



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 11, 2024
MOAHR Docket No.: 23-007261
Agency No.: [REDACTED]
Petitioner: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 December 19, 2023. The Petitioner appeared for the hearing and was represented by her husband [REDACTED] [REDACTED] Petitioner's daughter [REDACTED] [REDACTED] also appeared for the hearing. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearings Facilitator.

ISSUE

Did the Department properly determine Petitioner's family's Medical Assistance (MA) Program 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. Petitioner and her family's MA benefits were initially denied full coverage benefits for excess assets and excess income, and they were placed in Group 2 Caregivers (G2C) and Group 2 Under Age 21 (G2U) MA categories.
2. Petitioner has the following household members:
 - a. Petitioner—age [REDACTED]
 - b. [REDACTED] age [REDACTED]
 - c. [REDACTED] r—age [REDACTED]
 - d. [REDACTED]—age [REDACTED]

- e. [REDACTED]—age [REDACTED]
 - f. [REDACTED]—age [REDACTED]
 - g. [REDACTED]—age [REDACTED]
 - h. [REDACTED] age [REDACTED]
3. On October [REDACTED] 2023, the Department received Petitioner's request for hearing disputing MA coverage for each member of her household.
4. On October [REDACTED] 2023, verification of assets was requested from Petitioner for [REDACTED] [REDACTED] which were timely returned.
5. On November [REDACTED] 2023, the Department received verification of [REDACTED] assets as requested that showed that as of October [REDACTED] 2023, [REDACTED] account had a balance of \$[REDACTED] and that from September 1, 2023 through October 20, 2023 there were \$[REDACTED] in withdrawals and \$[REDACTED] in deposits.
6. On November [REDACTED] 2023, the Department issued a new Health Care Coverage Determination Notice (HCCDN) to Petitioner advising her that her and her husband [REDACTED] were eligible for MA coverage with a deductible of \$[REDACTED] per month each, that [REDACTED] and [REDACTED] were eligible for MA coverage with a deductible of \$[REDACTED] per month each, that [REDACTED] was eligible for full coverage effective December 1, 2023, denying coverage to [REDACTED] for failing the asset test, and failing to issue a decision about [REDACTED] and [REDACTED]
7. Petitioner has the following verified income from employment:
- | | |
|--------------------|--------------|
| September 22, 2023 | \$[REDACTED] |
| October 6, 2023 | \$[REDACTED] |
8. [REDACTED] has the following verified income from employment:
- | | |
|--------------------|--------------|
| September 5, 2023 | \$[REDACTED] |
| September 12, 2023 | \$[REDACTED] |
| September 19, 2023 | \$[REDACTED] |
| September 26, 2023 | \$[REDACTED] |
9. [REDACTED] has the following verified income from employment:
- | | |
|--------------------|--------------|
| September 14, 2023 | \$[REDACTED] |
| September 28, 2023 | \$[REDACTED] |
- [REDACTED] had a deduction for his 401k in the amount of \$[REDACTED] on the September 14, 2023 check stub. The September 28, 2023 paystub was not provided for the hearing.

10. At the hearing, the parties agreed to address the eligibility decision for each family member identified on the November 3, 2023 HCCDN.

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 disputes the eligibility of each family member who was denied full coverage MA.

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The first member of the household denied MA coverage was ██████████ who was denied because she had excess assets. Pursuant to policy, MAGI-related MA programs do not have an asset test. BEM 400 (July 2023), p. 3. Other MA programs including Group 2-Under age 21, Group 2 Caregivers (G2C), and all forms of SSI-related MA have an asset test. BEM 400, p. 6. In G2U and G2C, the asset limit is \$3,000.00. In the SSI-related MA category of the Medicare Savings Program (MSP) the asset limit is \$9,090.00 effective January 1, 2023 for a group size of one. BEM 400, p. 8; BEM 211 (October 2023), p. 7. For all other SSI-related MA programs, the asset limit for a group size of one is \$2,000.00. *Id.* As there has been no evidence presented that Mgd Abu-Baker is disabled, she is not eligible for SSI-related MA as she is only 16 years old. BEM 105 (October 2023), p. 4-5. Furthermore, ██████████ is not eligible for G2C because she is not a caretaker of a minor child. ██████████ meets all non-financial criteria for eligibility for G2U. BEM 132 (April 2018), p. 1. Therefore, to be eligible for G2U, ██████████ must have assets that are less than or equal to \$3,000.00 on any day during the month being tested. In this case, asset verifications showed that ██████████ had assets totaling \$██████████ on October ██████████ 2024, and had a total of \$██████████ in withdrawals and \$██████████ in deposits. Given that these were the verified account transactions and balances, and no other assets were discussed in the hearing, ██████████ had assets of less than \$3,000.00 during the month tested and is potentially eligible for G2U based on the asset test or a MAGI-related category which does not require an asset test. The Department has not met its burden of proof with respect to MA eligibility for ██████████

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Next, the Department determined that Petitioner and [REDACTED] [REDACTED] were eligible for MA under the Group 2 Caregivers (G2C) category with a deductible of \$3,700.00 per month. MA is available (i) to individuals who are aged (65 or older), blind or disabled under Supplemental Security Income (SSI)-related categories, (ii) to individuals who are under age 19, parents or caretakers of children, or pregnant or recently pregnant women, and (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage. BEM 105 (January 2021), p. 1. HMP provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income at or below 133% of the federal poverty level (FPL) under the Modified Adjusted Gross Income (MAGI) methodology; (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 2020), p. 1; MPM, Healthy Michigan Plan, § 1.1.

Since Petitioner and [REDACTED] [REDACTED] are not under 21 or over 64, nor are they pregnant, blind, or disabled, they do not qualify for any of the programs listed above involving these eligibility factors. If they are eligible for MA benefits, they may qualify for MA under HMP as they meet all non-financial eligibility factors.

HMP requires a determination of group size under the MAGI methodology with consideration of the client's tax status and dependents. BEM 211 (July 2019), p. 1. The household for a tax filer, who is not claimed as a tax dependent includes the individual, their spouse, and tax dependents. *Id.* The parties did not present any specific evidence regarding Petitioner's and [REDACTED] [REDACTED] tax filing status. However, they are married and they have four children aged 18 or younger. Therefore, their HMP group size is six. 133% of the FPL for a group size of six is \$53,572.40 at the time of review in this case. U.S. Department of Health and Human Services Office of the Assistance Secretary for Planning and Evaluation, *2023 Poverty Guidelines* <<https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>> (accessed January 8, 2024). Therefore, to be income eligible for HMP, Petitioner's annual income cannot exceed \$53,572.40 for a group size of six or \$4,464.37 per month.

To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500 (July 2020), pp. 3-4. Income is verified via electronic federal data sources in compliance with MAGI methodology. MREM, § 1. In determining an individual's eligibility for MAGI-related MA, the Department bases financial eligibility on current monthly household income. Centers for Medicare & Medicaid Services, *State Plan Amendment 17-0100 Approval Notice*, (March 19, 2018), p. 7. MAGI is calculated by reviewing the client's adjusted gross income (AGI) and adding it to any tax-exempt foreign income, tax-exempt Social Security benefits, and tax-exempt interest. HealthCare.gov, *Modified Adjusted Gross Income (MAGI)* <<https://www.healthcare.gov/glossary/modified-adjusted-gross-income-magi/>> (accessed July 20, 2023). AGI is found on IRS Tax Form 1040 at line 11. HealthCare.gov, *Modified Adjusted Gross Income (MAGI)* <<https://www.healthcare.gov/glossary/adjusted-gross-income-agi/>> (accessed July 20, 2023). 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. HealthCare.gov, *Modified Adjusted Gross Income (MAGI)* < <https://www.healthcare.gov/income-and-household-information/how-to-report/>> (accessed July 20, 2023). In situations where income is difficult to predict because of unemployment, self-employment, commissions, or a work schedule that changes regularly, income should be estimated based upon past experiences, recent trends, possible changes in the workplace, and similar information. *Id.*

Generally, MAGI based income includes the sum of the MAGI-based income of every individual in the individual's household. 42 CFR 435.603(d)(1). However, the MAGI-based income of an individual who is included in the household of their natural parent and is not expected to be required to file a tax return for the taxable year in which eligibility for Medicaid is being determined, is not included in household income whether or not the individual files a tax return. 42 CFR 435.603(d)(2)(i). The tax filing threshold for a single individual under 65 in 2023 was \$12,950. See <https://www.irs.gov/newsroom/who-needs-to-file-a-tax-return>

Petitioner had gross income of \$[REDACTED] and there was no evidence of deductions for health coverage, childcare, or retirement accounts listed on her paystubs. Petitioner's son [REDACTED] [REDACTED] had income of \$[REDACTED] with no evidence of these deductions either. [REDACTED] [REDACTED] income is greater than the tax filing threshold and therefore must be considered in the total MAGI calculation. Finally, Petitioner's husband [REDACTED] had gross income of \$[REDACTED] [REDACTED] [REDACTED] had deductions for retirement accounts listed on his paystub as \$[REDACTED] but only one paystub was provided for the hearing. Because the second paystub was not provided by the Department for the hearing and because Petitioner's second paystub was actually for a lesser wage, the same deduction will be used for the second paystub to determine a MAGI of \$[REDACTED]. Therefore, the household MAGI is \$[REDACTED]. Petitioner and her husband are not eligible for HMP.

Petitioner and her husband have minor children in the home; however, they are not eligible for MA under the Low-Income Family (LIF) category because the income limit is 54% of the FPL using the same MAGI methodology as HMP. BEM 110 (April 2018), p. 1.

Petitioner and her husband may still receive Medicaid subject to a monthly deductible through a Group 2 Medicaid category. Clients with a deductible may receive Medicaid if sufficient allowable medical expenses are incurred. BEM 105, p. 1; BEM 545 (July 2022), p. 1. Each calendar month is a separate deductible period when pandemic policies are not in place. BEM 545, p. 11. The fiscal group's monthly excess income is called the deductible amount. *Id.* Meeting a deductible means reporting and verifying allowable medical expenses that equal or exceed the deductible amount for the calendar month. *Id.* Petitioner and her husband are potentially eligible for a deductible MA program through the Group 2-Caretaker (G2C) category because they have minor children in the home.

Income eligibility for G2C exists when net income does not exceed the Group 2 needs in BEM 544. BEM 135 (October 2015), p. 2. The Department applies the MA policies in BEM 500, 530 and 536 to determine net income. *Id.*

The G2C net income calculation starts with determining Petitioner's and her husband's prorated income. This is calculated by subtracting a \$90 standard work expense from any earned income, a deduction for \$30 plus 1/3 of the remaining earned income if the group member received Family Independence Program (FIP) or Low-Income Family (LIF) MA benefits in one of the last four months, subtracting any dependent care expenses arising from costs while working, and child support. BEM 500 (April 2022); BEM 536 (July 2019), p. 1-3. Petitioner has earned income totaling \$[REDACTED] minus the standard work expenses of \$90 for a total of \$[REDACTED]. [REDACTED] had earned income of \$[REDACTED] minus the standard work expense for a total of \$[REDACTED]. Because Petitioner's son is not considered part of her group for G2C eligibility determinations, her son's income is not considered. BEM 211, pp. 8-9. No evidence was presented that Petitioner or her husband have received FIP or LIF benefits in the last four months, and there was no evidence of any dependent care or child support expenses. Next, any unearned income and child support income is added to the new earned income total to achieve the total net income, but none was presented in this case. BEM 536, p. 3. No evidence was presented of receipt of guardianship/conservator expenses; therefore, this step of the calculation is skipped as well. BEM 536, p. 3. Finally, after consideration of all the above income, expenses, and deductions, the remaining income is divided by the sum of the number of dependents, the person's spouse and unmarried children under age 18, and 2.9. BEM 536, p. 4. Petitioner has three unmarried children under age 18 in the home in addition to her husband; therefore, Petitioner and her husband each have a prorated divisor of 6.9. Petitioner's prorated income is \$[REDACTED] and [REDACTED] prorated income is \$[REDACTED] (after dropping the cents).

Finally, the adult fiscal group's net income is 2.9 prorated shares of the Petitioner's own income plus 3.9 prorated shares of Petitioner's spouse's own income plus one prorated share of the adult's income. BEM 536, pp. 6-7. The adult fiscal group's net income is \$[REDACTED].

The remainder of the calculations are governed by BEM 544 and 545. BEM 536, p. 7. Deductions are given for insurance premiums and remedial services. BEM 544 (January 2020), pp. 1-2. No evidence was presented of insurance premiums or remedial services. Therefore, the total net income is \$[REDACTED]. To achieve the deductible, the protected income level (PIL) is subtracted from the total net income. The PIL is a set allowance for non-medical need items such as shelter, food, and incidental expenses. *Id.* It is based upon group size. In G2C cases, an adult's fiscal group is the adult and their spouse if applicable. BEM 211, p. 9. Petitioner's and her husband's group size is two. The PIL for G2C eligibility with a group size of two is \$500.00 because they are residents of [REDACTED] County (Shelter Area IV). RFT 240 (December 2013), p. 1; RFT 200 (April 2017), p. 2; BEM 211, p. 9. Based upon the evidence presented in the hearing, Petitioner's and her husband's G2C deductible is \$3,848.00. The Department calculated a deductible which is less than what is calculated here and more beneficial to Petitioner and her husband;

therefore, the Department's determinations of eligibility are affirmed for Petitioner and her husband [REDACTED].

[REDACTED]
Next, the Department determined that [REDACTED] and [REDACTED] [REDACTED] age [REDACTED] and age [REDACTED] respectively, were eligible for MA under the G2U category with a deductible of \$ [REDACTED] per month.

Children over age one and under age 19 are potentially eligible for 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), pp. 1, 3-4; BEM 130 (July 2021), p. 1; BEM 131 (January 2022), p. 1; BEM 132 (April 2018), p. 1. The U19 and MiChild programs are Modified Adjusted Gross Income (MAGI)-related Group 1 MA categories, meaning that these categories provide 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. 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) which exceeds the applicable Group 2 MA protected income level (PIL) 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, the Department concluded that the two children were 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, the minor child lives with Petitioner and their father [REDACTED] [REDACTED]. The household of a non-tax filer who is claimed as a dependent includes the household of the tax filer claiming them as a dependent if the tax filer is the biological parent. BEM 211, p. 2. Therefore, the children have a group size of six. 4 CFR 435.603(f)(2-3). The FPL for a group size of six in 2023 is \$40,280; therefore, 160% of the annual 2023 FPL for HKE eligibility for a six-person household is \$64,448, or \$66,462 when the 5% disregard is applied (\$5,538.50 per month). 212% of the annual 2023 FPL for MiChild eligibility for a six-member household is \$85,393.60, or \$87,407.60 when the 5% disregard is applied (\$7,283.96 per month).

The same rules apply in determining the group's income for U-19 and MiChild programs as was seen for the HMP category discussed previously. The household MAGI is \$[REDACTED] per month; therefore, the children are not eligible for U-19 or MiChild and the evaluation must proceed to G2U.

Even though the children are not eligible for MA under any of the full-coverage MAGI-related policies, the Department concluded that they were eligible for MA under the G2U category, with MA subject to a monthly deductible of \$[REDACTED]. An individual under age 21 who is not eligible for MA under MAGI-related policies is eligible for MA under a Group 2 Under 21 (G2U) category when he meets all eligibility requirement other than income. BEM 132, p. 1. In such cases, the client is eligible for MA coverage with a deductible, with the deductible equal to the amount the net income (countable income minus allowable income deductions) exceeds the applicable Group 2 MA protected income level (PIL). BEM 132, p. 2; BEM 544, p. 1; RFT 240, p. 1; RFT 200 (April 2017), p. 3.

The Department presented a G2-FIP-related MA budget showing the calculation of the deductible effective May 2019. The PIL for the children who live with their parents in [REDACTED] County is \$[REDACTED]. RFT 240, p. 1; RFT 200, p. 2.

Income eligibility exists when net income does not exceed the Group 2 needs in BEM 544 and all policies found in BEM 500, 530, and 536 are applied to determine net income. BEM 132, p. 2. The G2U calculation follows the same initial procedure as G2C except that the member being processed for eligibility is not considered a dependent; therefore, the prorated divisor is 5.9. BEM 536, p. 4. Petitioner's prorated income is \$[REDACTED] and her husband's is \$[REDACTED] (dropping the cents). *Id.* A child's fiscal group's net income is the child's net income if the child has no dependents, plus 3.9 prorated shares of each parent's prorated income, plus one prorated share of each parent's income if both of the parents are in the child's fiscal group and the parents are married. BEM 536, p. 6. Neither child being evaluated has a source of income. Therefore, their fiscal group's net income is \$[REDACTED].

The remainder of the calculations are governed by BEM 544 and 545. BEM 536, p. 7. Deductions are given for insurance premiums and remedial services. BEM 544, pp. 1-2. No evidence was presented that anyone in the household was responsible for insurance premiums or remedial services. Therefore, the total net income is \$[REDACTED]. To achieve the deductible, the protected income level (PIL) is subtracted from the total net income. As discussed above, the PIL for Petitioner's children is \$[REDACTED]. After subtracting the PIL, Petitioner's children's deductible is \$[REDACTED]. The Department calculated a deductible less than the amount determined by this decision. Since the calculations made by the Department are more beneficial to Petitioner's children, those deductible calculations are affirmed and will not be changed for purposes of this decision.

[REDACTED]
Finally, the Department failed to issue a decision pertaining to the MA eligibility of both [REDACTED] and [REDACTED]. Both individuals live with Petitioner, are over age 19, and listed within Petitioner's application information. The Department is required to determine eligibility and benefit amounts for all requested programs. BAM 105 (October 2023), p.

17. MA eligibility must be determined within 45 days of the application. BAM 115 (January 2023), p. 15. Once a decision of eligibility is made, the Department is required to issue notice to the client specifying the actions taken by the Department, the reason for the action, a citation to the manual item or legal bases for the decision, and the right to request a hearing. Because the Department failed to issue a decision regarding two members of Petitioner's household included within its eligibility group, the Department has not acted in accordance with policy with respect to [REDACTED] and [REDACTED] [REDACTED]

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 acted in accordance with Department policy when it determined MA eligibility for [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] but did not act in accordance with Department policy when it denied MA eligibility to [REDACTED] [REDACTED] and failed to issue a decision regarding MA eligibility for [REDACTED].

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 MA eligibility for [REDACTED] [REDACTED] and [REDACTED] [REDACTED]
2. If otherwise eligible, issue supplements to Petitioner on behalf of these household members or on their behalf for benefits not previously issued or received; and,
3. Notify Petitioner in writing of its decision.



AM/mp

Amanda M. T. Marler
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 :

Interested Parties

MDHHS-Wayne-19-Hearings
EQAD Hearings
M. Schaefer
MOAHR
BSC4

Via-First Class Mail :

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]