



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 22, 2024
MOAHR Docket No.: 23-008244
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 Zoom video conference hearing was held on February 20, 2024. The Petitioner was represented by his sister [REDACTED]. The Department of Health and Human Services (Department) failed to appear for the hearing.

ISSUE

Did the Department properly determine Petitioner'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. 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 July 25, 2023, the Department received Petitioner's completed Redetermination for MA benefits indicating he was the only household member, had a disability, his assets included a checking account and a vehicle, his income included Retirement Survivors Disability Insurance (RSDI) in the amount of [REDACTED] and a trust payment of [REDACTED] per month, he has Medicare, and does not file taxes.
7. A Social Security Administration (SSA) letter and the State Online Query (SOLQ) show that Petitioner receives [REDACTED] per month effective August 1, 2023 and that he is responsible for his Medicare Part B premium in the amount of \$164.90 per month.
8. On October 30, 2023, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner advising him that effective September 1, 2023, he was eligible for Plan First (PF), Medicare Savings Program (MSP) under the Specified Low-Income Medicare Beneficiary (SLMB) category, and MA with a deductible of \$906.00 for September 2023 and \$741.00 for October 2023, ongoing.
9. In calculating the deductible, the Department considered [REDACTED] in unearned income, the \$20.00 general exclusion, the \$164.90 Medicare Part B premium (for October 2023 but not September 2023), and the Protected Income limit of \$408.00 to equal a deductible of \$741.00.
10. On November 16, 2023, the Department received Petitioner's request for hearing disputing the Department's determination of MA eligibility.

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, SLMB, and G2S categories. Petitioner disputes his deductible MA coverage under G2S.

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, p. 2; 42 CFR 435.404.

SSI-RELATED MA (DISABLED, BLIND OR OVER-65)

Because Petitioner is a Medicare recipient **and** disabled and there was no evidence that Petitioner was the parent or caretaker of a minor child, Petitioner was eligible for MA under an SSI-related category. In determining the SSI-related MA category Petitioner is eligible for, MDHHS must determine Petitioner's MA fiscal group size and net income. As an unmarried individual, Petitioner has fiscal group size for SSI-related MA purposes of one. BEM 211 (October 2023), p. 8.

The Ad-Care program, an SSI-related MA category, requires that net group income cannot exceed one hundred percent of the federal poverty level plus \$20.00. BEM 163, pp. 1-2. The 2023 federal poverty level for a one-person household was \$14,450 annually or \$1,215.00 per month. <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines/prior-hhs-poverty-guidelines-federal-register-references>. The net income limit is established subtracting \$20.00 from the income limits seen in RFT 242, \$1,215.00 for a group size of one effective April 1, 2023. RFT 242 (April 2023), p. 1; BEM 163 (July 2017), p. 2.

Countable income is calculated by adding the amounts of income actually received or reasonably anticipated within the month. BEM 530 (April 2020), p. 2. RSDI and trust payments to a trust beneficiary are considered countable income. BEM 503 (January 2023), pp. 29, 37. During the hearing, Petitioner's Authorized Hearings Representative (AHR) referenced a policy bulletin HCEDP 05-04 indicating that trust payments were not to be countable income for MA benefits in 2005. Currently policy under BEM 503 indicates income from a trust to a trust beneficiary is countable. Therefore, Petitioner has total gross income of [REDACTED]. Next, \$20.00 is subtracted for the general exclusion and Petitioner's Net Income is [REDACTED] BEM 541 (January 2023), p. 3. Petitioner does not have any expenses for child support, work-related expenses, nor guardianship or conservator expenses. BEM 541, pp. 1-7. Therefore, Petitioner's Net Income is greater than the net income limit. Petitioner is not eligible for the full coverage Ad-Care program.

Since Petitioner has excess income for eligibility under the Ad-Care program, the full coverage SSI-related MA program, an evaluation of Petitioner's eligibility for MA coverage under the Group 2 program follows. Group 2 provides MA coverage with a deductible. BEM 105, p. 1. The deductible is the amount that the client's net income (less any allowable deductions) exceeds the applicable Group 2 MA protected income level (PIL). PIL is a set allowance for non-medical need items such as shelter, food, and incidental expenses. BEM 544 (January 2020), p. 1. It is based on the client's MA fiscal group size and the county in which the client resides. *Id.* Petitioner resides in [REDACTED] County and has a group size of one; therefore, he is in shelter area VI, and his PIL is \$408.00. RFT 200 (April 2017), p. 3; RFT 240 (December 2013), p. 1. Thus, if Petitioner's monthly net income (less allowable needs deductions) is in excess of \$375.00, Petitioner is eligible for MA assistance under the G2S program with a deductible equal to the amount of income remaining after the appropriate and allowed deductions which is greater than \$375.00.

As discussed above, Petitioner's net income was [REDACTED]. In calculating the deductible, allowances are made for health insurance premiums and remedial services. BEM 544, pp. 1-2. Although the Department issued an HCCDN to Petitioner indicating he was eligible for MSP via the SLMB category, the SSA letter, SOLQ, and the Department's own G2S budget show that Petitioner is responsible for his Medicare Part B premium, therefore, a deduction of \$164.90 is provided here. Petitioner does not have any remedial services which produce the maximum reduction of physical and mental limitations and restore an individual to their best possible functioning level. BEM 544, p. 2. Remedial care services include basic self-care and rehabilitation training which teach and reinforce

dressings, grooming, eating, bathing, toileting, and following simple instructions. BEM 544, p. 2. Remedial services do not include personal care services as defined in BEM 545. Therefore, Petitioner's PIL is subtracted to reach a deductible of \$741.00. The Department properly determined Petitioner's MA G2S eligibility.

Evidence is conflicting as to whether the Department also provided MSP eligibility via the SLMB category. There are three categories for MSP. 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. BEM 165, p. 1. For QMB, net income cannot exceed 100% of the federal poverty level, the same as AD-Care. *Id.* 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. *Id.* Finally, ALMB is available to those whose income exceeds 120% of the federal poverty level but does not exceed 135%. *Id.* The 2023 federal poverty level and income limit for QMB for a one-person household is \$14,580.00 or \$1,215.00 per month. <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines/prior-hhs-poverty-guidelines-federal-register-references>; RFT 242 (April 2023), p. 1. The income limit for SLMB is \$17,496.00 or \$1,458.00. *Id.* Finally, the income limit for ALMB is \$19,683.00 or \$1,640.25. *Id.* The net income limit is established through policy by subtracting \$20.00 from the amount shown in RFT 242.

Because Petitioner's net income of [REDACTED] as calculated above exceeds the limit for QMB but falls within the limits for SLMB, Petitioner is eligible for SLMB MSP coverage. The Department has not satisfied its burden of proof that SLMB coverage was provided to Petitioner. (*Note: once SLMB coverage is provided to Petitioner, Petitioner's G2S deductible will change due to the removal of the Medicare Part B premium from his expenses.)

Finally, the Department determined that Petitioner was eligible for PF. PF-MA is a MAGI-related limited coverage Medicaid group available to any United States citizen or individual with an immigration status entitling them to full Medicaid coverage (not emergency services only (ESO)) residing in Michigan whose fiscal group's MAGI income does not exceed 195% of the federal poverty level (FPL) and meets the other eligibility criteria. BEM 124 (July 2023), p. 1. There are no age or gender restrictions to PF-MA eligibility. BEM 124, p. 1. PF provides MA coverage for family planning services. See <https://www.michigan.gov/mdhhs/assistance-programs/healthcare/adults/planfirst>.

Like HMP, determination of an individual's PF-MA eligibility requires consideration of the fiscal group's size and income and follows the same MAGI calculations. BEM 124, pp. 1-2. An individual's group size for MAGI purposes requires consideration of the client's tax filing status. In this case, Petitioner does not file taxes. He is not married and does not have any children. Therefore, for PF purposes, Petitioner has a household size of one.

BEM 211 (October 2023), pp. 1-2. 195% of the annual FPL in 2023 (the most current applicable FPL) for a household with one member is \$38,454.00. See <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for PF-MA, Petitioner's annual income cannot exceed \$38,454.00 or \$3,204.50 per month.

To determine financial eligibility under PF, income must be calculated in accordance with MAGI under federal tax law. 42 CFR 435.603(e); BEM 500 (April 2022), p. 3. MAGI is based on Internal Revenue Service rules and relies on federal tax information. *Id.* To determine income in accordance with MAGI, a client's adjusted gross income (AGI) is added to any tax-exempt foreign income, tax-exempt Social Security benefits, and tax-exempt interest. AGI is found on IRS Tax Form 1040 at line 11. See <https://www.healthcare.gov/glossary/adjusted-gross-income-agi>. 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/>. MDHHS considers *current* monthly income and family size (except for individuals who report seasonal work and complete a projected annual income field on the MA application to show work for only a portion of the year with reasonably predictable changes in income within the upcoming 12 months). Michigan Medicaid State Plan Amendment Transmittal 17-0100, effective November 1, 2017 and approved by the Center for Medicare and Medicaid Services on March 13, 2018 available at https://www.michigan.gov/mdhhs/-/media/Project/Websites/mdhhs/Folder3/Folder80/Folder2/Folder180/Folder1/Folder280/SPA_17-0100_Approved.pdf. For MAGI MA benefits, all RSDI income is countable to tax-filers and adults not claimed as dependents. BEM 503, p. 29.

Petitioner has a total income of [REDACTED] and currently a deduction for his Medicare Part B premium of \$164.90. Therefore, his MAGI is [REDACTED] and Petitioner's income falls below the PF income limits. Petitioner is eligible for PF. (*Note: Petitioner may opt out of MA-PF coverage if he is uninterested in this coverage.)

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's MSP eligibility.

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. Redetermine Petitioner's MSP eligibility effective September 1, 2023;
2. If otherwise eligible, issue supplements to Petitioner, on his behalf, or notify SSA to issue supplements to Petitioner 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-Oakland-DistrictII-Hearings
BSC4-HearingDecisions
EQADHearings
M. Schaefer
MOAHR

Via-First Class Mail :

Authorized Hearing Rep.

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Petitioner

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