



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 27, 2024  
MOAHR Docket No.: 23-008996  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: L. Alisyn Crawford**

### **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 14, 2024, from Detroit, Michigan. Petitioner appeared for the hearing and was represented by her daughter, [REDACTED]. The Department of Health and Human Services (Department) was represented by Valerie Foley, Hearing Facilitator.

### **ISSUE**

Did the Department properly determine that Petitioner and her spouse were eligible for Medicaid (MA) coverage under Plan First Family Planning (PFFP) and Group 2 SSI-related (G2S), respectively?

### **FINDINGS OF FACT**

Based on the competent, material, and substantial evidence on the whole record, the undersigned Administrative Law Judge 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. Before September 2023, Petitioner and her husband received MA under the Healthy Michigan Plan (HMP).
7. In connection with the CAA, 2023, MDHHS reevaluated Petitioner and her husband's MA eligibility for September 1, 2023 ongoing.
8. Petitioner's husband received gross income of [REDACTED] per month in Social Security Retirement, Survivors, and Disability Insurance (RSDI) benefits, and Petitioner's husband paid a Medicare Part B premium of \$164.90 per month. Petitioner's husband also has earned income of [REDACTED] per month.
9. On August 14, 2023, MDHHS sent Petitioner a Health Care Coverage Determination Notice notifying Petitioner that effective September 1, 2023, Petitioner's husband was eligible for MA under the G2S program with a \$1,263.00 monthly deductible.
10. Due to Petitioner's husband's income, the Department determined that Petitioner was eligible for PFFP only.
11. On December 7, 2023, MDHHS received Petitioner's hearing request disputing the MA action to reduce her benefits.

### **CONCLUSIONS OF LAW**

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

The Medical Assistance (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. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

## MA for Petitioner

Upon reviewing Petitioner's eligibility criteria at redetermination, MDHHS concluded that Petitioner was eligible for MA coverage under the PFFP MA program only. 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 PFFP coverage. 42 CFR 435.911; 42 CFR 435.100 to 435.172; BEM 105 (October 1, 2023), p. 1; BEM 137 (June 1, 2020), p. 1; BEM 124 (July 1, 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.

Prior to Petitioner's redetermination, Petitioner had full coverage MA through 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 or PFFP. 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 (June 1, 2020), p. 1; 42 CFR 435.603.

Additionally, the household size is determined based on tax filer and tax dependent rules. BEM 211 (July 1, 2019), p. 1. For tax filers, the household size includes the tax filer, the tax filer's spouse, and all dependents claimed. *Id.* at 1-2. Here, Petitioner has a household size of two because Petitioner is married and there were no dependents claimed in the household.

The FPL for a household size of two in 2023 was \$19,720.00. 88 FR 3424 (January 19, 2023). 133% of the FPL, the HMP income limit, is \$26,227.60. A 5% disregard that increases the income limit by an amount equal to 5% of the FPL for the group size is available to make those individuals eligible who would otherwise not be eligible. BEM 500 (April 1, 2022), p. 5. The 5% disregard would increase the HMP income limit for Petitioner to \$27,213.60. Thus, the maximum applicable income limit with the 5% disregard was \$27,213.60, or \$2,267.80 monthly.

Income eligibility for HMP is based on modified adjusted gross income (MAGI). BEM 137, p. 1 and 7 CFR 435.603. MAGI is defined as adjusted gross income increased by (1) excluded foreign income, (2) tax exempt interest, and (3) the amount of social

security benefits excluded from gross income. 26 USC 36B(d)(2)(B). Adjusted gross income is that which is commonly used for Federal income taxes, and it is defined as gross income minus deductions for, among other things, business expenses, losses on the sale or exchange of property, and retirement contributions. 26 USC 62.

In this case, Petitioner testified that she did not work or directly receive any unearned income. However, in calculating MAGI income for Petitioner, the income of her husband, who is in her household, is considered. 42 CFR 435.603(d). Petitioner's husband received [REDACTED] per month from Social Security RSDI. Although the employment summary budget from the Department's database showed that [REDACTED] was budgeted for Petitioner's husband's employment income through October 2023 and [REDACTED] was budgeted starting November 2023 (Exhibit A, p. 13), at the hearing, the Department testified that it budgeted [REDACTED] monthly for Petitioner's husband's earning in determining the household's MA eligibility for September 2023 ongoing. The sum of Petitioner's RSDI income and [REDACTED] per month from employment was [REDACTED] per month. Because the annualized amount of Petitioner's total household income was [REDACTED] which did not exceed the limit for HMP eligibility, the Department failed to establish that Petitioner was ineligible for full coverage MA under HMP.

#### MA for Petitioner's husband

Because Petitioner's husband was over age 65 and there was no evidence that Petitioner's husband was the parent or caretaker of a minor child, Petitioner was eligible for MA only under an SSI-related category. In determining the SSI-related MA category Petitioner's husband is eligible for, MDHHS must determine Petitioner's husband's MA fiscal group size and net income. As a married individual, Petitioner's husband has a fiscal group size for SSI-related MA purposes of two. BEM 211 (October 1, 2023), p. 8. The household's net income for MA purposes is the sum of (i) Petitioner's husband's [REDACTED] RSDI unearned income, reduced by a \$20 disregard, and (ii) his earned income of [REDACTED] reduced by a disregard of \$65 plus one-half of the remaining earned income. This results in net income of [REDACTED] per month (Petitioner's husband's net unearned income of [REDACTED] for RSDI and [REDACTED] net earned income). BEM 541 (January 1, 2023), p. 3.

Based on this net income, Petitioner's husband has excess income for eligibility under the AD-Care program, the full-coverage SSI-related MA program, which has an income limit of [REDACTED] per month for a two-person fiscal group. BEM 163 (July 1, 2017), p. 2; RFT 242 (April 1, 2023), p. 1; <https://aspe.hhs.gov/poverty-guidelines>. However, clients who are ineligible for full-coverage MA coverage because of excess income may still be eligible for SSI-related MA under a Group 2 SSI (G2S) program, which provides for MA coverage with a monthly deductible. BEM 105, p. 1. The deductible is in the amount that a client's net income (less any allowable needs deductions) exceeds the applicable Group 2 MA protected income levels (PIL). The PIL is a set amount identified in policy based on the client's MA fiscal group size and county of residence. BEM 105, p. 1; BEM 166 (April 1, 2017), pp. 1-2; BEM 544 (January 1, 2020), p. 1; RFT 240 (December 1, 2013), p. 1; RFT 200 (April 1, 2017), p. 2. The monthly PIL for a client in Petitioner's

husband's position, with an MA fiscal group size of two living in Wayne ██████ is \$500 per month. RFT 200, p. 2; RFT 240, p 1.

Thus, Petitioner's husband is eligible for MA assistance under the deductible program, with the deductible equal to the amount that monthly net income, less allowable deductions, exceeds \$500 per month. BEM 545 (July 1, 2022), pp. 2-3.

MDHHS presented an SSI-related MA budget showing the calculation of Petitioner's deductible (Exhibit A, p. 9) that was reviewed on the record. In determining the monthly deductible, net income is reduced by health insurance premiums paid by the MA group and remedial service allowances for individuals in adult foster care or homes for the aged. BEM 544, pp. 1-3.

In this case, Petitioner's husband does not reside in an adult foster care home or home for the aged and, as such, is not eligible for any remedial service allowances. The Department properly considered gross unearned income in the amount of ██████. The Department also properly applied a \$20 unearned income exclusion to determine that Petitioner's husband had net unearned income for MA purposes of ██████. The Department also properly accounted for Petitioner's husband's monthly insurance premiums of \$174.70 as an ongoing monthly expense to be applied as a deduction to the budget.

The SSI-related MA budget also shows a deduction of \$47 which the Department testified consisted of the cost of living adjustment (COLA). See BEM 503 (January 2023), p. 30. The budget also included Petitioner's husband's earned income from employment of ██████ per month. With the employment income, the Department properly considered appropriate deductions of \$65 plus 1/2 disregard for a net earned income of ██████. BEM 541, p. 3. Petitioner's husband's countable income for G2S purposes was properly determined to be ██████. Because Petitioner's husband's countable income of ██████ exceeds the \$500 PIL by \$1,055, the Department properly determined that Petitioner was eligible for MA under the G2S program with a monthly deductible of ██████1055.

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 processed Petitioner's MA benefits. In addition, the Department acted in accordance with Department policy when it processed Petitioner's husband's MA benefits.

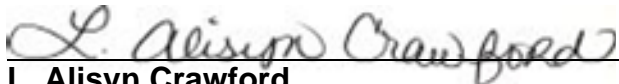
**DECISION AND ORDER**

Accordingly, the Department's decision is **REVERSED IN PART** with respect to Petitioner's MA benefits.

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 under the most beneficial category for September 1, 2023, ongoing;
2. If eligible, provide MA coverage to Petitioner, under the most beneficial category, that she was entitled to receive but did not from September 1, 2023, ongoing,
3. Notify Petitioner in writing of its decision.

LC/ml

  
**L. Alisyn Crawford**  
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:**

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**Interested Parties**

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M Schaefer  
EQAD

**Via First Class Mail:**

**Petitioner**

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