



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

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DIRECTOR

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

Date Mailed: March 5, 2024
MOAHR Docket No.: 23-009785
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 February 28, 2024. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Jacob Frankmann, Assistance Payments Supervisor.

ISSUE

Did the Department properly determine Petitioner's and his wife'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 his wife were ongoing MA Healthy Michigan Plan (HMP) recipients.
2. 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).
3. 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.

4. The MA continuous coverage requirement under § 6008 of the FFCRA was not indefinite.
5. The Consolidated Appropriations Act, 2023 (CAA, 2023), PL 117-328, terminated the continuous coverage requirement effective March 31, 2023.
6. Beginning April 1, 2023, the CAA, 2023 required MDHHS to reevaluate almost all MA recipients' eligibility for ongoing MA.
7. On October 3, 2023, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner advising him and his wife that they were not eligible for MA benefits effective November 1, 2023 because they were not under age 21, not pregnant, had excess income, not caretakers of minor children, not over 65, not blind, and not disabled.
8. On November 27, 2023, the Department received a new application for MA benefits for Petitioner (age [REDACTED]) and his wife (age [REDACTED]) listing themselves and two daughters in college in the household, a Retirement Survivors Disability Insurance (RSDI) benefit for Petitioner of \$[REDACTED] with a Medicare Part B premium of \$164.90, total assets of \$[REDACTED] in checking and savings accounts, two vehicles, employment income for Petitioner's wife in the amount of \$[REDACTED] per hour for 40 hours of work paid biweekly, and that they file taxes jointly with their two daughters as dependents.
9. On November 28, 2023, the Department received wage verifications for Petitioner's wife as follows:

September 29, 2023	\$ [REDACTED]
October 16, 2023	\$ [REDACTED]
November 1, 2023	\$ [REDACTED]
November 16, 2023	\$ [REDACTED]

She also had deductions for a 401K retirement account as follows: \$175.27, 146.42, \$259.59, and \$182.73 respectively.

10. On the same day, the Department received bank statement verifications showing the following balances:

<u>Bank</u>	<u>Starting</u>	<u>Ending</u>	<u>Average</u>
Bank of America	\$ [REDACTED]	\$ [REDACTED]	--
Fifth Third Bank	\$ [REDACTED]	\$ [REDACTED]	--
Citizens	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

11. On December 26, 2023, the Department received Petitioner's request for hearing disputing the denial of MA coverage for himself and his wife.
12. On January 8, 2024, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner advising him that effective December 1, 2023,

Petitioner was ineligible for Medicare Savings Program (MSP) benefits because his income exceeded the limit for MSP.

13. At the hearing, the Department and Petitioner agreed that the January 8, 2024 HCCDN should be addressed by the hearing and subsequent decision.
14. At the hearing, the Department clarified that Petitioner and his wife were income ineligible for ADcare, Medicare Savings Program (MSP), and Healthy Michigan Plan (HMP) and asset ineligible for Group 2 Caregivers (G2C) and Group 2-Aged, Blind, Disabled (G2S).

APPLICABLE LAWS

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*.

CONCLUSIONS OF LAW

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).

MA Coverage

Upon reviewing Petitioner's eligibility criteria at redetermination, MDHHS concluded that Petitioner was ineligible for MA coverage. Petitioner disputes this coverage.

MA is available (i) to individuals who are aged (65 or older), blind or disabled under 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 2020), 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 (January 2020), p. 1; Modified Adjusted Gross Income (MAGI) Related Eligibility Manual, § 1.2.

Since Petitioner is a Medicare recipient, he is ineligible for HMP. However, his wife meets other non-financial eligibility requirements and may be eligible for HMP. Petitioner and his wife are not pregnant; therefore, they are not eligible for pregnancy related programs. Petitioner's children's ages were not provided in the hearing, so Petitioner and his wife may be eligible for Low-Income Family (LIF) or Group 2 Caregivers (G2C) if their children are under age 19 and they meet the financial eligibility requirements. Finally, Petitioner is an RSDI recipient, but his wife is not, so Petitioner may be eligible for SSI-related MA categories (ADcare, G2S, and MSP) if he meets the financial requirements, but Petitioner's wife is not.

MAGI-RELATED PROGRAMS: 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.

In this case, MDHHS concluded that Petitioner's wife was not eligible for HMP due to having income that exceeded the applicable income limit for her 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 and his wife file joint taxes and claim their two daughters as dependents.; therefore, her group size consists of herself, Petitioner, and their two children. BEM 211 (October 2023), p. 2. Therefore, Petitioner has a group size of four. 133% of the annual FPL in 2023 (the most current applicable FPL) for a household with four members is \$39,900. See <https://www.federalregister.gov/documents/2023/01/19/2023-00885/annual-update-of-the-hhs-poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's wife's group income cannot exceed \$39,900.00 or \$3,325.00 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.*

Ordinarily, the Department would review income for the 30-day period prior to the application. However, in this case, the Department clarified that because Petitioner's wife's income was significantly higher for the November 1, 2023 paycheck as opposed to three other verified pay periods, the Department did not consider the November 1, 2023 check in its decision. Therefore, the Department only considered Petitioner's wife's wages for November 16, 2023. To estimate her monthly MAGI, the gross income minus the 401K deduction for each verified week, except the excluded week, can be averaged and multiplied by 2.15 for an estimated monthly MAGI of \$██████████. Petitioner had gross RSDI income of \$██████████. Petitioner is responsible for his Medicare Part B premium of \$164.90. There was no other evidence of deductions for health coverage, childcare, or retirement accounts listed. Therefore, their total MAGI is \$██████████. Petitioner's wife is not eligible for HMP.

LOW-INCOME FAMILY (LIF)

Petitioner and his wife have two children and their ages were not provided at the hearing. If the children are under age 19, then they may be eligible for LIF if their income is below 54% of the federal poverty level (FPL). *Id.* LIF is a MAGI MA category and follows the same rules as identified above for HMP and PF. As seen above, Petitioner's and his wife's MAGI is greater than 133% of the FPL; therefore, they are not eligible for LIF.

MAGI-RELATED PROGRAMS: 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. PF is an MA program limited to family planning services only. <https://www.michigan.gov/mdhhs/assistance-programs/healthcare/adults/planfirst>.

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. Again, Petitioner has a group size of two. BEM 211, pp. 1-2. 195% of the annual FPL in 2023 (the most current applicable FPL) for a household with four members is \$58,500.00. See <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for PF-MA, Petitioner's annual income cannot exceed \$58,500.00 or \$4,875 per month.

The same rules apply for determining countable income for PF as are used for HMP. Therefore, Petitioner has income which is greater than the PF income limit. Based upon the evidence presented, the Department improperly denied PF MA eligibility to Petitioner and his wife and has not met its burden of proof. Petitioner and his wife are income eligible for PF. (Note*: If Petitioner and his wife are uninterested in PF eligibility, they can decline PF coverage.)

ASSET TESTS FOR G2C, ADCARE, G2S, AND MSP

Petitioner and his wife were determined to have excess assets for G2C, ADcare, G2S, and MSP. Asset eligibility is required for all SSI-related MA categories including G2S, ADcare, all MSP categories, and, in addition to G2C. BEM 400 (July 2023), p. 6. Modified Adjusted Gross Income (MAGI) MA (HMP, LIF, and PF) categories do not have an asset test. *Id.* Asset eligibility exists when the asset group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400, p. 7. For MSP with a group size of two (because they are married), the asset limit effective January 1, 2023 was \$13,630.00. BEM 400, p. 8. For all other SSI-related MA categories, including AD-Care and G2S and excluding QDWI, the asset limit was \$3,000.00 for a group size of two. *Id.* Finally, for G2C, the asset limit is \$3,000.00. The Department is not required to verify assets when countable assets exceed the applicable asset limit based on a person's own statement of value. BEM 400, p. 61.

In this case, Petitioner provided verification of his and his wife's assets in his checking and savings accounts which was valued at \$[REDACTED] (the least amount Petitioner and his wife could possibly have based on reported balances). Based solely on their bank account assets, Petitioner and his wife are ineligible for ADcare, G2S, and G2C. However, the bank assets are less than the MSP asset limit so an evaluation of other assets is necessary. Petitioner also had two vehicles in the home. For SSI-related MA categories, the group is allowed to exclude one motorized vehicle owned by the asset group. BEM 400 (July 2023), p. 41. Additional exclusions may apply if the vehicle is required by a person's employer and it is used to produce their income, but no evidence

was presented here regarding a requirement of the employer. BEM 400, p. 58. No evidence was provided regarding the value of either of the vehicles owned. Verification can be provided by use of a Kelly Blue Book or NADA Book wholesale valuation or a statement of a vehicle or junk dealer. BEM 400, pp. 66-67. Because no verification of the value of Petitioner's vehicles was provided, Petitioner's eligibility for MSP cannot be established based on assets.

MEDICARE SAVINGS PROGRAM (MSP)

Because Petitioner's eligibility for MSP based on assets cannot be determined, an evaluation of his eligibility based on income follows next. The MSP is divided into three subcategories. BEM 165 (October 2022), p. 1. Qualified Medicare Beneficiary (QMB) is the full coverage MSP. BEM 165, p. 1. Specified Low-Income Medicare Beneficiary (SLMB) is a limited coverage MSP. *Id.* The third MSP category is the Additional Low-Income Medicare Beneficiary (ALMB). *Id.* QMB pays for Medicare premiums, coinsurances, and deductibles. BEM 165, p. 2. SLMB pays Medicare Part B premiums. *Id.* ALMB pays for Medicare Part B premiums if funding is available. *Id.*

Income determines placement in the programs. BEM 165, p. 1. For QMB, net income cannot exceed 100% of the federal poverty level, the same as AD-Care. *Id.* SLMB is available for individuals whose income is over 100% of the federal poverty level, but not more than 120% of the federal poverty level. *Id.* Finally, ALMB is available to those whose income exceeds 120% of the federal poverty level but does not exceed 135%. *Id.* The 2023 federal poverty level and income limit for QMB for a two-person household (Petitioner and his wife) is \$19,720.00 or \$1,643.33 per month. <https://www.federalregister.gov/documents/2023/01/19/2023-00885/annual-update-of-the-hhs-poverty-guidelines>; RFT 242 (April 2023), p. 1; BEM 211 (October 2023), p. 8. The income limit for SLMB is \$23,664.00 or \$1,972.00. *Id.* Finally, the income limit for ALMB is \$26,622.00 or \$2,218.50. *Id.* The net income limit is established through policy by subtracting \$20.00 from the amount shown in RFT 242.

To determine the countable income for purposes of MSP benefits, the Department relies on the same policies as utilized for AD-Care and G2S: BEM 500, 501, 502, 503, 504, 530, 540, and 541. BEM 165, p. 8.

In determining the eligibility, the Department must determine Petitioner's MA fiscal group size and net income. Petitioner has a group size of two for Supplemental Security Income (SSI)-related MA purposes. BEM 211, p. 8. Petitioner's total monthly income from RSDI is \$[REDACTED]. Petitioner's wife also has employment income. Because Petitioner's wife's income fluctuates, a best estimate is achieved by excluding the pay for November 1, 2023, averaging the remaining paychecks, and multiplying by 2.15 as was done for MAGI programs.

Countable income is calculated by adding the amount of income actually received/available within the past month. BEM 530 (April 2020), p. 2. First, Petitioner's RSDI income is considered. Next, the \$20.00 general exclusion is deducted. BEM 541 (January 2023), p. 3. Then, Petitioner's wife's earned income is calculated as \$[REDACTED]

as described above. There is a deduction for \$65.00 plus half of the group's remaining earnings to calculate (\$██████) for a total net earned income of \$██████ and a combined total net income of \$██████. Therefore, Petitioner's net income is greater than the net income limit set by policy for all categories of the MSP. Petitioner is not eligible for the MSP.

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 denied Petitioner and his wife's PF MA eligibility.

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 and his wife's MA eligibility for PF effective November 1, 2023;
2. If otherwise eligible, issue supplements to Petitioner and his wife for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.

AMTM/cc



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-Oakland-6303-Hearings
BSC4-HearingDecisions
EQADHearings
M. Schaefer
MOAHR

Via-First Class Mail :

Petitioner

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