



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
SUZANNE SONNEBORN  
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA  
ACTING DIRECTOR

██████████  
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██████████, MI ██████████

Date Mailed: December 8, 2023  
MOAHR Docket No.: 23-006808  
Agency No.: ██████████  
Petitioner: ██████████

**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 December 6, 2023, via conference line. The Petitioner was represented by her husband, ██████████. The Department of Health and Human Services (Department) was represented by Haysem Hosny, Hearing Facilitator. Also present was Arabic interpreter, Randa Abraham.

### **ISSUE**

Did the Department properly determine Petitioner's and Petitioner's husband's Medical Assistance (MA) benefit 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. Petitioner and her husband were ongoing MA recipients under the full coverage Healthy Michigan Plan (HMP) program.
2. Petitioner's household consisted of herself, her husband and their three children.
3. Petitioner's husband had income from employment at ██████████ (Exhibit A, pp. 15-17, 22, 23, 24 and 25) and at ██████████

4. Effective August 1, 2023, Petitioner and her husband's eligibility was reviewed, and it was determined that Petitioner and her husband were eligible for MA benefits subject to a deductible under the Group 2 Caretaker (G2C) MA program.
5. On October 12, 2022, Petitioner submitted a request for hearing disputing the Department's actions.

### **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 and her husband were ongoing MA recipients under the HMP program. Effective August 1, 2023, Petitioner was approved for MA benefits under the G2C program with a monthly deductible. Petitioner's husband was approved for MA benefits under the G2C MA program with a monthly deductible effective September 1, 2023. Petitioner submitted a new application under the above Department case number. Petitioner's application was denied, as she and her husband had been approved for MA benefits under a different case number under the G2C program. Petitioner disputed the Department's determination that he was not eligible for benefit under the full coverage HMP MA program.

The Department concluded that Petitioner and her husband were not eligible for HMP because the household income exceeded the applicable income limit for their group size. HMP uses a Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (October 2016), p. 1. An individual is eligible for HMP if his household's income does not exceed 133% of the Federal Poverty Level (FPL) applicable to the individual's group size. BEM 137, 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. In this case, Petitioner and her husband filed taxes and claimed their three

children. Therefore, for HMP purposes, they have a household size of five. BEM 211 (January 2016), pp. 1-2.

138% of the annual FPL in 2023 for a household with five members is \$60,623. See <https://aspe.hhs.gov/poverty-guidelines>. The monthly income limit for a group size of one is \$5,052. Therefore, to be income eligible for HMP, Petitioner's household income cannot exceed \$60,623 annually or \$5,052 monthly. To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. BEM 500 (July 2017), p. 3. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500, p. 3. Income is verified via electronic federal data sources in compliance with MAGI methodology. MREM, § 1.

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 November 1, 2017, when determining eligibility for ongoing recipients of MAGI related MA, the State of Michigan has elected to base financial eligibility on current monthly income and family size. See:

[https://www.michigan.gov/documents/mdhhs/MAGI-Based\\_Income\\_Methodologies\\_SPA\\_17-0100\\_-\\_Submission\\_615009\\_7.pdf](https://www.michigan.gov/documents/mdhhs/MAGI-Based_Income_Methodologies_SPA_17-0100_-_Submission_615009_7.pdf)

The Department presented the pay statements submitted by Petitioner. Petitioner was paid on September 7, 2023, in the gross amount of \$[REDACTED] with a 401k pretax deduction of \$[REDACTED]; on September 14, 2023, in the gross amount of \$[REDACTED], with a 401k pretax deduction of \$[REDACTED]; on September 21, 2023, in the gross amount of \$[REDACTED], with a 401k pretax deduction of \$[REDACTED]; on October 5, 2023, in the gross amount of \$[REDACTED], with a 401k pretax deduction of \$[REDACTED] on October 12, 2023, in the gross amount of \$[REDACTED], with a 401k pretax deduction of \$[REDACTED]5; on October 19, 2023, in the gross amount of \$[REDACTED], with a 401k pretax deduction of \$[REDACTED]; and on October 26, 2023, in the gross amount of \$6[REDACTED], with a 401k pretax deduction of \$[REDACTED]. Petitioner also provides home health care for his mother. The Department testified that a case comment was reviewed from September 25, 2023, indicating that Petitioner's husband's income was verified to be \$[REDACTED] per month from that source of employment. However, the Department could not locate the income verification. The Department testified that Petitioner's gross monthly income exceeded the income limit under the HMP program.

At the hearing, Petitioner's husband testified that his income fluctuates. Petitioner's husband stated that he is sometimes offered overtime pay, which causes his income to

change from week to week. Petitioner's husband stated he is not always given overtime work.

When calculating MAGI 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. See: <https://www.healthcare.gov/income-and-household-information/how-to-report/>

Upon review of the paychecks provided, Petitioner's husband's income from [REDACTED] varies widely based on the number of overtime hours that he works. When income fluctuates, the Department is to consider other factors when estimating income. Petitioner's husband's year to date income as of the October 26, 2023 paycheck was \$[REDACTED]. Additionally, it is unclear as to whether the Department properly deducted Petitioner's husband's pretax 401k withholdings, which totaled \$[REDACTED] year-to-date as of the October 26, 2023 paycheck. Petitioner's husband's year to date gross income through October 2023, subtracted by the year-to-date 401k withholdings, at [REDACTED] divided by 10 (January-October 2023) is \$[REDACTED] per month. With the addition of the \$[REDACTED] income from Northern Home Care, Petitioner's total household monthly income, in consideration of her husband's fluctuating income, is \$[REDACTED], which is less than the income limit under the HMP program for their group size. Therefore, the Department did not act in accordance with policy when it determined that Petitioner and her husband were eligible for MA benefits under the HMP program.

### **DECISION AND ORDER**

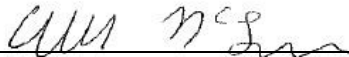
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it determined Petitioner's and Petitioner's MA eligibility. Accordingly, the Department's 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 and Petitioner's husband's MA eligibility as of August 1, 2023, ongoing, under the appropriate case number;
2. If Petitioner and her husband are eligible for MA benefits, provide coverage they are eligible to receive; and

3. Notify Petitioner of its decision in writing.

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**Ellen McLemore**  
Administrative Law Judge

**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-Electronic Mail :**

**DHHS**  
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**Interested Parties**

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**Via-First Class Mail :**

**Petitioner**

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