



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

**SARA COWSERT
1927 LONDON AVE
LINCOLN PARK, MI 48146**

Date Mailed: March 6, 2020
MOAHR Docket No.: 20-000436
Agency No.: 102576360
Petitioner: Sara Cowser

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 March 2, 2020, from Detroit, Michigan. Petitioner was present with her mother, Mary Cowser. The Department of Health and Human Services (Department) was represented by Carolyn Begley, Lead Specialist.

ISSUE

Did the Department properly determine Petitioner's children's Medical Assistance (MA) 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 September 9, 2019, Petitioner submitted an MA application for herself and her family (Exhibit A, pp. 6-13).
2. Petitioner's household consisted of herself, her four children and her children's father/Living Together Partner (LTP).
3. Petitioner's LTP had income from employment (Exhibit A, pp. 14-16).
4. Petitioner had income from employment (Exhibit A, pp. 17-18).
5. On November 19, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice (HCCDN) informing her that her children were approved for

MA benefits subject to a monthly deductible effective September 1, 2019, ongoing (Exhibit A, pp. 24-28).

6. On January 10, 2020, Petitioner submitted a request for hearing disputing the Department's actions related to her children's MA benefit cases.

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 submitted an application for MA benefits on behalf of her children on September 9, 2019. The Department determined Petitioner's children were not eligible for MA benefits under the full-coverage MA programs. The Department determined Petitioner's children were eligible for MA benefits subject to a monthly deductible.

In this case, Petitioner's children could be potentially eligible for MA benefits under the Under 19 (U19) MA program. The U19 program is a Modified Adjusted Gross Income (MAGI) related MA category. BEM 131 (June 2015), p. 1. There are different MAGI U-19 categories which are defined by the household income. BEM 131, p. 1. The U-19 income limits for Low Income Families (LIF) is 0-54% of the Federal Poverty Level (FPL) for children aged 0-19. The U-19 income limit for Other Healthy Kids (OHK) is 54-143% of the FPL for children aged 0-19. The U-19 income limits for the Healthy Kids Expansion (HKE) are 143-160% of the FPL for children aged 0-6 and 109-160% of the FPL for children aged 6-9. BEM 131, p. 1.

Petitioner's children could also qualify for full-coverage MA benefits under the MICHild program. MICHild is also 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.

Additionally, for MAGI-related MA programs, the Department allows a 5 percent disregard in the amount equal to five percent of the FPL level for the applicable family

size. BEM 500 (July 2017), p. 5. It is not a flat 5 percent disregard from the income. BEM 500, p. 5. The 5 percent disregard is applied to the highest income threshold. BEM 500, p. 5. The 5 percent disregard shall be applied only if required to make someone eligible for MA benefits. BEM 500, p. 5.

An individual's group size for MAGI-related purposes requires consideration of the client's tax filing status. BEM 211 (July 2019), p. 1. In this case, Petitioner and her LTP were not married. All four children in the household were the biological children of Petitioner and her LTP. Petitioner and her LTP filed taxes separately, and Petitioner's LTP claimed all four children as his dependents.

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 tax dependent. BEM 211, p. 2. However, if 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 is living with both parents but the parents do not expect to file a joint tax return, the individual must be considered as a non-filer/non-dependent. BEM 211, p. 2. The household of a non-tax filer who is not claimed as a dependent consists of the individual and, if living with the individual: (i) the individual's spouse; (ii) the individual's natural, adopted and step children under the age of 19 or under the age of 21 if a full time student; and (iii) if the individual is under the age of 19 (or under 21 if a full time student), the group consists of the 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). BEM 211, p. 2.

At the hearing, the Department testified that it considered the children to have a group size of five. Because all of Petitioner's children live with both parents, but the parents file separate tax returns, each of the children's group composition would follow the rules regarding non-filers/non-dependents. Therefore, each child's group would contain both parents and all of their siblings. Thus, each child's group would contain six individuals. As such, the Department improperly determined the children's group size.

As stated above, the highest income limit for full-coverage MA for an individual under the age of 19 is 212% of the FPL. With the additional 5% disregard, Petitioner's children cannot exceed 217% of the FPL for their group size to receive full-coverage MA benefits. 217% of the FPL for a group size of six is \$75,060.30 annually or \$6,255.025 monthly.

In order to determine income in accordance with MAGI, a client's adjusted gross income (AGI) is added to any tax-exempt foreign income, Social Security benefits, and tax-exempt interest. AGI is found on IRS tax form 1040 at line 37, form 1040 EZ at line 4, and form 1040A at line 21. 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, childcare, or retirement savings. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>. For

MAGI MA benefits, if an individual receives RSDI benefits and is a tax filer, all RSDI income is countable. BEM 503 (January 2019), p. 29.

Effective January 1, 2014, when determining eligibility for new applicants of MAGI-related MA, the State of Michigan has elected to base financial eligibility on current monthly income and family size. See:

http://www.michigan.gov/documents/mdch/SPA_13_0110_MM3_MAGI-Based_Income_Meth_446554_7.pdf.

The Department testified that it considered Petitioner's and Petitioner's LTP's income when determining the children's MA eligibility. The Department presented pay statements from Petitioner's LTP's income from employment (Exhibit A, pp. 14-16). Petitioner's LTP's taxable earnings were \$720 on November 15, 2019; \$648 on November 29, 2019; and \$504 on December 6, 2019. Petitioner's LTP was paid weekly.

The Department did not present a fourth pay statement to determine Petitioner's LTP's current monthly income. To determine the monthly income, the pay statements can be averaged and multiplied by four. When averaging the pay amounts and multiplying by four, it results in a current monthly income of \$2,496.

The Department also presented pay statements from Petitioner's income from employment (Exhibit A, pp. 17-18). Petitioner was paid on November 29, 2019, in the gross amount of \$1,925 and on December 13, 2019, in the gross amount of \$1,963.50. However, Petitioner had \$112.02 in withholdings for various insurance policies. As stated above, those amounts should be deducted from Petitioner's gross earnings to determine her MAGI income. Petitioner's MAGI income was \$1,812.98 on November 29, 2019 and \$1,851.48 on December 13, 2019. Petitioner's total MAGI-based income was \$3,664.46.

Between Petitioner and Petitioner's LTP, the household MAGI-based income was \$6,160.46. The children's household income was below the income limit for MiChild based on their group size. Therefore, the Department did not act in accordance with policy when it placed Petitioner's children in an MA program subject to a deductible. Thus, the Department did not act in accordance with policy when it determined Petitioner's children's MA eligibility.

DECISION AND ORDER

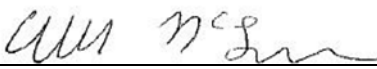
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it determined Petitioner's children's MA eligibility.

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 Petitioner's children's MA eligibility as of September 1, 2019, ongoing;
2. Provide Petitioner's children with MA coverage they are entitled to receive; and
3. Notify Petitioner of its MA decision in writing.

EM/cg



Ellen McLemore
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-Wayne-49-Hearings
D. Smith
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Petitioner – Via First-Class Mail: Sara Cowsert
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