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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

MARLON BROWN
DIRECTOR

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Date Mailed: May 17, 2024
MOAHR Docket No.: 24-001807
Agency No.: ██████████
Petitioner: █████ █████

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 April 18, 2024, from Lansing, Michigan. The Petitioner was represented by ██████████, Employer. █████ █████ the Petitioner, was present. The Department of Health and Human Services (Department) was represented by Brad Reno, Senior Eligibility Specialist and Hearings Facilitator (HF).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-56.

ISSUE

Did the Department properly determine Petitioner's eligibility for Medical Assistance (MA)?

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 December █████ 2023, Petitioner submitted an Assistance Application for MA. (Exhibit A, pp. 7-14)
2. On December █████ 2023, Petitioner submitted a Redetermination for the MA case. (Exhibit A, pp. 15-21)

3. On February █ 2024, a Health Care Coverage Determination Notice was issued to Petitioner closing MA for Petitioner and her three children effective March 1, 2024, due to income in excess of program limits. (Exhibit A, pp. 22-28)
4. On February █ 2024, Petitioner filed a hearing request contesting the Department's determination, (Exhibit A, p. 6)
5. On February █ 2024, the HF reviewed and updated the case, including ending self-employment income and adding the verified employment income. Petitioner's children were approved for full-coverage MA under the MI Child Category and Petitioner was potentially eligible for MA under the parent/caretaker category (MA-G2C) with a monthly deductible of \$█ Petitioner's coverage is also limited to emergency services only due to her immigration status. (Exhibit A, pp. 3-4 and 29-56; HF Testimony)
6. On February █ 2024, a Health Care Coverage Determination Notice was issued to Petitioner reflecting the full coverage MA for her children effective March 1, 2024 and the emergency services only with the deductible of \$█ for Petitioner effective March 1, 2024. (Exhibit A, pp. 48-55)

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.

The Medicaid program comprise several sub-programs or categories. BEM 105, January 1, 2024, p. 1.

To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. Medicaid eligibility for children under 19, parents or caretakers of children, pregnant or recently pregnant women, former foster children, MOMS, MIChild, Flint Water Group and Healthy Michigan Plan is based on Modified Adjusted Gross Income (MAGI) methodology. BEM 105, January 1, 2024, p. 1.

In general, the terms Group 1 and Group 2 relate to financial eligibility factors. For Group 1, net income (countable income minus allowable income deductions) must be at or below a certain income limit for eligibility to exist. The income limit, which varies by category, is for nonmedical needs such as food and shelter. Medical expenses are not used when determining eligibility for MAGI-related and SSI-related Group 1 categories. For Group 2, eligibility is possible even when net income exceeds the income limit. This is because incurred medical expenses are used when determining eligibility for Group 2 categories. Group 2 categories are considered a limited benefit as a deductible is possible. BEM 105, January 1, 2024, p. 1.

Medicaid eligibility is determined on a calendar month basis. Unless policy specifies otherwise, circumstances that existed, or are expected to exist, during the calendar month being tested are used to determine eligibility for that month. When determining eligibility for a future month, assume circumstances as of the processing date will continue unchanged unless you have information that indicates otherwise. BEM 105, January 1, 2024, p. 2. This is consistent with 42 CFR § 435.603(h), which states that financial eligibility for Medicaid for applicants must be based on current monthly household income and family size.

Low Income Family (LIF) eligibility under the ACA will be a MAGI-related eligibility subgroup. Eligibility for LIF will be derived after a successful MAGI-related eligibility determination for either Parent/Caretaker Relative or Children Under 19. Adults with a dependent child and income under 54 percent of the Federal Poverty Level will be considered LIF eligible. BEM 110, April 1, 2018.

Transitional Medical Assistance (TMA) is an automatic coverage group. TMA eligibility is only considered after LIF MA. Individuals may receive TMA for up to 12 months when ineligibility for LIF relates to income from employment of a caretaker relative. (BEM 111, April 1, 2018, p. 1.

MA is available to parents and other caretaker relatives who meet the eligibility factors under the Group 2 Caretaker Relative (MA-G2C) category. Citizenship/alien status is one of the eligibility factors that must be met. BEM 135, October 1, 2015, p. 1. Income eligibility exists when net income does not exceed the Group 2 needs in BEM 544. Apply the Medicaid policies in BEM 500, 530 and 536 to determine net income. If the net income exceeds Group 2 needs, Medicaid eligibility is still possible. See BEM 545. BEM 135, October 1, 2015, p. 2.

For the G2C category, a fiscal group is established for each person requesting MA and budgetable income is determined for each fiscal group member. Since how a client's income must be considered may differ among family members, special rules are used to prorate a person's income among the person's dependents, and themselves. BEM 536 July 1, 2019, p. 1. The BEM 536 policy outlines the 16 step process to determine a fiscal group member's income. BEM 536, July 1, 2019, pp. 1-7.

When determining Group 2 needs, the Department utilizes a protected income level (PIL) is a set allowance for non-medical need items such as shelter, food and incidental expenses. BEM 544, January 1, 2020, p. 1. RFT 240 lists the Group 2 MA PILs based on shelter area and fiscal group size. RFT 200 lists the counties in each shelter area. Genesee county is part of shelter area VI. RFT 200, April 1, 2017, p. 3. In shelter area VI, for a group size of 4 the PIL is \$563.00. RFT 240, December 1, 2013, p. 1.

Deductible is a process which allows a client with excess income to become eligible for Group 2 MA if sufficient allowable medical expenses are incurred. Each calendar month is a separate deductible period. The fiscal group's monthly excess income is called a deductible amount. Meeting a deductible means reporting and verifying allowable medical expenses that equal or exceed the deductible amount for the calendar month tested. BEM 545, July 1, 2022, p. 10-12

The Department counts the gross wage amount as earned income. BEM 501, January 1, 2024, p. 7.

BEM 225 addresses citizenship/non-citizenship status for MA coverage:

Citizenship/non-citizen status is not an eligibility factor for emergency services only (ESO) MA. However, the person must meet all other eligibility factors, including residency; see BEM 220.

To be eligible for full MA coverage a person must be a U.S. citizen or a non-citizen admitted to the U.S. under a specific immigration status.

U.S. citizenship must be verified with an acceptable document to continue to receive Medicaid; see BAM 130.

A person claiming U.S. citizenship is not eligible for ESO coverage.

The status of each non-citizen must be verified to be eligible for full MA coverage; see CITIZENSHIP/NON-CITIZEN STATUS in this item.

A child born to a woman receiving Medicaid is considered a U.S. citizen. No further documentation of the child's citizenship is required.

Exception: RSDI and SSI recipients, Medicare recipients, newborns (BEM 145), safe delivery babies, and children receiving Title IV-B services or Title IV-E adoption assistance or foster care payments are not required to verify U.S. citizenship.

MA coverage is limited to emergency services for any:

- Persons with certain non-citizen statuses or U.S. entry dates as specified in policy; see CITIZENSHIP/NON-CITIZEN STATUS in this item.
- Persons refusing to provide citizenship/non-citizen status information on the application.
- Persons unable or refusing to provide satisfactory verification of non-citizen information.

Note: All other eligibility requirements including residency must be met even when MA coverage is limited to emergency services; see BEM 220.

BEM 225, April 1, 2023, pp. 2-3.

CITIZENSHIP/ NON-CITIZEN STATUS

All Programs Persons listed under the program designations in Acceptable Status meet the requirement of citizenship/non-citizen status. Eligibility may depend on whether or not the person meets the definition of Qualified Non-citizen.

QUALIFIED NON-CITIZEN

The definition of qualified non-citizen includes specific non-citizen statuses, but **not** all non-citizen statuses. This definition is used in several of the acceptable non-citizen statuses, in conjunction with other criteria. Not all acceptable non-citizen statuses require that the person be a qualified non-citizen.

Qualified non-citizen means a non-citizen who is:

- Lawfully admitted for permanent residence under the INA.
- Granted asylum under Section 208 of the INA.
- A refugee who is admitted to the U.S. under Section 207 of the INA; this includes Iraqi and Afghan special immigrants.
- Paroled into the U.S. under Section 212(d)(5) of the INA for a period of at least one year.
- A non-citizen whose deportation is being withheld under Section 241(b)(3) or 243(h) of the INA.
- Granted conditional entry pursuant to Section 203(a)(7) of the INA.
- A Cuban/Haitian entrant.
- A non-citizen who has been battered or subjected to extreme cruelty in the U.S. by a U.S. citizen or legal permanent resident spouse or parent, or by a member of the spouse's or parent's family living in the same household or is the parent or child of a battered person.

BEM 225, April 1, 2023, pp. 3-4.

ACCEPTABLE STATUS

All Programs

- U.S. citizens (including persons born in Puerto Rico).
- See Exhibit IV, HOW TO BECOME A UNITED STATES CITIZEN, in this item.
- Persons born in Canada who are at least 50 percent American Indian.
- Member of a federally acknowledged American Indian tribe.
- **Qualified military** non-citizen--a qualified non-citizen on active duty in, or veteran honorably discharged from, the U.S. armed forces. Active duty must not be for training, such as two weeks of active duty training for National Guard. Discharge must not have been due to non-citizen status.

Veteran means a person who either:

- Served in the active military, naval or air service for the shorter of 24 months of continuous active duty or the full period for which he or she was called to active duty.
- Died while in the active military, naval or air service.
- Served in the military forces of the Commonwealth of the Philippines while such forces were in the service of the armed forces of the U.S. during the period from July 26, 1941, through June 30, 1946.
- Served in the Philippine Scouts under Section 14 of the Armed Forces Voluntary Recruitment Act of 1945.
- A qualified non-citizen spouse and unmarried qualified non-citizen dependent child of a qualified military non-citizen.
Note: Dependent child is a child claimed as a dependent on the qualified military non-citizen's federal tax return and under 18, or under age 22 and a student regularly attending school.
Spouse includes the unremarried surviving spouse of a deceased qualified military non-citizen. The marriage must fulfill one of the following:
 - The spouse was married to the veteran for one year or more.
 - A child was born to the spouse and veteran during or before the marriage.
 - The spouse was married to the veteran within the 15-year period following the end of the period of service in which an injury or disease causing the death of the veteran was incurred or aggravated.
- Holder of one of the following immigration statuses:

- Lawful permanent resident with class code RE, AS, SI or SQ on the I-551 (former refugee or asylee).
Note: For FAP, clients who enter the U.S. with one of the following categories are eligible for the first seven years. If they adjust to another category which requires them to meet the five-year requirement, they are still eligible for the first seven years.
- Refugee admitted under INA Section 207.
- Granted asylum under INA Section 208.
- Cuban/Haitian entrant.
- Amerasian under P.L. 100-202 (class code AM on the I-551).
- Victim of trafficking under P.L. 106-386 of 2000; see VICTIMS OF TRAFFICKING in this item.
- Non-citizen whose deportation (removal) is being withheld under INA Sections 241(b)(3) or 243(h).
- **For FIP**, eligibility is limited to five years following the date of the withholding order unless the non-citizen is a qualified military non-citizen or the spouse or dependent child of a qualified military non-citizen.

FIP, SDA and MA

- Non-citizen admitted into the U.S. with one of the following immigration statuses:
 - Lawful Permanent Resident with a class code on the I-551 other than RE, AM or AS.
 - Non-citizen paroled into the U.S. for at least one year under INA Section 212(d)(5).
Exception (both statuses above): The eligibility of a non-citizen admitted into the U.S. on or after August 22, 1996, with one of these statuses is restricted as follows unless the non-citizen is a qualified military non-citizen or the spouse or dependent child of a qualified military non-citizen:
 - **For FIP**, an individual is disqualified for the first five years in the U.S.
 - **For SDA**, an individual is disqualified.
 - **For MA** an individual is limited to emergency services for the first five years in the U.S.
- Non-citizen granted conditional entry under INA section 203(a)(7).
- Lawful Permanent Resident with an I-151, Alien Registration Receipt Card. (not acceptable for MA verification)

FIP, MA and FAP

- An non-citizen who has been battered or subjected to extreme cruelty in the United States or whose child or parent has been

battered or subjected to extreme cruelty in the United States.
Exception: The eligibility of a battered alien admitted into the U.S. on or after August 22, 1996, is restricted as follows:

- **For FIP**, clients are disqualified for the first five years in the U.S. For MA, clients are limited to emergency services for the first five years in the U.S.
- **For FAP**, clients are disqualified unless they meet one of the applicable footnotes listed in Exhibit II-CITIZENSHIP/NON-CITIZEN STATUS TABLE at the end of this item.

A non-citizen is considered a battered alien if all of the following conditions are met:

- The USCIS or the Executive Office of Immigration Review (EOIR) has granted a petition or found that a pending petition sets forth a prima facie case that the non-citizen is eligible for legal permanent resident status (LPR) by way of being one of the following:
 - A spouse or child of a U.S. citizen or LPR.
 - The widow or widower of a U.S. citizen to whom the non-citizen had been married for at least two years before the citizen's death.
 - A battered alien, or the non-citizen parent of a battered child, or the non-citizen child of a battered parent.
- The abuse was committed by the non-citizen's spouse or parent, or by a member of the spouse or parent's family residing in the same household as the non-citizen, and the spouse or parent consented to such battery or cruelty (and if the victim was the non-citizen's child, the non-citizen did not participate in or condone the abuse).
- There is a substantial connection between the battery or extreme cruelty and the need for assistance.
- The battered alien, child or parent no longer lives in the same household as the abuser.

MA

- Non-citizen paroled into the U.S. for less than one year under INA Section 212(d)(5). Coverage is limited to emergency services only.
- Non-immigrant--a non-citizen temporarily in the U.S. for a specific purpose (for example, student, tourist). The non-citizen must not have exceeded the time period authorized by USCIS. For MA, coverage is limited to emergency services only.

- Person who does not meet any of the MA citizenship/non-citizen statuses above--limited to coverage of emergency services only. This includes, for example, undocumented non-citizens and non-immigrants who have stayed beyond the period authorized by USCIS

BEM 225, April 1, 2023, pp. 4-9.

In this case, Petitioner and her children had been receiving MA under the TMA category. (HF Testimony).

Petitioner's AHR explained that he made a mistake when he provided a letter explaining Petitioner's income. The AHR testified that Petitioner came to the US in [REDACTED] on a K1 Visa and has a complicated immigration status. Petitioner was married, but the federal government determined that they could not verify that the marriage was valid. Petitioner had three children with another man and was married to him for almost 20 years. Petitioner divorced in 2021 after her husband became drug addict and sold their house and business. Petitioner now works at his nail salon. Petitioner had a petition pending prior to her divorce, the case was taken off their calendar due to the divorce, but no further action has been taken regarding her immigration status. (Exhibit 1, pp. 1-42; AHR Testimony).

Overall, it appears that the Department's determinations were not in accordance with Department policy at the time of the February 1, 2024 action based on the available. When the HF reviewed the case on February [REDACTED] 2024, updates were made including ending self-employment income and adding the verified employment income. Petitioner's children were approved for full-coverage MA under the MI Child Category and Petitioner was potentially eligible for MA under the parent/caretaker category (MA-G2C) with a monthly deductible of \$[REDACTED]. Petitioner's coverage is also limited to emergency services only due to her immigration status. (Exhibit A, pp. 3-4 and 29-56; HF Testimony). However, the testimony of the AHR indicated that he had made a mistake when he provided the December [REDACTED] 2023 letter verifying Petitioner's income since she started employment on February 1, 2024. Updated income verification was submitted for this hearing on April [REDACTED] 2024 and was forwarded to the HF during the hearing. (Exhibit A, pp. 46-47; Exhibit 1; AHR Testimony). Accordingly, the Department may need to redetermine Petitioner's eligibility for MA again with the updated income information.

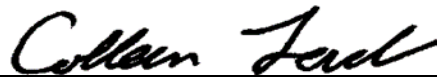
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's eligibility for MA on February 1, 2024.

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 eligibility for MA as of the March 1, 2024 effective date in accordance with Department policy.



CL/dm

Colleen Lack
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
Janice Collins
Genesee County DHHS Union St
District Office
**MDHHS-Genesee-UnionSt-
Hearings@michigan.gov**

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MOAHR

Via-First Class Mail :

[REDACTED]
[REDACTED]
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Authorized Hearing Rep.

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[REDACTED]
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