

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-023378
Issue No.: 2001
Agency Case No.: [REDACTED]
Hearing Date: February 17, 2016
County: Macomb (20)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Petitioner'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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on February 17, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], hearing facilitator.

ISSUE

The issue is whether MDHHS properly failed to determine Petitioner's Medicare Savings Program (MSP) eligibility.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was an ongoing MA benefit recipient.
2. As of October 2012, Petitioner was responsible for payment of a Part B Medicare premium.
3. In October 2012, Petitioner received MA benefits through Low-Income Family (LIF).
4. In November 2012, Petitioner received MA through a Group 2 category.
5. On [REDACTED], Petitioner requested a hearing to pursue the lack of MSP benefits since October 2012.

CONCLUSIONS OF LAW

Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. MDHHS (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner's hearing request noted a need for accommodation; specifically, a telephone hearing was requested. Petitioner's request for accommodation appeared to be overlooked as Petitioner was directed to appear at a MDHHS office for the hearing. Petitioner testified she could proceed with the hearing as long as patience could be given to her testimony; Petitioner testimony elaborated she was having difficulty speaking. The hearing proceeded and Petitioner had no complaints about the patience given to her.

Petitioner testified MDHHS recently approved her for MSP benefits, beginning October 2015. Petitioner testified she received benefits beginning November 2015. Petitioner testified she wanted a hearing, in part, so she could receive MSP benefits from October 2015.

Petitioner's written hearing request asserted a dispute based on a MDHHS failure to process Petitioner's MSP eligibility from two years earlier. Petitioner's hearing request did not specify any dispute concerning October 2015 eligibility. If Petitioner intended to dispute an issuance of MSP benefits from October 2015, she should have specified the complaint in her hearing request. This decision will only address Petitioner's MSP benefit eligibility from two years earlier (as stated in Petitioner's hearing request).

It should be noted that clients may not typically dispute benefit eligibility for a period from several years earlier. This general rule is due to the 90 day time limit a client has to request a hearing. The 90 day period begins to run when MDHHS issues a written notice. In the present case, MDHHS did not issue a written notice of Petitioner's MSP eligibility. Without a written notice, Petitioner's hearing request cannot be untimely. Thus, Petitioner is not procedurally barred from pursuing MSP eligibility from October 2012.

It was not disputed that Petitioner never specifically applied for MSP benefits. Petitioner's primary contention was that MDHHS should have advised her to apply for MSP benefits. Petitioner did not cite any policy supporting her contention. MDHHS policy is not to obligate MDHHS to inform a client to apply for benefits. Petitioner's

contention that MDHHS had an obligation to inform her to apply for MSP benefits was not persuasive.

Despite the above finding, an application may not be necessary for a determination of MSP benefits. [MDHHS is to] do Medicare Savings Programs determinations for the following clients if they are entitled to Medicare Part A: Medicare Savings Programs-only, Group 2 MA (FIP-related and SSI-related), Extended Care (BEM 164), Healthy Kids, [and/or] TMA-Plus. BEM 165 (October 2010), p 1.

Unfortunately, during the hearing it was not definitively established what type of coverage Petitioner received. Conclusions will have to be made based on the presented evidence.

MDHHS testimony indicated Petitioner was an MA benefit recipient since at least October 2012. MDHHS testimony indicated Petitioner received LIF benefits in October 2012. [LIF] is a FIP-related Group 1 MA category. BAM 110 (January 2011), p. 1. LIF is not a category entitling Petitioner to a MSP determination. It is found MDHHS properly did not determine Petitioner's MSP eligibility for October 2012.

After October 2012, Petitioner's eligibility appeared to change to a deductible. MDHHS testimony indicated Petitioner received worker's compensation income which likely placed her over the Medicaid eligibility income limits.

In general, the terms Group 1 and Group 2 relate to financial eligibility factors. BEM 105 (October 2010), p. 1. For Group 1, net income (countable income minus allowable income deductions) must be at or below a certain income limit for eligibility to exist. *Id.* The income limit, which varies by category, is for nonmedical needs such as food and shelter. *Id.* Medical expenses are not used when determining eligibility for FIP-related and SSI-related Group 1 categories. *Id.* For Group 2, eligibility is possible even when net income exceeds the income limit. *Id.* This is because incurred medical expenses are used when determining eligibility for FIP-related and SSI-related Group 2 categories. *Id.*

If Petitioner was eligible for Medicaid subject to a deductible, her MA category had to be a Group 2 category. This category required MDHHS to determine Petitioner's MSP eligibility. It is found MDHHS improperly failed to determine Petitioner's MSP eligibility, effective November 2012.

As noted above, Petitioner is only entitled to a determination of MSP eligibility if she received Medicare Part A. Generally, if Petitioner was responsible for paying a Part B premium, she was most likely also receiving Part A Medicare. Based on this generality, it will be presumed that Petitioner had Part A Medicare since November 2012 and MDHHS will be ordered to determine Petitioner's MSP eligibility since November 2012. It should be noted that Petitioner testimony indicated unspecified difficulties in completing Social Security Administration documentation. Petitioner's paperwork difficulties could have rendered her ineligible for Part A. Though Petitioner's possible

Medicare Part A ineligibility will not be held against Petitioner in this decision, MDHHS may consider whether Petitioner received Part A in determining Petitioner's MSP eligibility.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly failed to determine Petitioner's MSP eligibility from November 2012. It is ordered that MDHHS begin the following actions, in accordance with policy and this hearing decision, within 10 days of the date of mailing of this decision:

- (1) determine Petitioner's MSP eligibility, effective November 2012; and
- (2) initiate a supplement of any benefits improperly not issued.

The actions taken by MDHHS are **REVERSED**.



Christian Gardocki

Administrative Law Judge
for Nick Lyon, Director

Department of Health and Human Services

Date Signed: **FEBRUARY 25, 2016**

Date Mailed: **FEBRUARY 25, 2016**

CG / hw

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from MAHS within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion. MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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 48909-8139

CC:

