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When Differences Between Marketplace and Medicaid MAGI Result in Ineligibility for Either Program

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Q. I am preparing for a fair hearing challenging the denial of Medicaid eligibility for two children. They live with their parents who are not married. The mother earns $20,000/year and the father earns $31,500/year. The mother claims the children as tax dependents. The Marketplace determined that the children do not qualify for Premium Tax Credits because they are under income. However, the state Medicaid agency determined they are not eligible for Medicaid because they are over income. Instead, the state found the children eligible for spend-down once the family incurs $2,750 a month, per child, in medical expenses. Is this correct?

A. The children are eligible for Medicaid with no spend-down. Federal regulations address situations when differences between Marketplace and Medicaid methodologies render an individual financially ineligible for either program. The state should use the Marketplace methodology (e.g. annual income) to determine Medicaid MAGI eligibility, applying 42 C.F.R. § 435.603(i).

Discussion

The rules under Modified Adjusted Gross Income (MAGI) methodologies differ for Marketplace and Medicaid eligibility determinations. Because of those differences, there may be instances in which an individual seemingly is financially ineligible for both programs. This can arise due to two main issues: (1) the differences in household composition rules; and (2) differences in determining income – Medicaid uses a "point in time" or ***current monthly*** income while the Marketplace uses ***projected annual*** income.

Federal MAGI regulations address this situation to ensure an individual is not left without any coverage. Under 42 C.F.R. § 435.603(i), when an individual is determined financially ineligible for both Medicaid and Marketplace subsidies, the Marketplace MAGI methodology should be used to determine eligibility for Medicaid.

1. **Differences in household composition**

Medicaid and the Marketplace have different MAGI rules for determining who is in an applicant's household. For Marketplace eligibility for Premium Tax Credits (PTCs) and Cost Sharing Reductions (CSRs), the household is comprised of the tax filer (or filers for married couples filing jointly) and persons they can claim as dependents.[1]

Marketplace MAGI

In the situation described above, the mother claims both children as tax dependents. Therefore, the children's Marketplace household is three – mother plus the two children. The father's income is not included in the children's Marketplace household because he and the children's mother are unmarried and cannot file federal income taxes jointly.

Because the total annual household income for the mother and her two children is $20,000, below 100% FPL for a family of 3, they are not eligible for PTCs or CSRs.[2]

Medicaid MAGI

In Medicaid, when a child under 19 (or 21 for full time students under state option) is claimed as a tax dependent by just one parent, but lives with both parents, *both* parents are included in the child's Medicaid MAGI household.[3] Although the father is not included in the children's Marketplace household because they have no tax relationship, he is included in the children's Medicaid household because they live together. The children's Medicaid MAGI household is four – mother, father, plus the two children.

In this instance, including the father's income raises the total household income to $51,500 annually, or $4,290 per month, which, at 212% FPL for a family of 4, is over the state's threshold for Medicaid eligibility. Therefore, a state's initial determination might find the children ineligible for Medicaid because they are over income with a four person household.

In this instance, the state erroneously concluded that 42 C.F.R. § 435.603(i) does not apply and instead found the children eligible for Medically Needy (also known as spend-down).[4] However, when a state finds an individual eligible under Medically Needy, it

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[1] 26 U.S.C. § 36B(d)1).

[2] 26 U.S.C. § 36B(c)(1)(A). Note that lawfully present immigrants under 100% FPL can receive PTCs and CSRs if they are not eligible for Medicaid. *See* 26 U.S.C. § 36B(c)(1)(B).

[3] 42 C.F.R. §§ 435.603(f)(2)(ii), (3)(iv).

[4] States may provide Medicaid coverage to persons who are over-income if they meet other eligibility requirements – a category known as "Medically Needy" or "spend-down." States that must establish a "medically needy income level" (MNIL) and choose a budget period of between one month and six months for calculating the spend-down. To receive Medicaid services, an individual must spend down the determined amount on medical expenses within the budget

means that the applicant is *financially ineligible* for Medicaid, but meets all eligibility requirements (e.g., residency). As HHS explains in a Dear State Health Official Letter:

> "At the beginning of the budget period, an individual with income above the MNIL *will not be eligible*. As soon as the individual has incurred sufficient medical expenses, such that, after subtracting incurred medical expenses, her income falls below the MNIL, she is eligible for coverage for the rest of the budget period."[5]

Hence, 42 C.F.R. § 435.603(i) *does apply*, because using the general Medicaid MAGI rules results in "financial ineligibility for Medicaid," and the children's Marketplace income is below 100% FPL.

Solution

When someone has been determined financially ineligible for Medicaid using Medicaid MAGI methodologies, but is under 100% FPL and thus ineligible for Marketplace subsidies, 42 C.F.R. § 435.603(i) requires states to use the Marketplace MAGI methodology to determine Medicaid eligibility.

Here, the children are seemingly ineligible for Medicaid because, using the four person household, their current monthly income is 212% FPL. However, the children are ineligible for Marketplace subsidies because their projected annual income, based upon a household of three, is below 100% FPL.

Instead of using the four person household to decide their Medicaid eligibility, the state must use the three person Marketplace household and income to determine Medicaid eligibility. The children are eligible for Medicaid because their total three-person household income, using the Marketplace methodology, is under 100% FPL.[6]

2. Differences in Income Rules

As noted above, financial eligibility Medicaid under MAGI is based upon current monthly income.[7] However, eligibility for Marketplace subsidies is based upon projected annual income.[8] As a result, an individual applying for coverage may have different income

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period. *See* 42 U.S.C. § 1396a(a)(10)(C); 42 C.F.R. §§ 435.300-.350, 435.800-.845, 436.800-.845; see also *Atkins v. Rivera*, 477 U.S. 154 (1986); *Brobst v. Dep't of Pub. Welfare*, 915 A.2d 160 (Pa. Commw. Ct. 2007) (requiring claimant to spend down certain amount on expenses every month to be eligible for medically needy program).

[5] Dear State Health Official Letter, Re: Minimum Essential Coverage, SHO-14-002 (Nov. 7, 2014) at 6, (emphasis added) *available at* https://www.medicaid.gov/federal-policy-guidance/downloads/sho-14-002.pdf.

[6] 42 C.F.R. § 435.603(i).

[7] 42 U.S.C. § 1396(a)(e)(14)(H); 42 C.F.R. § 435.603(h)(1)).

[8] 45 C.F.R § 155.305(f)(i)).

determinations due to the differing methodologies. While the example above focused on household composition, another example can illustrate how differences in income counting can affect eligibility, particularly for persons with fluctuating income.

For example, a freelance writer has a current monthly income of $1,400. However, her projected annual income is $11,000 (under 100% FPL). She is over income for Medicaid, but under-income for Marketplace subsidies.

Marketplace MAGI

Because her projected annual income is under 100% FPL, she is not eligible for Marketplace subsidies.

Medicaid MAGI

Because her current monthly income is $1,400, she is determined financially ineligible for Medicaid because she is over income (147% FPL while her state's Medicaid expansion eligibility only covers up to 138% FPL).

Solution

When someone has been determined financially ineligible for Medicaid using Medicaid MAGI methodologies, but is under 100% FPL and thus ineligible for Marketplace subsidies, 42 C.F.R. § 435.603(i) requires states to use the Marketplace MAGI methodology to determine Medicaid eligibility. The freelance writer is thus eligible for Medicaid because her income, using the Marketplace MAGI methodology, is 98% FPL.[9]

Conclusion

The introduction of MAGI methodologies to determine financial eligibility across multiple insurance affordability programs, including Medicaid, CHIP, and subsidies for Marketplace coverage, was intended to simplify and streamline eligibility processes. However, the differences in Medicaid and Marketplace MAGI can be complex, and some states continue to experience implementation challenges. The failure of states to properly apply MAGI rules leads to wrongful eligibility determinations. It is important for legal services and other advocates to master the new MAGI rules to assist low income clients in obtaining the coverage they need.

[9] 42 C.F.R. § 435.603(i).