



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 13, 2024
MOAHR Docket No.: 23-008303
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 February 1, 2024. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Geyauna Goods, Assistance Payments Supervisor, and Alexander Ostroskie, Assistance Payments Worker.

ISSUE

Did the Department properly determine Petitioner's and her son'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 June 27, 2023, the Department received Petitioner's completed Redetermination for MA benefits reporting employment income of [REDACTED] weekly, irregular child support income, childcare costs of \$21.00 weekly, that she was not filing taxes and did not intend to claim dependents.
7. On November 6, 2023, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner advising her that effective December 1, 2023, both her and her son were no longer eligible for MA benefits because he was not under 21, pregnant, a caretaker of a minor child, over age 65, blind or disabled.
8. On November 13, 2023, the Department received a new application for MA benefits from Petitioner listing unemployment benefits and employment income.
9. On November 20, 2023, the Department received Petitioner's request for hearing disputing the denial of MA benefits from her Redetermination.
10. The Equifax Work Number verification shows Petitioner had employment income for June 1, 2023 through August 25, 2023 in the amount of [REDACTED] weekly for 40 hours of work and beginning September 1, 2023 through the date of the HCCDN of [REDACTED] per week for 20 hours of work except for the paychecks dated September 15, 2023 and October 13, 2023 in which she received [REDACTED] for 24 hours worked.
11. Consolidated Inquiry records show that as of September 30, 2023, Petitioner began receiving Unemployment Compensation Benefits (UCB) as follows:

September 30, 2023	[REDACTED]
October 14, 2023	[REDACTED]
October 28, 2023	[REDACTED]
12. Consolidated Inquiry records show that Petitioner received the following child support between August 2023 and November 2023:

August 2023	[REDACTED]
September 2023	[REDACTED]
October 2023	[REDACTED]
November 2023	[REDACTED] (November 14 and 27, 2023)

13. As of the date of the hearing, Petitioner's [REDACTED] 2023 application for MA benefits was still pending for requested verifications.

CONCLUSIONS OF LAW

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.

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).

Upon reviewing Petitioner's eligibility criteria at redetermination, MDHHS concluded that Petitioner was ineligible for MA coverage. Petitioner disputes this decision.

The Department was significantly delayed in processing Petitioner's redetermination and should have reviewed its available data information and data sources before determining hers and her son's eligibility effective December 1, 2023. Therefore, the 30-days of income prior to the Department's issuance of the HCCDN on November 6, 2023 will be considered for purposes of this decision.

MA Coverage

Upon reviewing Petitioner's eligibility criteria at redetermination, MDHHS concluded that Petitioner and her son were ineligible for MA coverage. 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.

MAGI-RELATED PROGRAMS: HMP

Because Petitioner was not age 65 or older, blind, or disabled, under age 19, or pregnant or recently pregnant, Petitioner was potentially eligible for MA coverage 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 indicated she was not filing taxes or claiming dependents; therefore, her group size consists of herself, any spouse, and her children under age 19 or 21 if a full-time student. BEM 211 (October 2023), p. 2. Therefore, Petitioner has a group size of two. 133% of the annual FPL in 2023 (the most current applicable FPL) for a household with two members is \$26,227.60. See <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines/prior-hhs-poverty-guidelines-federal-register-references/2023-poverty-guidelines-computations>. Therefore, to be income eligible for HMP, Petitioner's annual income cannot exceed \$26,227.60 or \$2,185.63 per month.

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 earned income of [REDACTED] in the 30 days prior to the Department's decision and there was no evidence of deductions for health coverage, childcare, or retirement accounts listed on her paystubs. Petitioner noted on her Redetermination that she pays \$21.00 weekly for childcare so a deduction of \$84.00 is appropriate. Petitioner also received UCB income totaling [REDACTED] and child support totaling [REDACTED] for the 30-day period prior to the Department's decision. Therefore, Petitioner had a total MAGI income of [REDACTED]. Petitioner is 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 (July 2023), 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 two. BEM 211, pp. 1-2. 195% of the annual FPL in 2023 (the most current applicable FPL) for a household with two members 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.

The same rules apply for determining countable income for PF as are used for HMP. Therefore, Petitioner has income which is greater than the PF income limit. Based upon

the evidence presented, the Department improperly provided PF MA eligibility to Petitioner and has not met its burden of proof. Petitioner is not eligible for PF.

MAGI-RELATED PROGRAMS: FOR CHILDREN

Children over age 1 and under age 19 who are not eligible for MA for foster care children are potentially eligible for MA under three programs: (1) the Under Age 19 (U19) program; (2) the MiChild program; and (3) the Group 2 Under 21 (G2U) program. BEM 105 (October 2023), p. 1, 3-4; BEM 130 (July 2021), p. 1; BEM 131 (January 2022), p. 1; BEM 132 (April 2018), p. 1. The U19 program is a Modified Adjusted Gross Income (MAGI)-related Group 1 MA category, meaning that it provides full-coverage MA without a deductible for children whose household's income, calculated in accordance with MAGI rules, meets the income eligibility limits. BEM 131, p. 1. Income eligibility for MiChild is also determined according to MAGI rules. BEM 130, p. 1. Children whose household income exceeds the income limit for U19 or MiChild eligibility are eligible for MA under the G2U category, with a deductible equal to the amount the child's net income (countable income minus allowable income deductions) exceeds the applicable Group 2 MA protected income level (PIL). The PIL is based on the county in which the child resides and child's fiscal MA group size. BEM 132, p. 2; BEM 544 (January 2020), p. 1; RFT 240 (December 2013), p. 1. Under federal law, the child is entitled to the most beneficial category, which is the one that results in eligibility, the least amount of excess income, or the lowest cost share. BEM 105, p. 2.

In this case, MDHHS concluded that Petitioner's child was income-ineligible for MA coverage under either the U19 or MiChild categories. Eligibility for U19 categories is for children under the age of 19 whose household income does not exceed 160% of the federal poverty level and consists of (1) the Low Income Families (LIF) program (when the household's income does not exceed 54% of FPL); (2) the Other Healthy Kids (OHK) program (for children ages 1 through 5 when the household's income is more than 54% and less than 144% of the FPL or, if the child has other comprehensive insurance, from 144% up to 160% of the FPL and for children ages 6 through 18, when the household's income is more than 54% and less than 110% of the FPL or, if the child has other comprehensive insurance, from 110% to 160% of the FPL); and (3) the Healthy Kids Expansion (HKE) program (for children ages 1 through 5 with no other comprehensive insurance when the household's income is from 144% to 160% of the FPL and for children ages 6 through 18 with no other comprehensive insurance when the household's income is from 110% to 160% of the FPL). BEM 131, p. 1. A child under age 1 with household income between 196% to 212% of the FPL or age 1 through 18 whose household income is between 161% and 212% of the FPL is income eligible for MiChild subject to a monthly \$10 premium per family. BEM 130, pp. 1-2.

In order to determine income eligibility for MAGI-related U19 and MiChild programs, the household's MAGI income must be considered. In this case, the minor child lives with Petitioner and Petitioner is a non-tax-filer. Therefore, the child has a household size of two. See 42 CFR 435.603; BEM 211 (October 2023), pp. 2-3. The household MAGI exceeded 195% of the FPL as seen above under the PF analysis; therefore, Petitioner's child is not eligible for U19 or MiChild MA programs.

DEDUCTIBLE PROGRAM: G2C, G2U

Although Petitioner and her child were income ineligible for the above programs, they are potentially eligible for MA under Group 2 Caretaker Relative (G2C) for Petitioner or Group 2 Under 21 (G2U) for Petitioner's son. 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 that 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 (October 2015), p. 2; BEM 544, p. 1; RFT 240, p. 1.

The Department failed to consider either of these programs for Petitioner and Petitioner's son at the time it reviewed Petitioner's redetermination. Because these programs were not considered at the time of Petitioner's redetermination, the Department has not shown that it complied with policy in denying both Petitioner's and Petitioner's son's MA benefits effective December 1, 2023.

DECISION AND ORDER

MDHHS did not act in accordance with Department policy when it closed Petitioner's and her son's Medicaid (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 and her son's MA eligibility effective December 1, 2023;
2. If otherwise eligible, issue supplements to Petitioner or on behalf of Petitioner and her son for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.

AMTM/cc



Amanda M. T. Marler
Administrative Law Judge

PETITIONER'S APPEAL RIGHTS: You may ask the Michigan Office of Administrative Hearings and Rules (MOAHR) for a rehearing or reconsideration of this Hearing Decision. Your written request should include your name, the docket number from page 1 of this Hearing Decision, an explanation of the specific reasons you are making the request, and any documents supporting your request. Send your request to MOAHR

- by email to MOAHR-BSD-Support@michigan.gov, **OR**
- by fax at (517) 763-0155, **OR**
- by mail addressed to
Michigan Office of Administrative Hearings and Rules
Rehearing/Reconsideration Request
P.O. Box 30639
Lansing Michigan 48909-8139

Your request must be **received** by MOAHR within 30 days of the Mailing Date of this Hearing Decision, or it will be untimely. Untimely requests will be dismissed.

You may also appeal this Hearing Decision to the circuit court. MOAHR does not provide legal assistance for appeals to the circuit court.

Via-Electronic Mail :

Interested Parties

MDHHS-Wayne-19-Hearings
BSC4-HearingDecisions
EQADHearings
M. Schaefer
MOAHR

Via-First Class Mail :

Petitioner

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