



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: March 4, 2024
MOAHR Docket No.: 23-009318
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Danielle Nuccio

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 15, 2024. Petitioner appeared and represented herself. The Department of Health and Human Services (MDHHS) was represented by Marc Suarez, Eligibility Specialist.

ISSUE

Did MDHHS properly determine Petitioner's son'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. 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, terminates 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 was an ongoing recipient of MA for her son (Son) and herself.
7. In November 2023, Son turned [REDACTED] years old.
8. On November 13, 2023, Petitioner submitted a redetermination of MA benefits. Petitioner reported that she is employed at Princeton Management (Employer) (Exhibit A, pp. 11-17).
9. On November 30, 2023, MDHHS issued a Health Care Coverage Determination Notice to Petitioner, informing her that Son is no longer eligible for MA coverage (Exhibit A, pp. 22-25).
10. On an unknown date, MDHHS determined that Son is eligible for Group 2 Under 21 (G2U) MA coverage with a \$1,561.00 monthly deductible, effective January 1, 2024 (Exhibit A, p. 1.)
11. On December 11, 2023, MDHHS received Petitioner's timely submitted hearing request disputing the change in Son's MA coverage (Exhibit A, pp. 4-9).

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.

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 Son is eligible under G2U Medicaid program with a \$1,561.00 deductible. Petitioner disputes the change to this coverage.

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), which is based on the county in which the child resides and child's fiscal 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. There are three U19 categories for children under age 6: the Low-Income Families (LIF) program applies when the household's income does not exceed 54% of the federal poverty level (FPL); the Other Healthy Kids (OHK) program applies when the household's income is between 54% and 143% of the FPL; and the Healthy Kids Expansion (HKE) program applies when the household's income is between 143% and 160% of the FPL. BEM 131, p. 1. A child between age 1 through 18 whose household income is between 160% 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, Son and Petitioner are the only household members. Therefore, Son has a household size of two. See BEM 211

(October 2023), pp. 1-2. 212% of the annual 2024 FPL for MiChild, which has the highest income threshold, for a two-member household, is \$43,332.80 or \$3,611.07. BEM 130 (January 2024), pp. 1-2.

Generally, household income for MAGI-related MA eligibility is the sum of the MAGI-based income of every individual included in the individual's household, minus an amount equivalent to five percentage points of the FPL for the applicable family size. 42 CFR 435.603(d)(1). However, the MAGI-based income of an individual who is included in the household of his or her natural parent and is not expected to be required to file a tax return for the taxable year in which eligibility for MA is being determined, is not included in the household income whether or not such tax dependent files a tax return. 42 CFR 435.603(d)(2)(i).

To determine financial eligibility under MAGI-related MA programs, income must be calculated in accordance with MAGI under federal tax law. BEM 500 (April 2022), p. 3. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500, p. 3. Income is verified via electronic federal data sources in compliance with MAGI methodology. MREM, § 1.

In order to determine income in accordance with MAGI, a client's adjusted gross income (AGI) is added to any tax-exempt foreign income, Social Security benefits, and tax-exempt interest. AGI is found on IRS tax form 1040 at line 37, form 1040 EZ at line 4, and form 1040A at line 21. 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. This figure is multiplied by the number of paychecks the client expects in 2023 to estimate income for the year. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>.

Effective November 1, 2017, when determining eligibility for ongoing recipients of MAGI related MA, the State of Michigan has elected to base financial eligibility on current monthly income and family size. See:

https://www.michigan.gov/documents/mdhhs/MAGI-Based_Income_Methodologies_SPA_17-0100_-_Submission_615009_7.pdf

MDHHS presented Petitioner's pay statements from November 3, 2023 and November 17, 2023, in which she is paid \$ [REDACTED] in gross biweekly pay. MDHHS budgeted \$ [REDACTED] in monthly income. This is below 212% of the FPL for eligibility for MiChild. MDHHS was unable to testify as to how Petitioner's income was used to determine Son's MA coverage and was unable to testify as to how the deductible was determined in Son's case. Therefore, MDHHS failed to satisfy its burden that it acted in accordance with policy in determining Son's MA 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 Son's MA coverage.

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. Reprocess Petitioner's MA redetermination to determine the most beneficial category of coverage for Son in accordance with policy and consistent with this hearing decision;
2. If Son is eligible for MA benefits, provide coverage to Petitioner for any MA that he was eligible to receive but did not from January 1, 2024 ongoing;
3. Notify Petitioner of its decision in writing.



Danielle Nuccio
Administrative Law Judge

DN/nr

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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