

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No.: 2010-10287
Issue No.: 2017
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 25, 2010
Wayne County DHS (57)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37 and Claimant's four requests for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan, on March 25, 2010. Claimant appeared and testified. [REDACTED], and [REDACTED] [REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUES

1. Whether Claimant's request for a hearing was filed in a timely manner?
2. Whether DHS properly denied Medicare Savings Program/Qualified Medicare Beneficiaries (QMB) benefits to Claimant prior to October 1, 2009?
3. Whether Claimant is eligible for QMB benefits as of October 1, 2009?

FINDINGS OF FACT

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

1. Claimant was born in [REDACTED]. She became disabled on October 7, 1998, and began receiving Social Security (RSDI) benefits on April 1, 1999. In 2008, her Social Security income was \$547 per month.
2. Claimant's son, [REDACTED], whose date of birth is [REDACTED], became entitled to RSDI benefits on June 1, 2006, in the amount of \$197 per month.
3. In June, 2008, Claimant earned \$773.98 in child development and care income.
4. Also in June, 2008, Claimant's husband, [REDACTED] (deceased), received RSDI of \$754.40 gross per month.
5. At some point in 2008, Claimant began receiving Medicare Savings Program (QMB) benefits, although she may have been in excess of DHS' income limits for the receipt of these benefits.
6. Effective January 1, 2009, DHS determined that Claimant had excess income and terminated Claimant's QMB benefits.
7. However, on January 7, 2009, Claimant was approved for Medicaid and Medicare Savings Program benefits. Claimant received notice that her Medicaid benefits began January 1, 2009, and her Medicare Savings Program benefits would begin February 1, 2009.
8. Claimant's QMB benefits did not begin in February, 2009. On February 9, 2009, Claimant filed a written request for hearing, asking, "Why did my QMB stop?"
9. Claimant did not receive QMB benefits for January-September, 2009.

10. On September 1, 2009, DHS conducted a redetermination and found that Claimant's income was lower than her 2008 income, and she now had less income than the poverty limit and qualified for QMB benefits. Claimant's new eligibility date was October 1, 2009.
11. Claimant filed three additional written hearing requests in this matter, on November 16 and December 23, 2009, and on January 13, 2010.

CONCLUSIONS OF LAW

The Medical Assistance (MA or Medicaid) program was established by Title XIX of the Social Security Act and is implemented by Code of Federal Regulations (CFR) Title 42. DHS administers MA pursuant to Michigan Compiled Laws Sections 400.1 *et seq.* and 400.105. DHS' MA policies are found in the Bridges Administrative Manual (BAM) and the Bridges Eligibility Manual (BEM). These manuals are available online at www.mich.gov.

Timeliness. In this case, DHS alleges that Claimant's request for a hearing is untimely because it was filed more than ninety days from the date of the negative case action. BAM Item 600 sets forth the deadlines for filing a hearing request. The client has ninety days from the date of the written notice of the negative case action to request a hearing. The client may also request a hearing within the time between the receipt of notice and the date of DHS' proposed future action, if the DHS action in question is one that is proposed to be taken in the future. Also, a client may file a hearing request within eleven days of the effective date of an immediate negative action of which they have received adequate notice. BAM 600, p. 4.

Based on my findings of fact above, DHS regulations, and the entire record as a whole, I conclude that Claimant's February 9, 2009, request for a hearing was timely with regard to the

January 1, 2009, termination of her QMB benefits. The January 1, 2009, termination was a negative action, and Claimant's request was within ninety days of the negative action.

Also, with regard to the February 9, 2009, hearing request, I conclude that it is sufficiently timely for all of the subsequent issues raised by Claimant in her three later requests. I conclude that Claimant's three later requests are cumulative and have no effect on her hearing rights other than to protect and preserve her right to challenge subsequent denials in the event that the February 9, 2009, request was lost.

QMB Benefits for January 1-September 30, 2009. BEM Item 165 sets forth the Medicare Savings Programs operated by DHS. There are three types of premium coverage. Customers in the first category, Qualified Medicare Beneficiaries, receive full coverage of their Medicare premiums. The client's income is the major factor in determining whether a person is eligible for QMB or another, lesser amount of coverage. In order to receive QMB benefits, the customer's net income cannot exceed the poverty level. BEM 165, p. 1.

Based on my findings of fact above, BEM 165, and the entire record as a whole, I find that Claimant had excess income in January-September, 2009, based on the 2008 income information which was used to project her 2009 income. I conclude that, in 2008, Claimant had her own RSDI, she had child development and care income, and she had her son's and her husband's RSDI income. I conclude that, while Claimant received QMB benefits in 2008, DHS was right to recalculate a proper income budget and terminate those benefits when they made an accurate calculation for the coming year, 2009.

QMB Benefits for October, 2009-Present. BEM 165 states the DHS procedures for initiating QMB benefits for customers. DHS is to begin QMB coverage for the calendar month


after the month in which the agency processes the application or redetermination. QMB benefits are not available for any months before the processing month. BEM 165, p. 3.

Based on the findings of fact above, BEM 165, and the entire record as a whole, I conclude that DHS was correct in beginning Claimant's QMB benefits in October, 2009, because the recalculation occurred September 1, 2009. BEM 165 requires that the agency must start the benefits one month after the eligibility is awarded, and that is what they did. I find that Claimant's QMB benefit starting date is correct for October, 2009, based on her 2009 income for the first part of 2009.

I find that, as Claimant's QMB benefits were again terminated on or about November 1, 2009, DHS acted in violation of law and Claimant's benefits must be restored. DHS' action is PARTIALLY REVERSED, to the extent that DHS has not paid QMB benefits to Claimant as of October 1, 2009, on a continuing basis.

DECISION AND ORDER

DHS' denial of QMB benefits to Claimant for January-September, 2009 is AFFIRMED. DHS is Ordered to initiate QMB benefits to Claimant from October 1, 2009, on a continuing basis and to remit to Claimant those QMB benefits not provided to her during that time. By this decision, DHS is PARTIALLY REVERSED.



Jan Leventer
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 9, 2010

Date Mailed: April 12, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

JL/pf

cc:

