



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: May 17, 2024  
MOAHR Docket No.: 24-002364  
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 April 18, 2024. Petitioner was present at the hearing. Originally, Petitioner had an authorized hearing representative who did not appear at the hearing. On the record, Petitioner withdrew his appointment of the authorized hearing representative and represented himself. The Department of Health and Human Services (Department) was represented by Lori Turner, Eligibility Specialist.

### **ISSUE**

Did the Department properly process Petitioner's Medical Assistance (MA) application including Petitioner's request for retroactive MA (Retro MA) benefits?

Did the Department properly determine Petitioner's 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 [REDACTED] 2023, Petitioner applied for MA with retroactive MA benefits for September 2023, October 2023, and November 2023. (Exhibit A, p. 1).
2. Petitioner is self-employed, under age 65, unmarried, files taxes and lives with his minor child, who he claims as a tax dependent.
3. On January 6, 2024, the Department sent Petitioner a Health Care Coverage Determination Notice (HCCDN) informing him that effective December 1, 2023, he

was eligible for MA under the Plan First Family Planning (PFFP) program. (Exhibit B, pp. 8-10). There was no mention in the HCCDN regarding Retro MA.

4. On March 4, 2024, Petitioner submitted a hearing request disputing the Department's determination and non-response to Petitioner's request for Retro MA. (Exhibit A, pp. 3-5).

### **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.

In this case, Petitioner requested a hearing alleging a failure by the Department to process Petitioner's application for retroactive MA coverage requested in his [REDACTED] 2023 application. (Exhibit A, pp. 3-5). Petitioner was not disputing a [REDACTED] MA application that the Department argued was properly denied. Further, Petitioner disputes the Department determination that he is only eligible for MA limited coverage under Plan First Family Planning (PFFP) program effective December 1, 2023.

#### **Retroactive Medicaid**

Retro MA coverage is available back to the first day of the third calendar month prior to the current MA application. BAM 115, pp. 11-12. A person might be eligible for one, two or all three retro months, even if not currently eligible. BAM 115, p. 12. A separate determination of eligibility must be made for each of the three retro months. BAM 115, p. 12 -14. The DHS-3243, Retroactive Medicaid Application, may be used along with the DHS-1171 application for health care coverage (HCC) to apply for retro MA coverage. BAM 110, (October 2023) p. 5. Only one DHS-3243 is needed to apply for one, two or three retro MA months. BAM 110, p. 5. However, when the request for retroactive Medicaid coverage, including specific months, is indicated on the MDHHS-1171 HCC Supplemental Healthcare Coverage Questionnaire, Federally Facilitated Marketplace (FFM) application, a separate DHS-3243 is not required. BAM 110, p. 5.

The standard of promptness (SOP) begins the date the Department receives an application/filing form, with minimum required information. BAM 115 (January 2024), p.

15. For MA applications, the Department certifies the program approval or denial of the application within 45 days. BAM 115, p. 15.

Here, the Department sent a HCCDN dated January 4, 2024 to Petitioner in connection with his December 2023 assistance application. The HCCDN stated that Petitioner was eligible for MA coverage under the PFFP program effective December 1, 2023 ongoing. (Exhibit B, pp.) The notice did not provide any information regarding a determination made for retroactive MA for September, October and November 2023, the three months prior to the date of Petitioner's [REDACTED] 2023 application, which Petitioner requested in his application. The Department did not present any evidence to refute Petitioner's testimony that he requested retroactive MA benefits, such as the copy of the [REDACTED] 2023 application. Thus, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it did not respond to Petitioner's request for retroactive MA benefits with its [REDACTED] 2023 application. As such, the evidence of record does not support finding that the Department correctly processed Petitioner's application as required by federal and state law and Department policy.

### **Medicaid Program Eligibility**

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 Family Planning Medicaid (PFFP-MA) coverage. 42 CFR 435.911; 42 CFR 435.100 to 435.172; BEM 105 (January 2024), p. 1; BEM 137 (January 2024), 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.

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 only under HMP. HMP is a Modified Adjusted Gross Income (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, the Department 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 filed taxes and claimed one dependent. Therefore, for HMP purposes, Petitioner has a household size of two. BEM 211 (October 2023), pp. 1-2.

The annual FPL for a household size of two in 2023 was \$19,720. 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/poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's annual income cannot exceed [REDACTED]. Additionally, 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 eligible those individuals who would otherwise not be eligible. BEM 500 (April 2022), p. 5. The 5% disregard would increase the HMP annual income limit for Petitioner in 2023 to [REDACTED]. Therefore, to be income eligible for HMP, Petitioner's annual income cannot exceed [REDACTED] in 2023.

To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. 42 CFR 435.603(e); BEM 500 (April 2022), p. 3. MAGI is based on Internal Revenue Service rules and relies on federal tax information. *Id.* To determine income in accordance with AGI, a client's adjusted gross income (AGI) is added to any tax-exempt foreign income, tax-exempt Social Security benefits, and tax-exempt interest. AGI is found on IRS tax form 1040, 1040-SR and 1040-NR at line 11. 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, child care, or retirement savings. See <https://www.healthcare.gov/income-and-household-information/how-to-report/> MDHHS considers *current* monthly income and family size (except for individuals who report seasonal work and complete a projected annual income field on the MA application to show work for only a portion of the year with reasonably predictable changes in income within the upcoming 12 months). Michigan Medicaid State Plan Amendment Transmittal 17-0100, effective November 1, 2017 and approved by the Center for Medicare and Medicaid Services on March 13, 2018 available at [https://www.michigan.gov/mdhhs/-/media/Project/Websites/mdhhs/Folder3/Folder80/Folder2/Folder180/Folder1/Folder280/SPA\\_17-0100\\_Approved.pdf](https://www.michigan.gov/mdhhs/-/media/Project/Websites/mdhhs/Folder3/Folder80/Folder2/Folder180/Folder1/Folder280/SPA_17-0100_Approved.pdf).

Here, the Department based Petitioner's income on the following: a 2023 Form 1040 Income tax return and a Schedule C form for self-employment. (Exhibit B, pp. 11-14). The documentation showed income of [REDACTED] for the year and Petitioner testified that before excluding business costs and losses, he made [REDACTED] in 2023. The Department testified that based on its review of Petitioner's income documentation, it noted Petitioner's self-employment income as [REDACTED] per month, or [REDACTED] annually. However, the Department was unable to provide a budget to substantiate the monthly income amount it attributed to Petitioner. Further, line 11 on the 1040 introduced into evidence showed that Petitioner had AGI of [REDACTED] annually. There was no evidence that Petitioner had tax-exempt foreign income, tax-exempt Social Security benefits, and tax-exempt interest that should be added to his AGI. Therefore, the AGI would be Petitioner's MAGI-based income. The Department provided a MAGI Determination Group sheet which indicated a projected annual income for Petitioner of [REDACTED] (Exhibit B, p. 15). However, it is unclear what the Department based this annual income amount for Petitioner on and the Department could not explain its calculation. Thus, Petitioner was potentially income eligible for HMP, and the Department failed to satisfy

its burden of showing that it acted in accordance with Department policy when it determined Petitioner was only eligible for MA coverage under the PFFP program.

Lastly, even if Petitioner were not eligible for HMP coverage, he is a caretaker of a minor child. Therefore, the Department should have also considered Petitioner's eligibility for MA under the Group 2 Caretaker/Relative (G2C) program, which would provide for a more beneficial coverage option for Petitioner over the PFFP program. There was no evidence that the Department did so in this case.

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 did not provide a determination for Petitioner Retro MA request and when it determined that Petitioner was only eligible for MA coverage under the PFFP program.

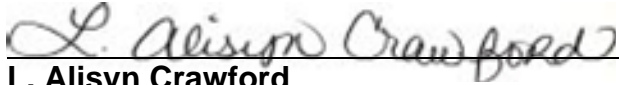
### **DECISION AND ORDER**

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. Determine Petitioner's eligibility for Retro MA for September, October and November 2023 based on the [REDACTED] 2023 application;
2. Redetermine Petitioner's eligibility for MA based on confirmed employment income for a group size of two from December 2023 ongoing;
3. If eligible, provide Petitioner with the most beneficial MA coverage he is eligible to receive from September 1, 2023 ongoing; and
4. 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:**

**DHHS**

Tara Roland 82-17  
Wayne-Greenfield/Joy-DHHS  
8655 Greenfield  
Detroit, MI 48228

**MDHHS-Wayne-17-hearings@michigan.gov**

**Interested Parties**

BSC4  
M Schaefer  
EQAD  
MOAHR

**Via First Class Mail:**

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]