



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: November 14, 2016
MAHS Docket No.: 16-013454
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 October 19, 2016, from Lansing, Michigan. Petitioner was represented by her Authorized Hearing Representative [REDACTED] and her Department of Veterans Affairs fiduciary [REDACTED]. The Department was represented by Long Term Care Specialist [REDACTED]. Department's Exhibit A, pages 1-66 was admitted into evidence. Petitioner's Exhibit 1, pages 1-16 was admitted into evidence.

ISSUE

Did the Department properly end Petitioner's Medicare Savings Program (MSP) beginning September 1, 2016?

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 recipient of Medicare Savings Program (MSP) benefits.
2. On June 13, 2016, a Redetermination (DHS-1010) was submitted by Petitioner. The packet contained a letter from the [REDACTED] which stated Petitioner receives a monthly benefit of \$ [REDACTED] for Survivors Pension with Aid and Attendance. Department Exhibit A page 11.
3. On July 15, 2016, Petitioner was sent a Verification Checklist (DHHS-3503) requesting verification of the VA Pension breakdown.

4. On July 15, 2016, the Department received a July 26, 2014 letter from the [REDACTED] sent to Petitioner's [REDACTED] fiduciary [REDACTED]. The letter breaks down Petitioner's monthly expenses and identifies the expenses paid from the VA benefit. Department Exhibit A page 30.
5. On July 20, 2016, the Department mailed a Verification of VA Payments (DHS-75) form to the [REDACTED].
6. On July 29, 2016, Petitioner's Medicare Savings Program (MSP) financial eligibility budget was run using her \$ [REDACTED] Social Security Administration benefits and her entire \$ [REDACTED] VA benefit amount. Petitioner exceeded the income limit for Medicare Savings Program (MSP) benefits. Department exhibit A page 40. Petitioner was sent a Health Care Coverage Determination Notice (DHHS-1606) stating she was not eligible for from September 1, 2016 ongoing.
7. On September 12, 2016, Petitioner's Authorized Hearing Representative [REDACTED] submitted a hearing request. The hearing request packet included a January 29, 2016, letter from the [REDACTED] sent to Petitioner's [REDACTED] fiduciary [REDACTED]. The letter breaks down Petitioner's monthly expenses and identifies the expenses paid from the VA benefit. Department Exhibit A page 59 & 60 and Petitioner's Exhibit 1 pages 10 & 11.

CONCLUSIONS OF LAW

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

The 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. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case the Department used all of Petitioner's monthly VA benefits in calculating her Medical Assistance (MA) eligibility. This was done because Petitioner did not provide verification of what portion of her VA benefits were excluded from income under Bridges Eligibility Manual (BEM) 503 Income, Unearned. BEM 503 addresses Veterans Benefits at pages 35-39. In relevant part it states:

VA PENSION AND COMPENSATION

All Types of Assistance

Pension payments are based on a combination of need, age, and/or nursing home status. Pensions are normally paid monthly. However, the VA may make the payment quarterly, twice a year or annually if the amount is small (less than \$ [REDACTED] per month).

Compensation payments are based on service-connected disability or death.

The pension and compensation payment can also include:

- Aid and Attendance
- Housebound allowance
- VA Clothing Allowance
- Adjustment for Unusual Medical Expenses
- Augmented Benefits

Note: These allowances are **not** identifiable on a check stub or award letter. Accept the client's statement that the payment does **not** include any of these additional allowances.

Bridges counts the gross amount of the pension or compensation as unearned income.

Exceptions:

Bridges excludes any portion of a payment resulting from an Aid and Attendance or Housebound allowance; see VA Aid and Attendance and Housebound Allowances in this item.

Bridges may exclude augmented benefits; see Augmented Benefits in this item.

Bridges excludes any portion of a payment resulting from unusual medical expenses; see VA Adjustment for Unusual Medical Expenses in this item. The VA calls a payment that is increased because of a dependent an augmented benefit. If the VA chooses to pay the dependent's portion directly to the dependent, it is called an Apportionment Payment: see Apportionment Payment.

VERIFICATION SOURCES

All Types of Assistance

VA Benefits

DHS-75, Verification of VA Payments.

Other acceptable method that provides necessary information.

A visit to [REDACTED] provided insights that would never be deduced from Bridges Eligibility Manual (BEM) 503. There is a Maximum Annual Pension Rate (MAPR) for a veterans surviving spouse. For a surviving spouse without dependent children the MAPR is \$ [REDACTED], for a housebound surviving spouse without dependents the MAPR is \$ [REDACTED] and for a surviving spouse without dependents who is eligible for Aid and Attendance the MAPR is \$ [REDACTED].

A surviving spouse's pension is calculated by subtracting their countable income from their MAPR. By example, a surviving spouse without dependents who is eligible for Aid and Attendance and has \$ [REDACTED] countable income would receive the MAPR for that category, \$ [REDACTED] a year or \$ [REDACTED] per month. The portion of the VA survivor pension due to receiving Aid and Attendance would be (\$ [REDACTED] - \$ [REDACTED]) \$ [REDACTED] a year or \$ [REDACTED] per month.

However, if the surviving spouse without dependents who is eligible for Aid and Attendance has any countable income, such as Social Security Administration (SSA) benefits, the annual amount of the SSA benefits is subtracted from the \$ [REDACTED] MAPR. In this case Petitioner receives \$ [REDACTED] a month, or \$ [REDACTED] a year of SSA benefits. As only an estimate, it would appear that Petitioner would be eligible for a VA surviving spouse pension of \$ [REDACTED] a year or \$ [REDACTED] per month.

To further complicate things, the VA reduces the countable income amount by unreimbursed medical expenses exceeding 5% of the MAPR. Based on numbers unknown, the VA has determined that Petitioner is eligible for a surviving spouse pension of \$ [REDACTED] per month or \$ [REDACTED] per year.

BEM 503 provides for the exclusion of the portion of a VA pension that is Aid and Attendance. However, BEM 503 does not identify any way to determine what, if any, portion of a VA pension is Aid and Attendance. Review of the VA website does not indicate that they have any method of classifying what portion of a payment is Aid and Attendance. It appears that the VA simply provides for an increased pension benefit for those who require Aid and Attendance.

Bridges Administration Manual (BAM) 130 Verification and Collateral Contacts provides:

Obtaining Verification

All Programs

Tell the client what verification is required, how to obtain it, and the due date; see **Timeliness of Verifications** in this item. Use the DHS-3503, Verification Checklist (VCL), to request verification.

The client must obtain required verification, but the local office must assist if they need and request help.

If neither the client nor the local office can obtain verification despite a reasonable effort, use the best available information. If **no** evidence is available, use your best judgment.

The Department did make an effort to obtain information from the VA but did not get the verification they were hoping for. Nothing in the evidence of this case suggests that any form of judgement was applied to a determination of whether any portion of Petitioner's VA benefit should be excluded. The full VA benefit was used simply because no verification was provided.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it ended Petitioner's Medicare Savings Program (MSP) beginning September 1, 2016.

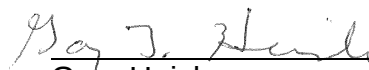
DECISION AND ORDER

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. Reinstate Petitioner's Medicare Savings Program (MSP) and determine her eligibility from October 1, 2016 ongoing in accordance with Department policy.

GH/nr



Gary Heisler
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]

Petitioner

[REDACTED]

Authorized Hearing Rep.

[REDACTED]