



GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: September 24, 2024
MOAHR Docket No.: 24-009467
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 19, 2024. The Petitioner and her husband [REDACTED] [REDACTED] appeared for the hearing. The Department of Health and Human Services (Department) was represented by Corlette Brown, Hearings Facilitator, and Jacqueline Miles, Eligibility Specialist.

ISSUE

Did the Department properly determine Petitioner's and her husband'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. On June 10, 2024, the Department received Petitioner's completed Redetermination for Petitioner and her family.
2. Petitioner's household contains herself, her husband, and three children.
3. On July 1, 2024, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner informing her that both her and her husband were eligible for Plan First (PF) MA benefits for August 2024, ongoing; and that Petitioner's husband was also eligible for full coverage MA benefits for July 2024.
4. On July 30, 2024, the Department received a completed application for Petitioner and her family for MA benefits.

5. Petitioner's husband receives \$ [REDACTED] per month in Retirement Survivors Disability Insurance (RSDI) benefits and has a Medicare Part B premium of \$174.70 per month.
6. Petitioner has earned income from employment for pay date July 12, 2024 in the amount of \$ [REDACTED] and pay date July 26, 2024 in the amount of \$ [REDACTED].
7. On August 2, 2024, the Department issued a HCCDN to Petitioner informing her that
 - Petitioner and her husband were ineligible for Medicare Savings Program (MSP) because they did "not meet basic criteria" for July 2024, ongoing.
 - Petitioner's husband was ineligible for MA benefits in August 2024 because he was not under 21, pregnant, or a caretaker of a minor child, not age 65 or older, blind, or disabled.
 - Petitioner was not eligible in August 2018 because she was not blind, disabled, pregnant, a parent/caretaker relative of a dependent child, nor did she meet age requirements.
8. On August 14, 2024, the Department received Petitioner's request for hearing disputing the determination of MA eligibility for Petitioner and her husband.
9. On August 22, 2024, the Department issued a HCCDN to Petitioner and determined that
 - Petitioner was eligible for MA benefits in November 2023 with a deductible of \$2,066.00; for August 2024, ongoing with a deductible of \$2,070.00 (in the Group 2 Caregivers (G2C) category); and effective October 2024 for Plan First (PF).
 - Petitioner's husband was eligible for PF effective August 2024; MA with a deductible of \$902.00 per month effective August 2024 (in the Group 2-Aged, Blind, Disabled (G2S) category); and the MSP Specified Low-Income Medicare Beneficiary (SLMB) effective September 2024.
 - Petitioner and her husband were ineligible for MSP in July and August 2024 because they did "not meet basic criteria."
 - Petitioner was ineligible for MSP effective September 2024 because she did "not meet basic criteria."
 - Petitioner was ineligible for MA benefits in August 2018 because she was not blind, disabled, pregnant, a parent/caretaker relative of a dependent child, nor did she meet age requirements.

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 submitted a hearing request disputing the Department's determination of MA eligibility for herself and her husband based on the July 1, 2024 and August 2, 2024 HCCDNs. After the hearing request, the Department issued a third HCCDN discussing Petitioner's and her husband's MA eligibility and the parties agreed to address these at the hearing.

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. Under federal law, an individual eligible under more than one MA category must have eligibility determined for the category selected and 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 (January 2021), p. 2; 42 CFR 435.404.

MSP is an MA category which provides coverage for payment of Medicare premiums. BEM 165 (July 2024), p. 2. Petitioner is not a Medicare recipient, but her husband is; therefore, she is ineligible for MSP and he may be eligible. Eligibility for MSP is contingent upon assets and income among other things. BEM 165, pp. 1,5-8. The Department failed to identify the specific reason for which Petitioner's husband was ineligible for MSP; therefore, the Department has not met its burden of proof that it properly determined his MSP eligibility.

For August 2024, the Department determined that Petitioner and Petitioner's husband were eligible for PF. 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>.

An individual is eligible for PF if the household's MAGI-income does not exceed 195% 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. Petitioner is married and has three minor children. Therefore, her group size is 5. BEM 211 (October 2023), pp. 1-2. 195% of the annual FPL in 2024 (the most current applicable FPL) for a household with five member is \$71,331. See <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for PF-MA, Petitioner's and her husband's annual income cannot exceed \$71,331.00 or \$5,944.25 per month.

To determine financial eligibility under PF, 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.*

Petitioner's husband has an RSDI benefit of \$ [REDACTED] per month and Petitioner has earned income which totaled \$ [REDACTED]. Petitioner's husband has a Medicare Part B premium of \$174.70 per month but no other evidence of other health insurance premiums, child support, childcare, or retirement savings was presented. Therefore, the household MAGI is \$ [REDACTED]. Petitioner and her husband are eligible for PF coverage which was correctly determined by the Department.

Using the same methodology for determining eligibility, Petitioner is ineligible for HMP as her income exceeds the income limit of 133% of FPL (\$██████████ per month). BEM 137 (January 2024), p. 1. Petitioner's husband is ineligible for HMP because he is a Medicare recipient. *Id.*

The Department then determined that Petitioner was eligible for MA benefits with a deductible of \$2,070 under the G2C category whereas Petitioner's husband was eligible for MA with a deductible of \$902.00 under the G2S category.

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 (July 2020); BEM 536 (July 2019), p. 1-3. Petitioner has earned income and is eligible for the standard work expense deduction. No evidence was presented that Petitioner has received FIP or LIF benefits in the last four months or that she 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. Petitioner does not receive any unearned income. 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 (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 three dependent children in the home and her husband; therefore, his prorated divisor is 6.9 and her prorated share of the group's income is \$██████████.

The same procedure is followed for Petitioner's husband's income. His only source of income is RSDI in the amount of \$██████████ and no evidence was presented regarding any other expenses or deductions. Therefore, he has the same prorated divisor of 6.9 and his prorated income is \$██████████.

Finally, the adult fiscal group's net income is 2.9 times Petitioner's prorated share for a total of \$██████████ plus 3.9 prorated shares of Petitioner's husband's own income totaling \$██████████ plus one prorated share of Petitioner's income of \$██████████. BEM 536, pp. 6-7. Petitioner's fiscal group net income is \$██████████.

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. Petitioner's husband is responsible for insurance premiums of

\$174.70, but no other evidence of insurance premiums or costs of remedial services was provided. 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. BEM 211, p. 9. Since Petitioner is married, she has a group size of two. The PIL for G2C eligibility with a group size of two is \$500.00 because Petitioner's is a resident of [REDACTED] County (Shelter Area IV). RFT 240 (December 2013), p. 1; RFT 200 (April 2017), p. 2; BEM 211, p. 9. Petitioner's G2C deductible is \$2,070.00. On the budget presented at the hearing, the Department properly calculated Petitioner's deductible effective August 2024.

To determine G2S eligibility, first the Department is required to determine if Petitioner's husband is eligible for the full coverage AD-care category. In determining the SSI-related MA category Petitioner's husband is eligible for, MDHHS must determine Petitioner's husband's MA fiscal group size and net income. As a married individual, Petitioner's husband has fiscal group size for SSI-related MA purposes of two. BEM 211, 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. BEM 163, pp. 1-2. The 2024 federal poverty level (FPL) for a two-person household was \$20,440 annually or \$1,703.33 per month. <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>. The net income limit is also established by subtracting \$20.00 from the income limits seen in RFT 242, \$1,703 for a group size of one effective April 1, 2024. RFT 242 (April 2024), p. 1; BEM 163 (July 2017), p. 2.

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 is considered countable income. BEM 503 (April 2024), pp. 29-30. Petitioner's husband has total gross RSDI income of \$[REDACTED]. Petitioner has earned income of \$[REDACTED]. Pursuant to policy, an allocation of parental income to meet the needs of the non-SSI-related children living in the home is necessary and the Department provided an allocation in determining Petitioner's husband's deductible. BEM 541 (January 2024), pp. 2-3. However, the allocation is made in consideration of any income received by the children which is less than \$[REDACTED]. *Id.* Because no evidence of income for the children was provided, the calculation of Petitioner's husband's eligibility for AD-care and G2S cannot be completed. Generally, after the allocation is provided, \$20.00 is subtracted for the general exclusion and \$65 plus ½ of the fiscal group's remaining earnings. BEM 541 (January 2024), p. 3. No evidence was presented of the costs for any expenses for child support, work-related expenses, nor guardianship or conservator expenses so these items would not be considered. BEM 541, pp. 1-7. Because the Department has not presented any evidence of the children's income for the allocation in Petitioner's AD-care or G2S deductible calculation, the Department has not met its burden of proof that it was properly calculated.

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 husband's MSP and 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 husband's MA and MSP eligibility effective August 2024;
2. If otherwise eligible, issue MA coverage for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.

AM/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-31-Grandmont-Hearings
BSC4-HearingDecisions
EQADHearings
M. Schaefer
MOAHR

Via-First Class Mail :

Petitioner

[REDACTED]
MI [REDACTED]

Authorized Hearing Rep.

[REDACTED]
MI [REDACTED]