



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]
MI [REDACTED]

Date Mailed: October 10, 2023
MOAHR Docket No.: 23-004756
Agency No.: [REDACTED]
Petitioner: [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 September 25, 2023. Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Jarrod Schwartz, Assistance Payments Supervisor.

ISSUE

Did the Department properly conclude that Petitioner, his wife, and child were eligible for Medicaid (MA) under the Group 2-caregiver (G2C) and Group 2-under age 21 (G2U) categories?

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, 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. Petitioner and his family were ongoing MA recipients previously enrolled in the Low-Income Family (LIF) MA program, then switched to Transitional MA (TMA) in July of 2022.
7. On May 23, 2023, the Department received a completed MA redetermination from Petitioner.
8. On June 21, 2023, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner informing him that both he and his wife were approved for MA with a \$3,422.00 monthly deductible and for his child with a monthly deductible of \$4,401.00.

9. Petitioner's wife had verified gross income from [REDACTED] as follows:

April 14, 2023	\$ [REDACTED]
April 28, 2023	\$ [REDACTED]
May 12, 2023	\$ [REDACTED]

No deductions were made for health insurance, child support, retirement accounts, or other items except taxes.

10. Petitioner had the following verified income from [REDACTED]:

April 20, 2023	\$ [REDACTED]
May 4, 2023	\$ [REDACTED]
May 18, 2023	\$ [REDACTED]

No deductions were made for health insurance, child support, retirement accounts, or other items except taxes.

11. Petitioner and his son each have ankylosing spondylitis.
12. Petitioner and his wife were placed in the Group 2 Caretaker Relatives (G2C) MA program effective August 1, 2023.

13. Petitioner's child was placed in the Group 2-under age 21 (G2U) MA program effective August 1, 2023.
14. On August 15, 2023, the Department received Petitioner's request for hearing disputing the determination of MA eligibility for himself.
15. At the time of the hearing, Petitioner and his wife were [REDACTED] years old, and their son was [REDACTED] years old.

CONCLUSIONS OF LAW

Authority for the ALJ to conduct the hearing is provided under MCL 400.9 and 400.37; 42 USC 1396(3); 42 CFR 431.200 to 431.250.

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

The MA program is established by Title XIX of the Social Security Act, 42 USC 1396 *et seq*; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, PL 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, PL 111-152; 42 CFR 430.10 to 42 CFR 430.25; 42 CFR 431.200 to 431.250; and 42 CFR 438.400 to 438.424. MDHHS administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.103 to MCL 400.112k of the Social Welfare Act, MCL 400.1 *et seq*.

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).

In this case, Petitioner's MA program designation was changed for each member of his family from LIF, to TMA in 2022, and now to G2C and G2U because income exceeded the limit.

TMA is only considered after LIF MA coverage for 12 months when ineligibility for LIF relates to income from employment of a caretaker relative. BEM 111 (April 2018), p. 1. All LIF group members transition to TMA. *Id.* TMA eligibility continues until the end of the 12-month TMA period unless a change is reported such as decreased income and the family is eligible for LIF or an individual member does not meet MA requirements. BEM 111, pp. 1-2.

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.

Low-Income Family (LIF)

Petitioner had one minor child in the home as of the redetermination date, therefore, Petitioner was potentially eligible for MA under the Low-Income Family (LIF) category. BEM 110 (April 2018), p. 1. To be eligible, adults with a dependent child must have income under 54% of the federal poverty level (FPL). *Id.* LIF is a MAGI MA category; therefore, Petitioner, his wife, and child are considered to be part of his MAGI MA group. BEM 110, p. 1; BEM 211, p. 2. The 2023 FPL for a three-person household is \$24,860.00. See <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>. The corresponding LIF income limit is \$13,424.40. Therefore, to be income eligible for LIF coverage, Client's group's income must be less than \$13,424.40 annually or \$1,118.70 per month. Since Petitioner's monthly income alone is more than \$5,100.00, Petitioner and his family are not eligible for LIF. Client is potentially eligible for a deductible MA program through HMP, Plan First, or Group 2- Caretaker (G2C) category.

Healthy Michigan Plan (HMP)

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 full coverage only under HMP. 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, p. 1; 42 CFR 435.603.

Since Petitioner and his wife are not under 21 or over 64, nor is there evidence that they are pregnant, blind, or disabled, Petitioner may qualify for MA under HMP as he meets all non-financial eligibility factors if he satisfies the income eligibility limit.

In this case, MDHHS 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. Based upon evidence presented, Petitioner and his wife are married, it is believed that they filed taxes and claimed his son as a dependent. Therefore, for HMP purposes, Petitioner and his wife have a group size of three. BEM 211 (July 2019), pp. 1-2. 133% of the annual FPL in 2023 for a household with one member is \$33,063.80. See <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for HMP, the group's annual income cannot exceed \$33,063.80.

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 MAGI, 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 at line 11. See <https://www.healthcare.gov/glossary/adjusted-gross-income-agi>. 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. 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. Therefore, the monthly income limit for HMP is \$2,755.31.

The 30 days of verified employment income provided by Petitioner to the Department showed that he had a total gross income of \$ [REDACTED]. Neither Petitioner nor his wife had any deductions for health insurance, childcare, or retirement savings. Therefore, Petitioner's and his wife's MAGI current monthly income is \$ [REDACTED] and they are not eligible for HMP.

Plan First

Plan First (PF)-MA is a MAGI-related limited coverage Medicaid group available to any United States citizen or individual with an immigration status entitling them to full

Medicaid coverage (not emergency services only (ESO)) residing in Michigan whose fiscal group's net income does not exceed 195% of the federal poverty level (FPL) and meets the other eligibility criteria. BEM 124 (July 2023), p. 1. There are no age or gender restrictions to PF-MA eligibility. BEM 124, p. 1.

Like HMP, determination of an individual's PF-MA eligibility requires consideration of the fiscal group's size and income. BEM 124, pp. 1-2. An individual's group size for MAGI purposes requires consideration of the client's tax filing status and again Petitioner's group size is one. 195% of the annual FPL in 2023 for a household with one member is \$48,477.00. See <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for PF-MA, Petitioner's annual income cannot exceed \$48,477.00.

To determine financial eligibility for PF-MA, income must be calculated in accordance with MAGI under federal tax law. 42 CFR 435.603(e); BEM 500, p. 3. The same income rules are applied to PF as are used in HMP. The monthly income limit for PF-MA is \$4,039.75. Petitioner's and his wife's income from employment exceeds the PF-MA income limit and they are not eligible.

Group 2 Caretaker Relatives (G2C)

Despite having excess income for HMP or PF-MA, Petitioner, who is the parent of a minor child, 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 monthly medical expenses are incurred. BEM 105, p. 1; BEM 545 (July 2022), p. 1. Each calendar month is a separate deductible period. 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.*

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 pro-rated 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 and his wife have earned income and are each eligible for the standard work expense deduction. Adding Petitioner's gross income totals for the 30 days prior to redetermination totals \$3,436.18. Subtracting the \$90 deduction totals \$3,346.18. Petitioner's wife has gross income of \$2,257.62 for the most recent verified 30-day period of income prior to redetermination and after the \$90 deduction totals \$2,167.62. No evidence was presented that Petitioner has received FIP or LIF benefits in the last four months or that he has 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. BEM 536, p. 3. There was no evidence for these items. Furthermore, there was no evidence 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 (pursuant to G2C policy) and 2.9. BEM 536, p. 4. Dependent for purposes of G2C includes a person's spouse and children. *Id.* Petitioner has one dependent child in the home and his wife; therefore, his prorated divisor is 4.9 and Petitioner has a prorated share of income of \$682.89. Petitioner's wife has the same prorated divisor as Petitioner and prorated share of income of \$460.73.

Finally, the adult fiscal group's net income is 2.9 times Petitioner's prorated share for a total of \$1,980.38 plus 3.9 prorated shares of Petitioner's wife's own income totaling \$1,796.84 plus one prorated share of Petitioner's income of \$682.89. BEM 536, pp. 6-7. Petitioner's fiscal group net income is \$4,460.11.

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. There was no evidence presented that Petitioner was responsible for insurance premiums or remedial services. Therefore, the total net income is \$4,460.00. 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. BEM 211, p. 9. Since Petitioner is married, he and his wife each have a group size of two. The PIL for G2C eligibility with a group size of two is \$516.00 because Petitioner is a resident of Kent County (Shelter Area V). RFT 240 (December 2013), p. 1; RFT 200 (April 2017), p. 2; BEM 211, p. 9. Petitioner's and his wife's G2C deductible are \$3,944.00. On the budget presented at the hearing, the Department calculated a deductible less than calculated here. Since the Department's calculation presented at the hearing is more favorable to Petitioner, the Department's determination of MA eligibility for Petitioner and his wife as G2C with a deductible of \$3,422.00 is affirmed.

Finally, at the hearing, Petitioner indicated that he suffers from ankylosing spondylitis, emphysema, and asthma. A new policy was recently put in place by the Department for MA recipients undergoing life-saving treatments. The Department has decided to implement an extension in the redetermination process so that individuals who are undertaking life-saving treatments would have their redetermination months pushed to the last month of the redetermination cycle in March 2024. Because the policy was just created and Petitioner's redetermination was completed more than two months before the policy was created, Petitioner does not appear to be eligible. It is also notable that the new policy applies to individuals who are undergoing chemotherapy, radiation, immunotherapy infusions, or dialysis. At this time, no evidence has been presented that Petitioner is receiving any of these treatments. More information to the policy can be found on the Department's website. See <https://www.michigan.gov/mdhhs/inside-mdhhs/newsroom/2023/09/19/august-medicaid:~:text=%E2%80%93%20To%20ensure>

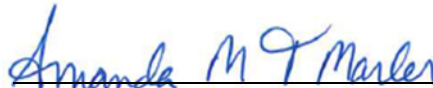
%20beneficiaries%20undergoing%20life-saving%20treatment%20such,nationally%20and%20extended%20their%20renewal%20through%20May%202024.

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 Petitioner's MA eligibility and calculated a deductible.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

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-Kent-Hearings
EQAD Hearings
M. Schaefer
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Via-First Class Mail :

Petitioner

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