



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

Date Mailed: September 4, 2024  
MOAHR Docket No.: 24-007200 and  
24-007628

Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Caralyce M. Lassner**

### **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 hearing was held by telephone on August 8, 2024. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Quon Williamson, Eligibility Specialist.

A duplicate hearing on this matter was also scheduled for August 8, 2024 and assigned Michigan Office of Administrative Hearings and Rules (MOAHR) Docket No. 24-007628. The issues raised in the hearing request dated June 21, 2024 and docketed under MOAHR Docket No. 24-007200, and the hearing request dated July 6, 2024 and docketed under MOAHR Docket No. 24-007628, are the same and the hearing was consolidated, with the issue raised addressed in this Hearing Decision.

### **ISSUE**

Did the Department properly determine Petitioner's, [REDACTED] [REDACTED] (Spouse), and sons', [REDACTED] (AY) and [REDACTED] (AR), Medicaid (MA) eligibility effective July 1, 2024 ongoing?

### **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 May 28, 2024, the Department received a completed MA redetermination application from Petitioner for himself, Spouse, AY, and AR. (Exhibit B, pp. 1 – 7).
2. Petitioner and Spouse are each ■ years old, married to each other, file joint income tax returns claiming one dependent, and neither are disabled, pregnant, or have minor children. (Exhibit B, pp. 1 – 7).
3. On June 5, 2024, the Department sent Petitioner a Health Care Coverage Determination Notice (HCCDN) denying Petitioner and Spouse MA coverage effective July 1, 2024 ongoing due to excess income and ineligible non-citizen status. The HCCDN also approved AY and AR for Emergency Services Only (ESO) MA effective July 1, 2024 ongoing. (Exhibit A, pp. 11 – 18).
4. On June 21, 2024, the Department received a request for hearing from Petitioner regarding denial of full coverage MA. (Exhibit A, p. 4).

### **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.

Petitioner requested a hearing to dispute denial of full coverage MA. The Department approved AY and AR for ESO MA and denied Petitioner and Spouse MA coverage due to excess income and ineligible non-citizen status.

To be eligible for full coverage MA, a person must be a United States (US) citizen, or a non-citizen admitted to the US under a specific immigration status, subject to certain restrictions. BEM 225 (August 2024), pp. 2 – 8. A non-citizen who is

- a) a lawful permanent resident with a permanent resident card with a class code<sup>1</sup> other than Refugee (RE), Amerasian (AM), or Asylee (AS), or
- b) or a noncitizen paroled into the US for at least one year under the Immigration and Nationality Act (INA), Section 212(d)(5),

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<sup>1</sup> Class codes are used to describe the visa category used to admit an immigrant to the US as a permanent or temporary resident.

and who was admitted to the US on or after August 22, 1996, is only eligible for ESO coverage for the first five years they are in the US, unless the individual meets one of the limited exceptions set forth in BEM 225. BEM 225, pp. 7 – 9, 32 – 33; see also INA 203(a)(7), 8 USC 1153.

In this case, Petitioner testified, and the Department confirmed, that until June 30, 2024, the family members had full coverage MA. Petitioner completed a redetermination application for himself, Spouse, AY, and AR on May 28, 2024. (Exhibit B, pp. 1 – 7). The Department processed the redetermination application and sent Petitioner a HCCDN that approved AY and AR for ESO MA effective July 1, 2024 ongoing but denied Petitioner and Spouse MA coverage. (Exhibit A, pp. 11 – 18). While the Department testified that Petitioner and Spouse were denied due to excess income, the HCCDN also indicated that Petitioner and Spouse are not eligible for PFFP due to ineligible non-citizen status. (Exhibit A, pp. 13 – 14). Petitioner testified that he, Spouse, AY, and AR all became permanent residents on September 25, 2019; however, there was no evidence that any of them meet any of the eligibility criteria for MA for non-citizens. Because Petitioner, Spouse, AY, and AR have each been lawful permanent residents for less than five years, they are each eligible for ESO MA only at this time if they meet all other eligibility requirements for that coverage. There is no emergency services only (ESO) benefit plan available for PFFP. BEM 124 (July 2023), p. 1. The Department properly approved AY and AR for ESO and denied Petitioner and Spouse for PFFP.

To determine Petitioner's and Spouse's eligibility for ESO MA for coverage other than PFFP, the Department must evaluate each's eligibility under MA. 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, and (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage. 42 CFR 435.911; 42 CFR 435.100 to 435.172; BEM 105 (January 2024), p. 1; BEM 137 (January 2024), p. 1.

In this case, Petitioner and Spouse are each [REDACTED] years old, married to each other, file joint income tax returns claiming one dependent, and neither are disabled, pregnant, or have minor children. (Exhibit B, pp. 1 – 7). Therefore, they are each potentially eligible for ESO, under HMP, which is a Modified Adjusted Gross Income (MAGI)-related MA policy. To be eligible for HMP, their respective income cannot exceed 133% of the federal poverty level based on their group size. BEM 137, p. 3. While the Department testified Petitioner and Spouse were a fiscal group of two, based on Petitioner's and Spouse's joint tax filing status with one dependent, they were each a fiscal group of three. BEM 211 (October 2023), p. 2.

To determine Petitioner's and Spouse's MAGI-income, the Department must calculate the countable income of the fiscal group. BEM 500, p. 1. To determine financial eligibility for MAGI-related MA, income must be calculated in accordance with MAGI under federal tax law. 42 CFR 435.603(e); BEM 500, pp. 3 – 4. MAGI is based on

Internal Revenue Service rules and relies on federal tax information from current income sources. BEM 500, pp. 3 – 4; see also 42 CFR 435.603(h)(1),(2).

The Department uses current monthly income, and reasonably predictable changes in income, to calculate a client's MAGI-income. (MAGI-Based Income Methodologies (SPA 17-0100), eff. 11/01/2017, app. 03/13/2018)<sup>2</sup>; 42 CFR 435.603(h). MAGI-income is calculated for each income earner in the household by using the "federal taxable wages" reported on earner's paystubs or, if federal taxable wages are not reported on the paystub, by using "gross income" minus amounts deducted by the employer for child care, health coverage, and retirement plans. Under both the federal and Michigan methodology, a client's tax-exempt foreign income, tax-exempt Social Security benefits, and tax-exempt interest, if any, are added to the client's adjusted gross income (AGI) from the client's tax return. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>.

Beginning in January 2024, the annual FPL for a household size of three was \$25,820. 89 FR 2961 (January 2024). The income limit for HMP is 133% of the FPL, which is \$34,340.60. Additionally, for MAGI-related plans, a 5% disregard is available to make those individuals eligible who would otherwise not be eligible. BEM 500 (April 2022), p. 5. The 5% disregard increases the income limit by an amount equal to 5% of the FPL for the group size. BEM 500, p. 5. 5% of the FPL of \$25,820 is \$1,291. Therefore, the total income limit for HMP, with the disregard, is \$35,631.60, or \$2,969.30 per month.

Here, the Department testified that it utilized weekly paystubs provided by Petitioner for the period of April 26, 2024 through May 17, 2024, and determined Petitioner had \$2,839 in monthly gross earnings. (Exhibit A, pp. 7 – 10). A review of the paystubs confirms that Petitioner's monthly gross earnings were less than the Department calculated; however, regardless of that, the Department's calculation is less than the total income limit for HMP with the 5% disregard. Because Petitioner and Spouse are both members of the fiscal group, they each had income below the limit for HMP and therefore, are each eligible for ESO MA. Therefore, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner and Spouse were a fiscal group of two and concluded that they each had excess income for ESO MA under HMP.

Petitioner, Spouse, AY, and AR may be eligible for more beneficial MA coverage after September 25, 2024.

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 approved AY and AR for ESO but failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner and Spouse for ESO MA under HMP.

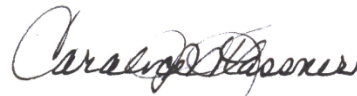
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<sup>2</sup> [MAGI-Based Income Methodologies \(SPA 17-0100\) Approved \(michigan.gov\)](https://www.healthcare.gov/income-and-household-information/how-to-report/), p. 7.

**DECISION AND ORDER**

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

1. Redetermine Petitioner's and Spouse's eligibility for MA for July 2024 ongoing based on a calculation of their income in accordance with MAGI methodology;
2. If eligible, provide Petitioner and Spouse with the most beneficial MA coverage they are each eligible to receive for July 2024 ongoing; and
3. Notify Petitioner of its decision in writing.



CML/nr

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**Caralyce M. Lassner**  
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**

Chelsea McCune  
Macomb County DHHS Warren Dist.  
13041 E 10 Mile  
Warren, MI 48089

**MDHHS-Macomb-20-Hearings@michigan.gov**

**Interested Parties**

BSC4  
M. Schaefer  
EQAD  
MOAHR

**Via-First Class Mail :**

**Petitioner**

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[REDACTED]  
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