



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: February 23, 2022
MOAHR Docket No.: 21-005747
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon Petitioner's request for a hearing.

After due notice, a hearing was held on February 22, 2022. [REDACTED], Petitioner's mother, appeared and testified on Petitioner's behalf.

Leigha Burghdoff, Appeals Review Officer, represented Respondent, Michigan Department of Health and Human Services (MDHHS or Department). Matthew Richardson, R.N., CPNA, Nurse Consultant, Children's Special Health Care Services Division, appeared as a witness for the Department.

ISSUE

Did the Department properly determine that Petitioner was not eligible for the Home Care Children program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Petitioner is not a Medicaid beneficiary but has insurance through her family's employer. (Exhibit A, p 17; Testimony).
2. Petitioner is a [REDACTED]-year-old female, born March 31, 2016, who is diagnosed with hypoglycemia, oral aversion; eosinophilic esophagitis; chromosome abnormality – microdeletion at 7Q11.22; and is G-tube dependent. (Exhibit A, p 27; Testimony).
3. On October 15, 2021, Petitioner's family sought an eligibility determination for the Home Care Children program by submitting a DHS-49 form completed by Petitioner's pediatrician, multiple medical reports from a variety of providers, a 24-hour plan of care, and an MET summary from Petitioner's school district. Additional materials were submitted on

November 10, 2021 and November 15, 2021. (Exhibit A, pp 6, 17-112; Testimony)

4. Beginning on October 15, 2021, the Department's nurse consultant completed a Level of Care Document Review and Assessment of Petitioner's medical conditions. The Department's nurse consultant determined that Petitioner did not require an IDD or ICF level of care. (Exhibit A, pp 7-14; Testimony)
5. The Department's nurse consultant then referred the matter to a behavioral health specialist within the Department to determine if Petitioner met IID criteria or required an ICF/IID level of care for her behavioral conditions. (Exhibit A, p 14; Testimony)
6. On November 16, 2021, the Department's specialist determined that Petitioner did not meet IID criteria or the criteria for an ICF/IID level of care. (Exhibit A, p 15; Testimony). The specialist concluded, in part:

Although it is clear that her medical conditions related to eosinophilic esophagitis require her to be g-tube fed, and closely monitored, and that her chromosome abnormality-microdeletion at 7Q11.22, appears to have led to some speech and language deficits; it also appears that she has made progress with her language skills through therapy. There were numerous testing reports included in this referral, and although some put her at low average or below, many areas she is functioning at age level. (Exhibit A, p 15)

7. On November 18, 2021, MDHHS CSHCS sent Petitioner a notice of Home Care Children eligibility denial. The reason stated in the notice was:

It does not appear that your child requires the level of care of a medical institutional setting at this time. (Exhibit A, p 16; Testimony)

8. On December 15, 2021, the Michigan Office of Administrative Hearings and Rules received the Petitioner's request for hearing. (Exhibit A, p 5)

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Title XIX of the Social Security Act, enacted in 1965, authorizes Federal grants to States for medical assistance to low-income persons who are age 65 or over, blind, disabled, or members of families with dependent children or qualified pregnant women or children. The program is jointly financed by the Federal and State governments and administered by States. Within broad Federal rules, each State decides eligible groups, types and range of services, payment levels for services, and administrative and operating procedures. Payments for services are made directly by the State to the individuals or entities that furnish the services.

42 CFR 430.0

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) added a provision to Title XIX of the Social Security Act which expanded Medicaid coverage to children with a medical institution level of care need but were otherwise ineligible for Medicaid due to a higher family income. The program is also referred to as the Katie Beckett program. See *P.L. 97-248, Section 134*. In essence, the Katie Beckett provision in TEFRA allowed states to waive the requirement for considering parental income in the process of determining Medicaid eligibility.

The implementing provision of the Code of Federal Regulations, as related to TEFRA individuals under age 19 who would be eligible for Medicaid if they were in a medical institution is, in pertinent part:

(a) The agency may provide Medicaid to children 18 years of age or younger who qualify under section 1614(a) of the Act, who would be eligible for Medicaid if they were in a medical institution, and who are receiving, while living at home, medical care that would be provided in a medical institution.

(b) If the agency elects the option provided by paragraph (a) of this section, it must determine, in each case, that the following conditions are met:

- (1) The child requires the level of care provided in a hospital, SNF, or ICF.
- (2) It is appropriate to provide that level of care outside such an institution.
- (3) The estimated Medicaid cost of care outside an institution is no higher than the estimated Medicaid cost of appropriate institutional care.

(c) The agency must specify in its State plan the method by which it determines the cost-effectiveness of caring for disabled children at home.

42 CFR 435.225 (Underline added).

The State of Michigan's policy is consistent with the Social Security Act, Code of Federal Regulations and State Plan. The State of Michigan Bridges Eligibility Manual (BEM) lists the criteria for eligibility:

DEPARTMENT POLICY

MA Only

This is an SSI-related Group 1 MA category.

MA is available to a child who requires institutional care but can be cared for at home for less cost.

The child must be under age 18, unmarried and disabled. The income and assets of the child's parents are not considered when determining the child's eligibility.

Children's Special Health Care Services (CSHCS) and the local MDHHS office share responsibility for determining eligibility for Home Care Children. All eligibility factors must be met in the calendar month being tested.

NONFINANCIAL ELIGIBILITY FACTORS

CSHCS Responsibilities

CSHCS determines if medical eligibility exists. That is:

- The child requires a level of care provided in a medical institution (for example the hospital, skilled nursing facility or an intermediate care facility); and
- It is appropriate to provide such care for the child at home; and
- The estimated MA cost of caring for the child at home does not exceed the estimated MA cost for the child's care in a medical institution.

CSHCS also obtains necessary information to determine whether the child is disabled and forwards it to the Disability Determination Service DDS. If the criterion in BEM 260 are met, disability will be

certified on a DHS-49-A, Medical-Social Eligibility Certification, by DDS.

Communication to the Local Office

If the child is disabled and requirements above are met, CSHCS sends a MSA-1785, Policy Decision, and the medical packet to the appropriate MDHHS local office. The MSA-1785 certifies that the medical requirements in CSHCS Responsibilities in this item are met.

CSHCS will also notify the MDHHS local office when this category can no longer be used for a child. Pursue eligibility for other MA categories when a child is no longer eligible for this category. A child determined medically eligible for this category does not need a determination of Medicaid eligibility under a MAGI category first.

Local Office Responsibilities

Do not authorize MA under this category without a MSA-1785 certifying medical eligibility for this category. Use this category when the child is not an SSI or FIP recipient. Use this category before using a Group 2 category.

If a MSA -1785 is received for a child who is not an MA applicant or recipient, treat the MSA -1785 as a request for assistance. Contact the child's parents concerning an MA application for the child.

Determine if the child meets the MA eligibility factors in the following items:

- BEM 220, Residence.
- BEM 223, Social Security Numbers.
- BEM 225, Citizenship/Alien Status.
- BEM 257, Third Party Resource Liability.
- BEM 270, Pursuit of Benefits.

Note: An ex parte review (see glossary) is required before Medicaid closures when there is an actual or anticipated change, unless the change would result in closure due to ineligibility for all Medicaid. When possible, an ex parte review should begin at least 90 days before the anticipated change is expected to result in case closure.

The review includes consideration of all MA categories; see BAM 115 and 220.

INQUIRIES

Inquiries from medical providers or parents concerning medical eligibility (requirements in CSHCS Responsibilities in this item) under this category should be directed to a nurse consultant at:

Michigan Department of Health and Human Services
Public Health Administration
Bureau of Family, Maternal & Child Health, Children's Special
Health Care Services
Lewis Cass Building, 6th Floor
320 S. Walnut Street
Lansing, MI 48913
Phone: 1-800-359-3722

FINANCIAL ELIGIBILITY FACTORS

Financial eligibility is determined by the MDHHS local office. Only the child's own income and assets are counted. Do not deem income and assets from the child's parents to the child.

Groups

The child is a fiscal and asset group of one.

Assets

The child's countable assets cannot exceed the asset limit in BEM 400. Countable assets are determined based on MA policies in BEM 400 and BEM 401.

Divestment

Do not apply policy in BEM 405.

Income Eligibility

Apply the MA policies in BEM 500, 501, 502, 503, 504, and 530 to determine net income. Income eligibility exists when the child's net income is equal to or less than 100 percent of the SSI federal benefit rate; see RFT 248:

VERIFICATION REQUIREMENTS

Verification requirements for all eligibility factors are in the appropriate manual items.

LEGAL BASE

MA

Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248),
Section 134

*State of Michigan Department of Human Services,
Home Care Children Bridges Eligibility Manual
(BEM 170) 10-1-17, pp 1-4.*

The State of Michigan operates a medical coverage program for children eligible under the TEFRA provision with approval from the Centers for Medicare and Medicaid Services (CMS). The program is titled Home Care Children and is housed within the Department of Health and Human Services (MDHHS) Children's Special Health Care Services Division (CSHCS). Because the State of Michigan opted to operate the Home Care Children program it must offer the program statewide and must determine for each child requesting an eligibility determination, whether he meets the three conditions of 42 CFR 435.225(b). Because the TEFRA provision includes eligibility for Medicaid benefits the Department is required to send a written notice of Home Care Children denial and the Petitioner possessed a right to a Medicaid fair hearing. See 42 CFR 431.200, *et seq.*

The Department's witness testified he has a master's degree in pediatric nursing, is a licensed registered nurse, and has worked as a nurse consultant for the Department for approximately 30 years. The Department's witness indicated that as part of his job he makes determinations regarding eligibility for numerous programs for children with disabilities, including the Home Care Children (HCC) program. The Department's witness explained that the HCC program is a special pathway to Medicaid for persons who would not otherwise be eligible for Medicaid. The Department's witness testified that he reviewed the request for consideration for the HCC program from the Petitioner in the instant matter, along with supporting medical documentation submitted by Petitioner's family, and determined that Petitioner was not eligible for the HCC program because she did not require an institutional level of care.

The Department's witness indicated that he determined that Petitioner did not require the level of care found in a hospital or skilled nursing facility and that a Department specialist determined that Petitioner did not require the level of care found in an ICF for her behavioral issues. The Department's witness noted that while the DHS-49 identified developmental delays, there were no significant functional deficits noted. The Department's witness indicated that while neurodevelopmental weaknesses were listed, they were not defined. The Department's witness noted that Petitioner identifies as in

age-appropriate schooling, academically successful without learning concerns, socially successful in school and the community environment. The Department's witness noted that while Petitioner was listed as g-tube dependent she was increasing her oral intake of food and received the majority of her nutrition daily orally. The Department's witness also noted that the developmental notes in the well child report identified Petitioner's activities as normal. The Department's witness also noted that from the records, it was unclear who was coordinating Petitioner's medical care. As such, the Department's witness concluded that Petitioner was not eligible for the HCC program because she did not meet the first criteria for admission into the program, namely that "[t]he child requires a level of care provided in a medical institution (i.e., hospital, skilled nursing facility or intermediate care facility)."

Petitioner's mother testified that Petitioner has a pediatric doctor who oversees all of Petitioner's care, but it is difficult to get documentation from that office. Petitioner's mother indicated that she knows Petitioner's presentation was murky but part of that is because she is only 5-years-old. Petitioner's mother testified that it is difficult to weed out the medical from the mental difficulties, but that Petitioner is struggling academically. Petitioner's mother pointed out that Petitioner cannot understand what a rhyme is and has difficulty counting much past 10. Petitioner's mother testified that Petitioner is now getting hearing aids to assist with her borderline hearing loss and auditory processing issues. Petitioner's mother noted that at school, teachers use a speaker to communicate with Petitioner and that works very well because she has difficulty filtering out other noise.

Petitioner's mother testified that Petitioner is still on a g-tube despite the fact that they have worked extensively to get her to eat more food at home. Petitioner's mother noted that they could not get Petitioner off the g-tube because of the hyperglycemia. Petitioner's mother testified that Petitioner's blood sugar levels continue to drop even a couple hours after eating so it is not just after fasting through the night. Petitioner's mother testified that they began working with an endocrinologist for this issue and ultimately were referred to Cincinnati Children's Hospital, where the last appointment was in November 2021. Petitioner's mother testified that they have been checking Petitioner's blood sugar since she was 2 years old, and Petitioner has been on a Continuous Glucose Monitor (CGM) since then.

Petitioner's mother testified that while it looks from the medical records like there are gaps in Petitioner's care, there are no gaps, it is just a lack of documentation. Petitioner's mother noted that Petitioner was hospitalized once when she got the flu, and then a double ear infection. Petitioner's mother indicated that Petitioner seems to have a dysfunctional immune system. Petitioner's mother testified that she did not know what the issue noted in the medical records regarding discharge was although she noted they were sent home without a discharge plan.

Petitioner's mother indicated that while Petitioner does get along with other kids, it is because she is little and cute, and they want to take care of her. Petitioner's mother noted that Petitioner does not present as other children do. Petitioner's mother testified that the physical aggression piece is very difficult and that she just wants to be a parent

to Petitioner, not her caregiver. Petitioner's mother testified that the family's insurance changed at the beginning of the year, and she spent hours on the phone trying to get coverage for everything Petitioner needs. Petitioner's mother noted that the family is bleeding money and time trying to take care of Petitioner. Petitioner's mother indicated that she wants Petitioner to independent and thrive, but she is worried that she is going to run out of steam. Petitioner's mother testified that she has looked at the definition of developmental disability and believes Petitioner meets that definition.

In response, the Department's witnesses indicated that the decision here was based on the documentation submitted back in November 2021, but if there is more documentation, and more recent documentation, Petitioner's mother can always ask for another eligibility determination. The Department's witness suggested that Petitioner's mother ask Petitioner's pediatrician to have the definition for developmental disability in front of them when they write their reports.

The preponderance of undisputed evidence in this case demonstrates that the Department properly determined that Petitioner was not eligible for the HCC program at the time of the determination, based on the documentation submitted. The Department's witness testified in a credible manner that in his opinion, based on extensive experience, Petitioner was not a child who requires a level of care provided in a medical institution (*i.e.*, hospital, skilled nursing facility or intermediate care facility). While the DHS-49 identified developmental delays, there were no significant functional deficits noted and while neurodevelopmental weaknesses were listed, they were not defined. Petitioner identifies as in age-appropriate schooling, academically successful without learning concerns, socially successful in school and the community environment. While Petitioner was listed as g-tube dependent she was increasing her oral intake of food and received the majority of her nutrition daily orally. In addition, the developmental notes in the well child report identified Petitioner's activities as normal. As such, it appears that Petitioner is stable in her current environment and would not require the level of care provided in a medical institution. Therefore, Petitioner was not eligible for the HCC program at the time of the determination.

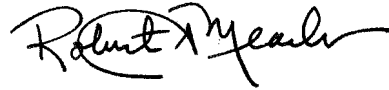
As noted, Petitioner's family can always reapply for the HCC program if the family has or receives new medical information.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly determined that Petitioner was not eligible for the Home Care Children program.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

A handwritten signature in black ink, appearing to read "Robert J. Meade", written in a cursive style.

RM/tem

Robert J. Meade
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 30763
Lansing, Michigan 48909-8139

Petitioner

[REDACTED]
[REDACTED]
[REDACTED], MI
[REDACTED]
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DHHS -Dept Contact

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