



GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN DPA
DIRECTOR

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Date Mailed: April 16, 2024
MOAHR Docket No.: 24-001915
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 April 3, 2024. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Santay Moore, Eligibility Specialist.

ISSUE

Did the Department properly determine Petitioner'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. 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. On June 26, 2023, the Department received Petitioner's completed Redetermination.
7. Effective July 2023, Petitioner received \$[REDACTED] in Retirement Survivors Disability Insurance (RSDI) benefits. For August 2023 through December 2023, the benefit increased to \$[REDACTED]. Effective January 2024, Petitioner began receiving \$[REDACTED] in RSDI benefits.
8. Petitioner is not married and does not have any dependents.
9. On July 25, 2023, the Department issued a Health Care Coverage Determination Notice (HCCDN) notifying Petitioner that for August 2023, she was eligible for full coverage MA benefits, but then effective September 2023, ongoing, Petitioner was eligible for Plan First (PF) coverage.
10. On December 9, 2023, the Department issued a Verification Checklist (VCL) to Petitioner requesting verification of her bank accounts by December 19, 2023.
11. On December 19, 2023, the Department received verification of Petitioner's bank accounts.
12. On January 5, 2024, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner advising her that effective September 2023, ongoing, she was eligible for Medicare Savings Program (MSP) benefits under the Additional Low-Income Beneficiary (ALMB) category, for MA with a deductible of \$1,155.00 for September 2023, with a deductible of \$990.00 for October 2023 through December 2023, and a deductible of \$980.00 effective January 2024, ongoing.
13. On February 19, 2024, the Department received Petitioner's request for hearing disputing the determination of MA eligibility.

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 eligible for full MA coverage in August and PF coverage only effective September 1, 2023. PF provides MA coverage for family planning services. See <https://www.michigan.gov/mdhhs/assistance-programs/healthcare/adults/planfirst>. When the Department made its initial decision regarding Petitioner's eligibility after Redetermination, the Department failed to consider Petitioner's eligibility for any SSI-related MA benefits. Therefore, in December 2023, the Department was correcting its error and requested the verification of Petitioner's assets to determine her SSI-related MA eligibility because pursuant to policy and federal law, an individual eligible under more than one MA category 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, p. 2; 42 CFR 435.404.

Once the Department completed its review of Petitioner's MA eligibility, it issued the January 2024 HCCDN advising Petitioner that she was eligible for MSP benefits effective September 2023, ongoing and MA with a deductible of \$1,155.00 in September, \$990.00 for October through December 2023, and finally, \$980.00 for January 2024, ongoing. Petitioner disputes the determination of MA eligibility based on the January 2024 HCCDN. 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 Medicaid (PF-MA) coverage. 42 CFR 435.911; 42 CFR 435.100 to 435.172; BEM 105 (October 2023), p. 1; BEM 137 (June 2020), p. 1; BEM 124 (July 2023), p. 1. 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.

SSI-RELATED MA (DISABLED, BLIND OR OVER-65)

Because Petitioner is a Medicare recipient **and** disabled and there was no evidence that Petitioner was the parent or caretaker of a minor child, Petitioner was eligible for MA under an SSI-related category. In determining the SSI-related MA category Petitioner is eligible for, MDHHS must determine Petitioner's MA fiscal group size and net income. As an unmarried individual, Petitioner has fiscal group size for SSI-related MA purposes of one. BEM 211 (October 2023), p. 8.

The Ad-Care program, an SSI-related MA category, requires that net group income cannot exceed one hundred percent of the federal poverty level plus \$20.00. BEM 163, pp. 1-2. The 2023 federal poverty level (FPL) for a one-person household was \$14,450 annually or \$1,215.00 per month. <https://www.federalregister.gov/documents/2023/01/19/2023-00885/annual-update-of-the-hhs-poverty-guidelines>. The net income limit is established by subtracting \$20.00 from the income limits seen in RFT 242, \$1,215.00 for a group size of one effective April 1, 2023. RFT 242 (April 2023), p. 1; BEM 163 (July 2017), p. 2. For 2024, the FPL for a group size of one is \$15,060 annually or \$1,255 per month. <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>

Countable income is calculated by adding the amounts of income actually received or reasonably anticipated within the month. BEM 530 (April 2020), p. 2. RSDI are considered countable income. BEM 503 (January 2023), pp. 29, 37. Petitioner has total gross income of \$[REDACTED] for August through December 2023 and \$[REDACTED] for January 2024, ongoing. Pursuant to policy, countable RSDI for fiscal group members is the gross amount for the previous December when the month being tested is January through March and the cost-of-living adjustment received in January is disregarded for the first three months of the year. BEM 503, p. 30. Therefore, for September through March, Petitioner's income of \$[REDACTED] is what is used to determine eligibility. Next, \$20.00 is subtracted for the general exclusion and Petitioner's Net Income is \$[REDACTED]. BEM 541 (January 2023), p. 3. No evidence was presented of any expenses for child support, work-related expenses, nor guardianship or conservator expenses. BEM 541, pp. 1-7. Therefore, Petitioner's Net Income is greater than the net income limit. Petitioner is not eligible for the full coverage Ad-Care program.

Since Petitioner has excess income for eligibility under the Ad-Care program, the full coverage SSI-related MA program, an evaluation of Petitioner's eligibility for MA coverage under the Group 2 program follows. Group 2 provides MA coverage with a deductible.

BEM 105, p. 1. The deductible is the amount that the client's net income (less any allowable deductions) exceeds the applicable Group 2 MA protected income level (PIL). PIL is a set allowance for non-medical need items such as shelter, food, and incidental expenses. BEM 544 (January 2020), p. 1. It is based on the client's MA fiscal group size and the county in which the client resides. *Id.* Petitioner resides in [REDACTED] and has a group size of one; therefore, she is in shelter area IV, and her PIL is \$375.00. RFT 200 (April 2017), p. 3; RFT 240 (December 2013), p. 1. Thus, if Petitioner's monthly net income (less allowable needs deductions) is in excess of \$375.00, Petitioner is eligible for MA assistance under the G2S program with a deductible equal to the amount of income remaining after the appropriate and allowed deductions which is greater than \$375.00.

As discussed above, Petitioner's net income was \$[REDACTED] for September 2023 through March 2024. In calculating the deductible, allowances are made for health insurance premiums and remedial services. BEM 544, pp. 1-2. According to the HCCDN dated January 5, 2024, Petitioner is eligible for MSP-ALMB and therefore not responsible for her Medicare Part B premium. No evidence was presented of other insurance premiums or remedial services which produce the maximum reduction of physical and mental limitations and restore an individual to their best possible functioning level. BEM 544, p. 2. Remedial care services include basic self-care and rehabilitation training which teach and reinforce dressing, grooming, eating, bathing, toileting, and following simple instructions. BEM 544, p. 2. Remedial services do not include personal care services as defined in BEM 545. Therefore, the PIL is subtracted to reach a deductible of \$1,125.00. The Department has not properly calculated Petitioner's G2S deductible for September 2023 through March 2024. The Department also did not present any evidence of a HCCDN being issued to Petitioner after the January 2024 HCCDN advising Petitioner of her G2S eligibility despite the Bridges Eligibility Summary indicating a new deductible had been calculated for April 2024, ongoing.

Evidence is conflicting as to whether the Department also provided MSP eligibility via the ALMB category as the HCCDN does not match the Bridges Eligibility Summary page. There are three categories for MSP. The Qualified Medicare Beneficiary (QMB) plan is the full coverage MSP and pays for Medicare premiums, coinsurances, and deductibles. BEM 165 (October 2022), pp. 1-2. The Specified Low-Income Medicare Beneficiary (SLMB) plan is a limited coverage MSP and pays Medicare Part B premiums. *Id.* A third MSP plan is the Additional Low-Income Medicare Beneficiary (ALMB) and it pays for Medicare Part B premiums if funding is available. *Id.* QMB.

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 one-person household is \$14,580.00 or \$1,215.00 per month. <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines/prior-hhs-poverty-guidelines-federal-register-references>;

RFT 242 (April 2023), p. 1. The income limit for SLMB is \$17,496.00 or \$1,458.00 per month. *Id.* Finally, the income limit for ALMB is \$19,683.00 or \$1,640.25 per month. *Id.* The net income limit is established through policy by subtracting \$20.00 from the amount shown in RFT 242.

Because Petitioner's net income of \$ [REDACTED] as calculated above is within the limit for MSP-ALMB, Petitioner is eligible for MSP coverage.

Finally, the Department determined that Petitioner was eligible for PF which Petitioner does not dispute. 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 MAGI 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 provides MA coverage for family planning services. See <https://www.michigan.gov/mdhhs/assistance-programs/healthcare/adults/planfirst>. Note: Petitioner may opt out of MA-PF coverage if she is uninterested in this coverage.

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 Medicare Savings Program (MSP) and G2S MA eligibility from September 2023, ongoing.

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 Medical Assistance (MA) Program eligibility effective September 2023, ongoing;
2. If otherwise eligible, issue supplements to Petitioner or on her behalf 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-Wayne-15-Greydale-Hearings
BSC4-HearingDecisions
EQADHearings
M. Schaefer
MOAHR

Via-First Class Mail :

Petitioner

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