



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: May 18, 2016
MAHS Docket No.: 16-003892
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 May 9, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. [REDACTED], Petitioner's spouse, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], hearing facilitator.

ISSUE

The issue is whether MDHHS properly processed Petitioner's eligibility for Medicare Savings Program (MSP).

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 Qualified Medicare Beneficiaries (QMB) recipient.
2. Petitioner's ongoing MSP eligibility, was based, in part, on a group composition which included his spouse.
3. On an unspecified date in or near January 2016, Petitioner began temporary residency in a nursing home.

4. On [REDACTED], MDHHS determined Petitioner was no longer eligible to receive QMB, effective April 2016, in part, based on a 1-person MA benefit group.
5. On [REDACTED], Petitioner requested a hearing to dispute the termination of MSP eligibility.

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 requested a hearing to dispute a termination of QMB eligibility, effective April 2016. MDHHS presented a QMB budget (see Exhibit 1, p. 4) verifying Petitioner was determined to be ineligible due to excess income.

[MDHHS is to] determine countable income [for MSP] according to the SSI-related MA policies in BEM 500 and 530, except as explained in COUNTABLE RSDI in this item. [MDHHS is to] apply the deductions in BEM 540 (for children) and 541 (for adults) to countable income to determine net income.

It was not disputed that Petitioner received unearned income of \$1,012/month. MDHHS allows a \$20 disregard, making Petitioner's countable income \$992.

Countable budget expenses including those for guardianship, conservator, and cost of living adjustments (for January through March only). None of the expenses were applicable to Petitioner. It is found Petitioner's net countable income for MSP eligibility is \$992.

Income eligibility exists [for MSP] when net income is within the limits in RFT 242 or 247. *Id.*, p. 7. The QMB income limit for Petitioner's 1-person group is \$990. RFT 242 (May 2015), p. 1. Petitioner's countable net income exceeds the income limits for QMB eligibility. Accordingly, it is found that DHS properly terminated Petitioner's QMB eligibility.

Petitioner's hearing request specifically cited a dispute over QMB. Petitioner testimony suggested he interpreted the termination of QMB to also be a termination of MDHHS' continued payment of his Medicare premium. MDHHS testimony conceded Petitioner

was not found eligible for programs other than QMB that could cover Petitioner's Medicare premium. The analysis will proceed to determine if MDHHS correctly did not find Petitioner eligible for MSP programs other than QMB.

MSP programs offer three different degrees of assistance with payment toward a client's Medicare premium and deductibles. BEM 165 (April 2014), p. 1. Qualified Medicare Beneficiaries (QMB) coverage pays for a client's Medicare premiums, coinsurances, and deductibles. *Id.* Specified Low Income Beneficiaries (SLMB) coverage pays for a client's Medicare Part B premium. *Id.* Additional Low Income Beneficiaries (ALMB) coverage pays for a client's Medicare Part B premium if DHHS funding is available. *Id.* Income is the major determiner of category. *Id.*

An ex parte review (see glossary) is required before Medicaid closures when there is an actual or anticipated change, unless the change would result in closure due to ineligibility for all Medicaid. *Id.*, p. 16. The review includes consideration of all MA categories; see BAM 115 and 220. *Id.* Presumably, this policy applies to MSP as well as Medicaid as the statements are contained within the MSP policy chapter.

MDHHS testimony conceded an ex-parte review should have been performed for all Medicare Savings Programs after Petitioner was deemed ineligible for QMB. The failure to perform an ex-parte review appears to be costly for Petitioner as he appears eligible for SLMB which has an income qualifying range (before applying a \$20 disregard) from \$1,001.01- \$1,208.00 (see RFT 242). It is found MDHHS failed to perform an ex-parte review of Petitioner's MSP eligibility, effective April 2016.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly terminated Petitioner's QMB eligibility, effective April 2016. The actions taken by MDHHS are **PARTIALLY AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly failed to process Petitioner's MSP eligibility. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Redetermine Petitioner's MSP eligibility, effective April 2016, subject to the finding that MDHHS failed to perform an ex-parte review of all MSP categories; and
- (2) Supplement Petitioner for any benefits improperly not issued.

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



CG/hw

Christian Gardocki
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

DHHS

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]