



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.: 23-008246  
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 Valarie Foley, Hearings Facilitator.

### **ISSUE**

Did the Department properly determine Petitioner's and his wife'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. Petitioner and his wife were ongoing MA recipients under the Healthy Michigan Plan (HMP).
7. On June 26, 2023, the Department received Petitioner's completed Redetermination on which he indicated that he lived with his wife and five children ages, [REDACTED]. He also indicated that no one was planning to file taxes and that he was not claiming any dependents.
8. At some point, Petitioner notified the Department that he was filing his taxes jointly with his wife and claiming two of his children, ages [REDACTED] and [REDACTED], as dependents.
9. On September 26, 2023, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner advising him that his and his wife's MA coverage would change to Plan First (PF) effective November 1, 2023. They were no longer eligible for HMP because their income exceeded the limit for his group size.
10. Petitioner has the following verified income:

July 17, 2023	[REDACTED]
July 24, 2023	[REDACTED]
July 31, 2023	[REDACTED]
August 7, 2023	[REDACTED]

11. Petitioner's wife had the following verified income:

June 2, 2023	[REDACTED]
June 16, 2023	[REDACTED]
June 30, 2023	[REDACTED]

Petitioner's wife also had deductions to her income for retirement accounts.

12. On November 15, 2023, the Department received Petitioner's request for hearing disputing the MA coverage for himself and his wife.
13. On November 27, 2023, the Department issued a second HCCDN to Petitioner advising him that him and his wife were eligible for Group 2 Caregivers (G2C) MA benefits with a deductible of \$2,977.00 per month effective December 1, 2023.

14. The parties agreed at the hearing to address the November 27, 2023 HCCDN regarding Petitioner's and his wife's 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 and G2C program. Petitioner disputes this coverage.

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.

### **MAGI-RELATED PROGRAMS: HMP**

Because Petitioner was not age 65 or older, blind or disabled, under age 19, the parent or caretaker of a minor child, or pregnant or recently pregnant, Petitioner was potentially eligible for MA coverage only under HMP. HMP is a MAGI-related MA category that provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income under the MAGI methodology at or below 133% of the federal poverty level (FPL); (iii) do not qualify for or are not enrolled in Medicare; (iv) do not qualify for or are not enrolled in other MA programs; (v) are not pregnant at the time of application; and (vi) are residents of the State of Michigan. BEM 137, p. 1; 42 CFR 435.603.

In this case, MDHHS concluded that Petitioner was not eligible for HMP due to having income that exceeded the applicable income limit for Petitioner's group size. An individual is eligible for HMP if the household's MAGI-income does not exceed 133% of the FPL applicable to the individual's group size. An individual's group size for MAGI purposes requires consideration of the client's tax filing status. In this case, Petitioner filed taxes and claimed two dependents. Therefore, for HMP purposes, Petitioner has a household size of four. BEM 211 (October 2023), pp. 1-2. 133% of the annual FPL in 2023 (the most current applicable FPL) for a household with four member is \$39,900.00. See <https://www.federalregister.gov/documents/2023/01/19/2023-00885/annual-update-of-the-hhs-poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's annual income cannot exceed \$39,900 or \$3,325.00.

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 2020), pp. 3-4. 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 July 20, 2023). AGI is found on IRS Tax Form 1040 at line 11. HealthCare.gov, *Modified Adjusted Gross Income (MAGI)* <<https://www.healthcare.gov/glossary/adjusted-gross-income-agi/>> (accessed July 20, 2023). 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. HealthCare.gov, *Modified Adjusted Gross Income (MAGI)* <<https://www.healthcare.gov/income-and-household-information/how-to-report/>> (accessed July 20, 2023). 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.*

Petitioner had gross income of ██████████ in 30-days of verified income and there was no evidence of deductions for health coverage, childcare, or retirement accounts listed on his paystubs. Petitioner's wife had verified income of ██████████ with deductions for retirement accounts totaling ██████████. Therefore, the household MAGI is ██████████. Petitioner and his wife are not eligible for HMP.

### **MAGI-RELATED PROGRAMS: PLAN FIRST**

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 net income does not exceed 195% of the federal poverty level (FPL) and meets the other eligibility criteria. BEM 124, p. 1. There are no age or gender restrictions to PF-MA eligibility. BEM 124, p. 1. PF is an MA program limited to family planning services only. <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. BEM 124, pp. 1-2. An individual's group size for MAGI purposes requires consideration of the client's tax filing status. Again, Petitioner has a group size of one. BEM 211, pp. 1-2. 195% of the annual FPL in 2023 (the most current applicable FPL) for a household with four members is \$58,500.00. See <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for PF-MA, Petitioner's annual income cannot exceed \$58,500 or \$4,875.00 per month.

The same rules apply for determining countable income for PF as are used for HMP. Therefore, Petitioner and his wife have income which is greater than the PF income limit. Based upon the evidence presented, the Department improperly provided PF MA eligibility to Petitioner and his wife and has not met its burden of proof.

### **DEDUCTIBLE PROGRAM: G2C, G2U**

Although Petitioner was not eligible for HMP nor PF coverage, parents are potentially eligible for MA under Group 2 Caretaker Relative (G2C). Group 2 eligibility for MA coverage is possible even when net income exceeds the income limit for full MA coverage. BEM 105, p. 1. For Group 2 categories, there is a monthly deductible equal to the amount the household's monthly net income (countable income minus allowable income deductions) exceeds the applicable Group 2 MA protected income level (PIL). PIL is based on the fiscal group size for Group 2 MA categories and the county of residence. BEM 135, p. 2; BEM 544 (January 2020), p. 1; RFT 240 (December 2013), p. 1. See BEM 105, p. 2; BEM 135 (October 2015), p. 1.

G2C is a Group 2 MA program. For purposes of Group 2 MA eligibility, Petitioner, who is married, has an MA fiscal group size of two. BEM 211 (October 2023), p. 9. The PIL for an individual with a two-person MA Group 2 fiscal group size living in Wayne County is \$500.00. RFT 200 (April 2017); RFT 240 (December 2013), p. 1. Thus, if the household's net income, calculated in accordance with BEM 536 (July 2019), pp. 1-7, exceeds the \$500.00 PIL, there is eligibility for MA assistance under the deductible program, with the deductible equal to the amount that the monthly income exceeds \$500.00.

The G2C net income calculation starts with determining Petitioner'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 Low-Income Family (LIF) MA benefits in one of the last four months, subtracting any dependent care expenses arising from costs while working, and child support. BEM 500 (April 2022); BEM 536 (July 2019), p. 1-3. Petitioner and his wife have earned income and are each eligible for the standard work expense deduction. Adding Petitioner's gross income for the verified 30 days of income totals [REDACTED]. Subtracting the \$90 deduction totals [REDACTED]. Petitioner's wife has gross income of [REDACTED] for the most recent verified 30-day period of income and after the \$90 deduction totals [REDACTED]. No evidence was presented that Petitioner or his wife has received FIP or LIF benefits in the last four months or that he has any dependent care or child support expenses. 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 was no evidence for these items. Furthermore, there was no evidence of receipt of guardianship/conservator expenses; therefore, this step of the calculation is skipped as well. BEM 536, p. 3. Finally, after consideration of all the above income, expenses, and deductions, the remaining income is divided by the sum of the number of dependents (pursuant to G2C policy) and 2.9. BEM 536, p. 4. Dependent for purposes of G2C includes a person's spouse and children (unmarried persons under age 18). *Id.* Petitioner has one dependent child in the home for purposes of G2C and his wife; therefore, Petitioner's and his wife's prorated divisor is 4.9. Petitioner has a prorated share of income of [REDACTED] (dropping the cents). Petitioner's wife's prorated share of income is [REDACTED] (dropping the cents).

Finally, the adult fiscal group's net income is 2.9 times Petitioner's prorated share for a total of [REDACTED] (dropping the cents) plus 3.9 prorated shares of Petitioner's wife's own prorated share of [REDACTED] (dropping the cents) plus one prorated share of Petitioner's income of \$593. BEM 536, pp. 6-7. Petitioner's fiscal group net income is [REDACTED].

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 (January 2020), pp. 1-2. There was no evidence presented that Petitioner was responsible for insurance premiums or remedial services. Therefore, the total net income is [REDACTED]. To achieve the deductible, the PIL of \$500.00 is subtracted from the total net income. Petitioner's and his wife's G2C deductible as calculated here would be \$3,648.00. The Department calculated a deductible of \$2,977.00. Because the Department has not

shown that they have properly calculated the deductible or considered the income of Petitioner and his wife, the Department's has not met its burden of proof.

**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 MA eligibility effective November 1, 2023;
2. If otherwise eligible, issue supplements to Petitioner or on his and his wife's behalf for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.

AMTM/cc



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**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-19-Hearings  
BSC4-HearingDecisions  
EQADHearings  
M. Schaefer  
MOAHR

**Via-First Class Mail :**

**Petitioner**

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