



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  
DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: February 29, 2024  
MOAHR Docket No.: 23-008995  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Christian Gardocki**

### **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 hearing was held via telephone conference line on February 14, 2024. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Denise Newsom, specialist.

### **ISSUE**

The issue is whether MDHHS properly determined Petitioner's benefit group's Medical Assistance (MA) 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. On May 9, 2022, Petitioner and her two children, [REDACTED] (hereinafter, "Child1") and [REDACTED] (hereinafter, "Child2") entered the United States from Ukraine as parolees.
2. On October 20, 2023, Petitioner submitted to MDHHS redetermination documents for MA benefits and reported a household including Child1 and Child2.
3. On November 20, 2023, MDHHS approved Petitioner, Child1, and Child2 for Emergency Services Only (ESO)-MA benefits beginning March 2023.

4. On December 7, 2023, Petitioner requested a hearing to dispute the determination of ESO-MA benefits.

### **CONCLUSIONS OF LAW**

The 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. MDHHS administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MA policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute MA eligibility. Exhibit A, pp. 4-5. Petitioner submitted to MDHHS redetermination documents to continue MA benefits for herself and two children. Exhibit A, pp. 10-12. A Health Care Coverage Determination Notice dated November 20, 2023, stated that Petitioner, Child1, and Child2 were eligible to receive ESO-Medicaid beginning March 2023. Exhibit A, pp. 42-43. Petitioner specifically disputed having MA benefits limited to ESO.

To be eligible for full Medicaid coverage (i.e., unrestricted Medicaid), a person must be a United States citizen, or an alien admitted to the U.S. under a specific immigration status. BEM 225 (April 2023) p. 2. Citizenship/alien status is not an eligibility factor for MA-ESO. *Id.* Any of the following persons are considered to have an acceptable citizenship or alien status (*Id.* pp. 3-4, 5-9, 11-12, 31-33):

- United States citizens (includes those born in Puerto Rico)
- born in Canada and at least 50% American Indian
- member of American Indian tribe
- qualified military alien, spouse, or child of qualified military alien
- refugee under Section 207
- asylee under Section 208
- Cuban/Haitian entrant
- Amerasian
- victim of trafficking
- permanent resident alien with class code of RE, AS, SI or SQ
- deportation withheld (under certain conditions)
- granted conditional entry under 203(a)(7)
- paroled under 212(d)(5) for at least one year (under certain conditions)
- battered aliens, if more than five (5) years in the United States
- permanent resident alien with a class code other than RE, AM or AS, if in the United States for longer than five (5) years

Petitioner's testimony and immigration documents verified that Petitioner and her children entered the U.S. on May 9, 2022, as "UHP" parolees from Ukraine. Exhibit A,

pp. 20-25. Birth documents verified that Petitioner, Child1, and Child2 were each born in Ukraine. Exhibit A, pp. 26-31. For non-refugees and non-asylees, MDHHS prohibits unrestricted MA benefits during the benefit group's first five years in the United States. BEM 225, p. 32. However, the Centers for Medicare and Medicaid Services has specific policy for Ukrainian parolees such as the members of Petitioner's benefit group:

Ukrainian nationals who enter the United States as parolees on or between February 24, 2022 and September 30, 2023 are eligible for Medicaid or CHIP to the same extent as refugees, without a five-year waiting period, if they meet other eligibility requirements (e.g., income, state residency) for coverage in the state. These Ukrainian parolees are considered "qualified non-citizens" for purposes of Medicaid and CHIP eligibility since they are eligible for the same benefits as refugees.<sup>1</sup>

Based on the above policy from the Centers for Medicare and Medicaid Services, the U.S. entry date, country of birth, and parolee status of Petitioner, Child1, and Child2 MDHHS should have considered each to be qualified non-citizens eligible for MA benefits to the same extent as refugees. In other words, MDHHS should not have limited Petitioner, Child1, and Child2 to emergency services only despite each having a U.S. entry date within the past five years.

Given the evidence, MDHHS improperly determined the MA eligibility for Petitioner and her children.<sup>2</sup> As a remedy, Petitioner and her children are entitled to a reprocessing of MA eligibility.

---

<sup>1</sup> See Economic Stability Administration (ESA) memo 2022-28; see also 8 U.S.C. §§ 1641(b)(3), 1613(b)(1)(A), 1612(b)(2)(A)(i), 42 C.F.R. §§ 435.4, 457.320(b)(6), and Sec. 401, Pub. L. No: 117-128(May 21, 2022), available at <https://www.federalregister.gov/documents/2022/04/19/2022-08390/designation-of-ukraine-for-temporary-protected-status>

<sup>2</sup> Petitioner inexplicably objected to her MA category of Transitional Medical Assistance (TMA). The evidence established that Petitioner received MA under Low-Income Family in at least three of the six months before being eligible for TMA. Under the circumstances, Petitioner is entitled to receive MA under TMA (see BEM 211).

**DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's MA eligibility. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reprocess the MA eligibility of Petitioner, Child1, and Child2 beginning March 2023, subject to the finding that Petitioner and her children are Ukraine nationals who entered the U.S. as parolees on May 9, 2022; and
- (2) Issue notice and benefit supplements, if any, in accordance with policy.

The actions taken by MDHHS are **REVERSED**.

CG/nr

  
\_\_\_\_\_  
**Christian Gardocki**  
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**

Dora Allen  
Wayne-Gratiot/Seven-DHHS  
4733 Conner Suite G 7 Lappin  
Detroit, MI 48215  
**MDHHS-Wayne-76-  
Hearings@michigan.gov**

**Interested Parties**

Wayne 76 County DHHS  
BSC4  
M. Schaefer  
EQAD  
MOAHR

**Via-First Class Mail :**

**Petitioner**

[REDACTED]  
[REDACTED] MI [REDACTED]