

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201418723
Issue No.: 2007
Case No.: [REDACTED]
Hearing Date: March 6, 2014
County: Oakland County DHS #02

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 March 6, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] [REDACTED].

ISSUE

Whether the Department of Human Services (Department) properly closed the Claimant's Medicare Savings Program benefits?

FINDINGS OF FACT

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

1. The Claimant was an ongoing Medicare Savings Program recipient.
2. The Claimant receives monthly Retirement, Survivors, and Disability Insurance (RSDI) in the gross monthly amount of \$ [REDACTED] as of November 1, 2013.
3. On June 1, 2013, the Claimant received an annual payment from an annuity in the gross amount of \$ [REDACTED].
4. On November 25, 2013, the Department notified the Claimant that it would close his Medicare Savings Program benefits as of January 1, 2014.
5. The Department received the Claimant's request for a hearing on December 6, 2013, protesting the closure of his Medicare Savings Program.

CONCLUSIONS OF LAW

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.

All earned and unearned income available to the Claimant is countable. Earned income means income received from another person or organization or from self-employment for duties for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMA), alimony, and child support payments. The amount counted may be more than the client actually receives because the gross amount is used prior to any deductions. Department of Human Services Bridges Eligibility Manual (BEM) 500 (July 1, 2013).

The Claimant was an ongoing Medicare Savings Program recipient when the Department received the Claimant's completed Redetermination (DHS-1010) form on November 1, 2013. The Department conducted a routine review of the Claimant's eligibility to receive benefits and on November 25, 2013, the Department notified him that it would close his Medicare Savings Program benefits as of January 1, 2014, because his income exceeded the limit to receive those benefits.

The Claimant receives monthly Retirement, Survivors, and Disability Insurance (RSDI) in the gross monthly amount of \$ [REDACTED] as of November 1, 2013. The Claimant received an annual annuity payment on June 1, 2013, in the gross amount of \$ [REDACTED]. The Department determined his prospective income from the annuity by dividing the gross annuity payment received on June 1, 2013, by 12 months. The Claimant's gross monthly income (if correctly determined) of \$ [REDACTED] exceeds the \$ [REDACTED] limit set forth in Department of Human Services Reference Table Manual (RFT) 242 (April 1, 2014), p 1.

The Claimant submitted a timely hearing request protesting the denial of Medicare Savings Program benefits.

The Claimant argues that the Department has improperly applied a cost of living increase to his Retirement, Survivors, and Disability Insurance (RSDI) benefits in its eligibility determination.

Federal law requires that for January, February and March:

- The RSDI cost-of-living increase received starting in January be disregarded for fiscal group members, and
- The income limits for the preceding December be used.

For all other months, countable RSDI means the countable amount for the month being tested. Department of Human Services Bridges Eligibility Manual (BEM) 165 (April 1, 2014), pp 7-8.

On November 25, 2013, the Department determined the Claimant's eligibility to receive Medicare Savings Program benefits effective January 1, 2014. This Administrative Law Judge finds that the Department did not use Retirement, Survivors, and Disability Insurance (RSDI) benefits for January of 2014 that included a cost of living increase, but instead used RSDI the Claimant received in November of 2013. Any previous cost of living increases are not excluded by Department policy. This Administrative Law Judge also finds that the Department applied the income limit in effect for the previous December, which was the income limit in effect on December 1, 2013. This income limit is the income limit listed in the Reference Table Manual Item 242, effective April 1, 2013.

The Claimant argues that the Department has improperly allocated the annuity income he receives. The Claimant argues that he receives one annuity payment in June of each year, and that it is improper to apply the interest income he receives from this annuity to other months.

Department policy requires that interest and dividends paid directly to a client count as unearned income in the month received. Department of Human Services Bridges Eligibility Manual (BEM) 503 (January 1, 2014), p 22.

Based on the evidence and testimony available during the hearing, this Administrative Law Judge finds that the Department has failed to establish that it properly determined the Claimant's prospective monthly income attributable to the Claimant's annuity.

However, the Claimant has the burden of establishing eligibility to receive a benefit from the Department, and this Administrative Law Judge finds that the Claimant has failed to establish eligibility for the Medicare Savings Program based on his income.

The Claimant provided a verification document to the Department showing that he is due a contractual annuity payment in the gross amount of \$ [REDACTED] and a dividend payment or additional amount of \$ [REDACTED] payable on June 1, 2013. If the dividend amount is classified as an interest payment paid directly to the Claimant and countable as unearned income only in June of 2013, the Claimant's gross monthly income remains over the income limit. This can be determined by adding his monthly Retirement, Survivors, and Disability Insurance (RSDI) benefit to the \$ [REDACTED] contractual annuity payment divided by 12, which results in a gross monthly income of \$ [REDACTED] which exceeds the income limit as of December 1, 2013.

The Claimant argued that a protected income deduction was not applied to his eligibility for the Medicare Savings Program.

This Administrative Law Judge finds that the protected income deduction is not relevant to the Medicare Saving Program. There is no protected income deduction listed in BEM 165, but the protected income level is an amount used by the Department based a client's county of residence to determine the deductible for Medicare benefits.

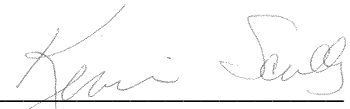
The Claimant argued that the Department failed to consider his Medicare supplement insurance expenses when determining his eligibility for the Medicare Savings Plan.

This Administrative Law Judge finds that there is no expense deduction for Medicare supplement insurance payments authorized by BEM 165. Furthermore, there is no income exclusion due to medical expenses from unearned income authorized by BEM 503.

This Administrative Law Judge finds that the Claimant failed to establish eligibility for benefits under the Medicare Savings Program as of January 1, 2014, and the Department's closure of these benefits is therefore upheld.

DECISION AND ORDER

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 closure of Medicare Savings Program benefits as of January 1, 2014, based on excess income is **UPHELD**.



Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 19, 2014

Date Mailed: March 19, 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.

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

KS/hj

cc:

