 premium per family. BEM 130, pp. 1-2. A 5% disregard may be applied in MAGI cases when necessary to make a person eligible for MA benefits. MREM, § 7.2.

In order to determine income eligibility for MAGI-related U19 and MICHild programs, the household's MAGI income must be considered. A determination of group size under the MAGI methodology requires consideration of the client's tax status and dependents. The household of a tax dependent consists of the household of the tax filer claiming the individual as a tax dependent. BEM 211 (February 2019), p. 2. Therefore, Petitioner's children's group size for MAGI purposes is four (Petitioner, Husband, and two children). 54% of FPL for LIF eligibility is \$13,905.00 or \$15,192.50 when the 5% disregard is applied. <https://aspe.hhs.gov/2019-poverty-guidelines>. 160% of the annual 2019 FPL for HKE eligibility for a four-person household is \$41,200.00 or \$42,487.50 when the 5% disregard is applied. *Id.* 212% of the annual FPL for MICHild eligibility for a four-member household is \$54,590.00 or \$55,877.50 when the 5% disregard is applied. *Id.*

In determining MA eligibility for Petitioner's children, the Department relied upon wages provided by Husband for the period September 5, 2019 through October 24, 2019. Petitioner did not dispute the income as listed on the paystubs. To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500 (July 2017), p. 3. 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, the Department bases financial eligibility on current monthly household income. Centers for Medicare & Medicaid Services, *State Plan Amendment 17-0100 Approval Notice*, (March 19, 2018), p. 7. MAGI is calculated by reviewing the client's adjusted gross income (AGI) and adding it to any tax-exempt foreign income, tax-exempt Social Security benefits, and tax-exempt interest. HealthCare.gov, *Modified Adjusted Gross Income (MAGI)* < <https://www.healthcare.gov/glossary/modified-adjusted-gross-income-magi/> > (accessed January 24, 2020). AGI is found on IRS Tax Form 1040 at line 7, Form 1040 EZ at line 4, and Form 1040A at line 21. HealthCare.gov, *Modified Adjusted Gross Income (MAGI)* < <https://www.healthcare.gov/glossary/adjusted-gross-income-agi/> > (accessed January 24, 2020). Alternatively, it is calculated by taking the "federal taxable wages" for each income earner in the household as shown on the paystub or, if not shown on the paystub, by using gross income before taxes reduced by any money the employer takes out for health coverage, child care, or retirement savings. HealthCare.gov, *Modified Adjusted Gross Income (MAGI)* < <https://www.healthcare.gov/income-and-household-information/how-to-report/> > (accessed January 24, 2020). In situations where income is difficult to predict because of unemployment, self-employment,

commissions, or a work schedule that changes regularly, income should be estimated based upon past experiences, recent trends, possible changes in the workplace, and similar information. *Id.*

Husband is employed with [REDACTED]. No other sources of income were presented for the household. According to the paystubs dated September 26, 2019 through October 17, 2019, Husband had the following federal taxable wages:

September 26, 2019	\$ [REDACTED]
October 3, 2019	\$ [REDACTED]
October 10, 2019	\$ [REDACTED]
October 17, 2019	\$ [REDACTED]

The remainder of the wage verifications do not specifically list Husband's federal taxable wages but do include deductions for dental and health insurance premiums which were not considered by the Department. No evidence was presented that the household had any deductions or expenses associated with childcare or retirement savings accounts. Therefore, Husband's MAGI was \$ [REDACTED].

When broken down to a monthly basis, the LIF income limit is \$1,266.04 with the 5% disregard. The HKE income limit is \$3,540.63 with the 5% disregard. Finally, the MiChild income limit is \$4,656.46 when considering the 5% disregard. Therefore, the children are ineligible for all U19 categories as well as MiChild benefits as MiChild has the highest income limit. Husband's verified wages exceed the limit by \$ [REDACTED] for MiChild, the category with the highest income limit, even with the 5% disregard.

The Department also presented a FIP-Related MA Net Income budget showing that Petitioner's children were eligible for MA benefits with a deductible of \$3,618.00 per month effective November 1, 2019 but \$3,564.00 per month for October 2019. The Department did not present any budgets or certain explanation as to why the deductible was less for October than it was for November. Even though Petitioner's children are not eligible for MA under any of the full-coverage MAGI-related policies, the Department concluded that they were eligible for MA under the G2U category, with MA subject to a monthly deductible. An individual under age 21 who is not eligible for MA under MAGI-related policies is eligible for MA under a Group 2 Under 21 (G2U) category when the individual meets all eligibility requirements other than income. BEM 132, p. 1. In such cases, the client is eligible for MA coverage with a deductible, with the deductible equal to the amount the net income (countable income minus allowable income deductions) exceeds the applicable Group 2 MA protected income level (PIL). BEM 132, p. 2; BEM 544, p. 1. The PIL is based on the client's shelter area (county in which the client resides) and fiscal group size. BEM 132, p. 2; BEM 544, p. 1; RFT 240, p. 1; RFT 200 (April 2017), p. 3.

The Department presented a G2-FIP-related MA budget showing the calculation of the deductible effective November 2019. In Group 2 categories, the group is comprised of the individual's spouse and the individual's parents if the individual being evaluated for eligibility is a child. BEM 211 (July 2019), p. 8. The PIL for Petitioner's children, who live with Petitioner and Husband in Wayne County is \$532.00, which was correctly listed by the Department on the budget. BEM 211, p. 8; RFT 240, p. 1; RFT 200, p. 2.

Income eligibility exists when net income does not exceed the Group 2 needs in BEM 544 and all policies found in BEM 500, 530, and 536 are applied to determine net income. BEM 132, p. 2. The G2U net income calculation starts with determining Petitioner's and Husband's pro-rated income. This is calculated by subtracting a \$90 standard work expense from any earned income, a deduction for \$30 plus 1/3 of the remaining earned income if the group member received Family Independence Program (FIP) or LIF benefits in one of the last four months, in addition to subtracting any dependent care expenses arising from costs while working, and child support. BEM 500 (July 2017); BEM 536 (July 2019), p. 1-3. Petitioner has no earnings. Husband has the following earnings:

September 26, 2019	\$ [REDACTED]
October 3, 2019	\$ [REDACTED]
October 10, 2019	\$ [REDACTED]
October 17, 2019	\$ [REDACTED]

Therefore, Husband's total countable earnings are \$ [REDACTED]. After the countable earnings are calculated, \$90.00 is deducted from the earned income for a new total of \$ [REDACTED]. No evidence was presented that Petitioner, Husband, or the children were FIP or LIF recipients in the four months prior to the Department's decision; therefore, there is no additional deduction here. Next, any unearned income and child support income is added to the new earned income total to achieve the total net income. BEM 536, p. 3. There were no other sources of income presented here. Therefore, the parent's respective net incomes are \$0 for Petitioner and \$ [REDACTED] for Husband. No evidence was presented of guardianship/conservator or child support expenses; therefore, these steps of the calculation are skipped. *Id.* Finally, after consideration of all of the above income, expenses, and deductions, the remaining income is divided by the sum of the number of dependents living with the fiscal group and 2.9. BEM 536, p. 4. Dependents are defined as a person's spouse and children. *Id.* The household contains Petitioner, Husband, and their two children. Therefore, the prorated divisor is 5.9. As a result, Petitioner's prorated share of net income is \$0.00. Husband's prorated share of net income is \$ [REDACTED]. Finally, the child's fiscal group's net income is calculated by adding the child's net income plus 3.9 times the prorated share of each parent's own income (\$0+ [REDACTED]), plus one prorated share of each parent's income if the parents are married and both parents are in the fiscal group (\$0+ [REDACTED]) for a total of \$ [REDACTED]. BEM 536, p. 6. Therefore, each of their children is considered to have a net income of \$ [REDACTED]. BEM 536, pp. 6-7.

The remainder of the calculations are governed by BEM 544 and 545. BEM 536, p. 7. Deductions are given for insurance premiums and remedial services. BEM 544, pp. 1-2. Husband is responsible for dental and health insurance premiums, which were not considered by the Department. In each paycheck, Husband pays \$4.09 towards dental insurance and \$86.15 towards health insurance. No evidence was presented of remedial services. Therefore, the total net income is \$[REDACTED]. To achieve the deductible, the protected income level (PIL) is subtracted from the total net income. The PIL is a set allowance for non-medical need items such as shelter, food, and incidental expenses. *Id.* As discussed above, the PIL for Petitioner's children is \$532.00. After subtracting the PIL, Petitioner's children's deductible is \$3,522.86. The Department calculated a deductible slightly higher than the amount determined by this decision and may be the result of rounding or using different pay stubs for its evaluation, but no evidence was presented to show which paystubs were considered and which were not.

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 Department policy when it placed Petitioner's children in the G2U MA category, but failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's children's deductible.

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. Recalculate the deductible for Petitioner's children effective October 1, 2019, ongoing;
2. Notify Petitioner in writing of its decision.

AMTM/jaf



Amanda M. T. Marler

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

DHHS

Jeanette Cowens
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Petitioner

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