

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201416077
Issue No.: 2007
Case No.: [REDACTED]
Hearing Date: February 19, 2014
County: Kent

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

Following Claimant'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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on February 19, 2014 from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] (Authorized Hearing Representative (AHR)/Spanish Interpreter) and [REDACTED] (Claimant). Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Eligibility Specialist) and [REDACTED] (Family Independence Manager).

ISSUE

Did the Department properly determine Claimant's eligibility for the Qualified Medicare Beneficiaries Medicare Savings Program (MC-QMB)?

FINDINGS OF FACT

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

1. Effective February 1, 2013, Claimant was active for MC-QMB.
2. On November 12, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605), which closed his MC-QMB because Claimant: (1) no longer met the basic criteria for the Medicare Savings Program; and (2) was not enrolled in Medicare Part A.
3. On November 22, 2013, the Department received Claimant's request for a hearing concerning the closure of his QMB case.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

Medicare Savings Programs are SSI-related MA categories and are neither Group 1 nor Group 2 categories. BEM 165, p 1 (10-1-2013). There are three categories that make up the Medicare Savings Programs. BEM 165. The three categories are: (1) Qualified Medicare Beneficiaries. This is also called full-coverage QMB and just QMB. Program group type is QMB. BEM 165. (2) Specified Low-Income Medicare Beneficiaries. BEM 165. This is also called limited-coverage QMB and SLMB. BEM 165. Program group type is SLMB. BEM 165. (3) Q1 Additional Low-Income Medicare Beneficiaries. This is also referred to as ALMB and as just Q1. BEM 165. Program group type is ALMB. BEM 165. All eligibility factors must be met in the calendar month being tested. BEM 165, p 1.

QMB pays the following: Medicare premiums, Medicare coinsurances, and Medicare deductibles. BEM 165, p 2. QMB pays Medicare Part B premiums and Part A premiums for those few people that have them. BEM 165, p 2.

A person may wish to know whether MA will pay Medicare premiums before enrolling in Medicare. The person may even contact the Department before reaching age 65 (example, during the three months before the person's 65th birthday). BEM 165, p 4. Policy directs the Department worker to advise persons listed under Automatic QMB above that MA will pay their Medicare premium and to do a determination of eligibility for all other persons. In doing this determination, the Department worker shall: (1) explain the nonfinancial eligibility factors; (2) assume they will be met; (3) use current information to determine financial eligibility; (4) do **not** ask for verification; (5) explain that changes may affect the actual determination of eligibility; and (6) be sure to discuss asset policy thoroughly if the person's assets exceed the limit. BEM 165, p 4.

For QMB, "entitled to Medicare Part A" means the person meets condition 1, 2 or 3: (1.) Is receiving Medicare Part A with no premium being charged. A premium is being charged even when it is being paid by the Buy-In program. BENDEX and State Online Query (SOLQ) indicate whether a Medicare Part A premium is being charged. (2.) Refused premium-free Medicare Part A. Suffix. Claim number suffix is always M1. (3.) Is eligible for, or receiving, Premium HI (Hospital Insurance). Premium HI is what the Social Security Administration calls Medicare Part A when it is **not** free of charge. Suffix. Claim number suffix is M. Exception: Medicare Part A under section 1818A of the

Social Security Act does **not** meet this eligibility factor; see Part A Identification in this item. BEM 165, p 5.

Here, the Department contends that Claimant's QMB case closed because he failed to meet the Medicare Cost Share requirements (being enrolled in Medicare Part A). The Department's hearing summary also indicates, "12/4/2013: Email sent to Buy-in-Unit to determine eligibility and if this is an computer error." [sic] Claimant's AHR, on the other hand, contends that Claimant has been in continuing discussions with the Social Security Administration (SSA) with regard to his Medicare eligibility, but he has not been provided with answers.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The record contains a copy of email correspondence from Claimant's caseworker to the "Buy-In-Unit" concerning Claimant's eligibility for Medicare Part B. These emails indicate that Claimant's SOLQ noted that his Part B buy in start date was July 1, 2013 and end date was July 1, 2013. Claimant's caseworker noted in the email that the closing was due to non-payment and then she inquired about the reason why Claimant was previously approved for Part B, but not currently enrolled for Part B. The Buy-In-Unit provided the following response: "The State is trying to pay premiums, due to a personal characteristics error (hyphenated last name) CMS is not accepting payment. A problem file was sent to TPU 10/20/13 requesting buy-in. It can take up to 120 days for Medicare files to update."

Based upon the entire hearing record, this Administrative Law Judge is not persuaded that the Department properly closed Claimant's MC-QMB case. The reason is because the Department conceded that the closure may be due to a computer error. This was indicated in the email exchange and this was also indicated on the Department's hearing summary. The Department worker, during the hearing, offered that Claimant's QMB closure may have been due to his inability to procure enrollment in Medicare Part A due to his purported failure to pay his premiums. The SOLQ indicated that the Part A and B buy-in start dates were July 1, 2013 and stop date of August 1, 2013. Both Part A and Part B were terminated due to nonpayment of premiums. This does not explain, however, that the Department's assertions that Claimant's Medicare Part B eligibility determinations may not be accurate.

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 did not act in accordance with Department policy when it closed Claimant's MC-QMB case.

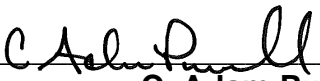
DECISION AND ORDER

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 Claimant's MC-QMB eligibility back to the date of closure (December 1, 2013).
2. Redetermine Claimant's eligibility for Medicare Part A or Part B.

IT IS SO ORDERED.



C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 25, 2014

Date Mailed: February 25, 2014

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) 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. MAHS 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 (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

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The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

CAP/aca

cc:

