



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

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: February 8, 2024
MOAHR Docket No.: 23-008127
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 31, 2024. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Sonya Baker, Assistance Payments Supervisor.

ISSUE

Did the Department properly determine Petitioner's Medical Assistance (MA) Program eligibility effective November 1, 2023?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Under the Families First Coronavirus Response Act (FFCRA), PL 116-127, Michigan received additional federal MA funding during the COVID-19 pandemic health emergency (PHE).
2. As a condition for receiving the increased funding, § 6008 of the FFCRA required that MDHHS provide continuous MA coverage for individuals who were enrolled in MA on or after March 18, 2020, even if those individuals became ineligible for MA for reasons other than death, residing outside of Michigan, or requesting that MA be discontinued.

3. The MA continuous coverage requirement under § 6008 of the FFCRA was not indefinite.
4. The Consolidated Appropriations Act, 2023 (CAA, 2023), PL 117-328, terminated the continuous coverage requirement effective March 31, 2023.
5. Beginning April 1, 2023, the CAA, 2023 required MDHHS to reevaluate almost all MA recipients' eligibility for ongoing MA.
6. On May 4, 2023, the Department received Petitioner's completed Redetermination listing Retirement Survivors Disability Insurance (RSDI) income in the amount of [REDACTED] per month, that he was not filing taxes, and that he was married.
7. On the same day, the Department also received verification of Petitioner's RSDI benefit showing it as [REDACTED] per month with no deductions for Medicare premiums.
8. Effective July 1, 2023, Petitioner's wife began receiving RSDI benefits in the amount of [REDACTED] per month and is responsible for her Medicare Part B premium in the amount of \$164.90 per month.
9. The Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner advising him that effective December 1, 2023, he was eligible for Plan First (PF) MA benefits but that effective October 1, 2023, both he and his wife were no longer eligible for Medicare Savings Program (MSP) because he had not submitted verification of his checking account and was not under 21, pregnant, a caretaker of a minor child in the home, over 65, blind, or disabled.
10. On November 15, 2023, the Department received Petitioner's request for hearing disputing the Department's determination of his MA eligibility. The Department also received verification of Petitioner's most recent SSA benefit showing that he received [REDACTED] for October and November 2023 and [REDACTED] per month beginning December 2023, ongoing. The verification also stated that Petitioner was responsible for his Medicare Part B premiums effective October 2023.
11. On November 20, 2023, the Department sought additional verifications of Petitioner's vehicle value by November 30, 2023.
12. As of the hearing date, Petitioner's eligibility for Group 2-Aged, Blind, Disabled (G2S) was still pending based on verification of Petitioner's assets.
13. At the hearing, the Department testified that the actual reason for Petitioner's ineligibility for MSP benefits was that he was over the income limit effective November 1, 2023 and that the reason listed on his HCCDN was just a standard explanation rather than the actual explanation for Petitioner's ineligibility. Furthermore, the delay in processing Petitioner's redetermination was caused by a change in Department personnel.

APPLICABLE LAWS

Authority for the ALJ to conduct the hearing is provided under MCL 400.9 and 400.37; 42 USC 1396(3); 42 CFR 431.200 to 431.250.

MDHHS policies are contained in the Michigan Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

The MA program is established by Title XIX of the Social Security Act, 42 USC 1396 *et seq.*; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, PL 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, PL 111-152; 42 CFR 430.10 to 42 CFR 430.25; 42 CFR 431.200 to 431.250; and 42 CFR 438.400 to 438.424. MDHHS administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.103 to MCL 400.112k of the Social Welfare Act, MCL 400.1 *et seq.*

CONCLUSIONS OF LAW

Starting April 1, 2023, ongoing MA eligibility must be renewed. For MA beneficiaries whose MA eligibility is based on their Modified Adjusted Gross Income (MAGI)-based income, MA must be renewed once every 12 months and no more frequently than once every 12 months. 42 CFR 435.916(a)(1). For MA beneficiaries whose MA eligibility is not based on their MAGI-based income, MA eligibility must be redetermined at least every 12 months. 42 CFR 435.916(b). Any renewal form or notice must be accessible to persons who are limited English proficient and persons with disabilities. 42 CFR 435.916(f)(2).

In conducting this renewal or redetermination, MDHHS must check available information and data sources to attempt to redetermine eligibility before contacting the beneficiaries. 42 CFR 435.916(a)(2) and (b), 435.948, and 435.949. Before concluding that an individual is ineligible for MA, MDHHS must evaluate the individual's eligibility for MA on all bases for MA coverage, including the Medicare Savings Programs. 42 CFR 435.916(f)(1).

MA Coverage

Upon reviewing Petitioner's eligibility criteria at redetermination, MDHHS concluded that Petitioner was eligible for MA coverage under the PF program and was no longer eligible for MSP benefits. Petitioner disputes this decision.

MA is available (i) under SSI-related categories to individuals who are aged (65 or older), blind or disabled, (ii) to individuals who are under age 19, parents or caretakers of children, or pregnant or recently pregnant women, (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage, and (iv) to individuals who meet the eligibility criteria for Plan First Medicaid (PF-MA) coverage. 42 CFR 435.911; 42 CFR 435.100 to 435.172; BEM 105 (October 2023), p. 1; BEM 137 (June 2020), p. 1; BEM 124 (July 2023), p. 1. Under federal law, an individual eligible under more than one MA category must have eligibility determined for the category selected and is entitled to

the most beneficial coverage available, which is the one that results in eligibility and the least amount of excess income or the lowest cost share. BEM 105 (January 2021), p. 2; 42 CFR 435.404.

Because Petitioner was a Medicare recipient and there was no evidence that Petitioner was the parent or caretaker of a minor child, Petitioner was eligible for MA only under an SSI-related category, including MSP.

The Department determined that Petitioner was ineligible for any of the three MSP plans. The Qualified Medicare Beneficiary (QMB) plan is the full coverage MSP and pays for Medicare premiums, coinsurances, and deductibles. BEM 165 (October 2022), pp. 1-2. The Specified Low-Income Medicare Beneficiary (SLMB) plan is a limited coverage MSP and pays Medicare Part B premiums. *Id.* A third MSP plan is the Additional Low-Income Medicare Beneficiary (ALMB) and it pays for Medicare Part B premiums if funding is available. *Id.* QMB.

Income determines placement in the programs in addition to other non-financial eligibility factors. BEM 165, p. 1. For QMB, net income cannot exceed 100% of the federal poverty level. *Id.* Effective April 1, 2023, the income limit for a group size of two is \$1,663.50. RFT 242 (April 2023), p. 1. SLMB is available for individuals whose income is over 100% of the federal poverty level, but not more than 120% of the federal poverty level. BEM 165, pp. 1-2. Effective April 1, 2023, the SLMB income range is \$1,663.51-\$1,992.00. RFT 242, p. 1. Finally, ALMB is available to those whose income exceeds 120% of the federal poverty level, but does not exceed 135%. BEM 165, pp. 1-2. Therefore, the income range for ALMB effective April 1, 2023, is \$1,992.01-\$2,238.50. RFT 242, p. 3.

Policy provides that persons are not eligible for ALMB if they are eligible for and receiving MA under another category. BEM 165, p. 6. Likewise, a deductible client that changes to a nursing home status Level of Care, Freedom to Work plan, or a waiver program is not eligible for ALMB. *Id.*

To be eligible for QMB or SLMB, a client must be income eligible. BEM 165, p. 8. Income eligibility exists when net income is within the limits found in RFT 242 and 247 and as more specifically outlined above. *Id.* Countable income for MSP purposes follows the same rules as SSI-related MA under BEM 500, 501, 502, 503, 504, and 530 except in the case of countable RSDI. *Id.* For RSDI benefits in the months of January, February, and March, the cost-of-living increase received beginning in January is disregarded and the income limits for the preceding December are used. BEM 165, p. 8. For all other months, countable RSDI is the countable amount for the month being tested. *Id.* The countable amount is the gross RSDI benefit. BEM 503 (January 2023), p. 29.

Petitioner receives ██████████ in Retirement, Survivors and Disability Insurance (RSDI) benefits per month. His wife receives ██████████ per month. In determining the Ad-Care and MSP eligibility, the Department must determine Petitioner's MA fiscal group size and net income. Petitioner has a group size for Supplemental Security Income (SSI)-related MA purposes of two as he is married and

living with his spouse. BEM 211 (January 2016), p. 8. Petitioner's and his wife's total monthly income is [REDACTED].

Countable income is calculated by adding the amount of income actually received and/or available within the past month. BEM 530 (July 2017), p. 2. Next, there is a \$20.00 general exclusion. BEM 541 (January 2022), p. 3. There was no earned income, guardianship or conservator expenses, nor any work related expenses to consider for deductions. Therefore, Petitioner's household net income is [REDACTED] and falls within the income limits for ALMB. At the time that Petitioner was denied MSP, he was not yet eligible for PF. Therefore, he is eligible for ALMB. Pursuant to policy, Petitioner would be precluded from receiving ALMB once he became eligible for PF in December 2023. However, policy also provides that "persons who are eligible for MA benefits under another category, but do not want such assistance can be eligible for ALMB." BEM 165, p. 6. Therefore, if Petitioner opts out of PF coverage, he may still receive ALMB. Finally, if Petitioner is determined to be eligible for Group 2-Aged, Blind, Disabled (G2S) with a deductible at some point in time, he is still eligible for ALMB. *Id.*

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 MSP eligibility as of October 2023.

DECISION AND ORDER

MDHHS did not act in accordance with Department policy when it closed Petitioner's MSP MA case.

Accordingly, MDHHS's MA decision is **REVERSED**.

MDHHS 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 MSP eligibility effective October 1, 2023;
2. If otherwise eligible, issue supplements to Petitioner or on his behalf for benefits not previously received; and,

3. Notify Petitioner in writing of its decision.

AMTM/cc



Amanda M. T. Marler
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 :

Interested Parties

MDHHS-Wayne-15-Greydale-Hearings
BSC4-HearingDecisions
EQADHearings
M. Schaefer
MOAHR

Via-First Class Mail :

Petitioner

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