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

RICK SNYDER
GOVERNOR

SHELLY EDGERTON
DIRECTOR

Date Mailed: February 16, 2017
MAHS Docket No.: 16-018908
Agency No.:
Petitioner:

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 1, 2017, from Lansing, Michigan. The Petitioner was represented by Authorized Hearings Representative The Department of Health and Human Services (Department) was represented by Eligibility Specialist .

ISSUE

Did the Department properly process Petitioner's Qualified Medicare Beneficiaries (QMB) 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 approved for Retirement, Survivors, and Disability Insurance in a letter dated June 3, 2015 (Exhibit 2 Pages 1-2), with Medicare Part A (Hospital Insurance) starting November 2012, and Part B (Medical Insurance) starting July 2015.

2. The monthly Part B premium was $ beginning July 2015.

3. On June 19, 2015, an application was submitted to the Department (Exhibit A Pages 8-15) for Medical Assistance (MA).

4. In her application, Petitioner reported income from Social Security of $[redacted] per month (Exhibit A Page 11) which is consistent with the State Online Query (SOLQ) (Exhibit 2 Page 5 and Exhibit A Page 17).

5. Petitioner has been receiving RSDI since at least 2009 (Exhibit 2 Page 5 and Exhibit A Page 17).

6. In a Health Care Coverage Determination Notice dated July 24, 2015 (Exhibit A Pages 21-22) Petitioner was found to be eligible for full coverage beginning July 1, 2015 through the Medicare Savings Program (MSP).

7. On December 27, 2016, the Department received a hearing request (Exhibit A Pages 2-3) from Petitioner's Authorized Representative (AR) who was also her Authorized Hearings Representative (AHR), stating: "The Medicare Savings Program with Medicare Part B eligibility was no properly effectuated back to the date of dual eligibility of Medicare and Fee for Service Medicaid. Medicaid began November 2014, however Medicare Buy-In for Part B began July 2015. The Claimant is in the category of AD-Care (Aged/disabled) with income and asset eligibility. BEM pg. 2-3 states Medicare savings begin date is the calendar month following the processing month (of Medicaid). Processing month is defined in BPG Glossary pg. 51 as, 'The calendar month during which the specialist determines MA eligibility.'"

8. In a fax dated February 1, 2017 from the AHR, the AHR has stated, "I have requested information from SSA relating to Premiums pain (sic) in 2012-2013 however after review of the case it appears that the Petitioner did not have Medicaid until November 2014 and it is with that application that the buy in was missed. I therefore withdraw my motion to instruct MDHHS to pay back Medicare premiums from any time prior to the time in which she was dually eligible for Medicaid and Medicare Part A."

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.

The AHR argued in her brief (Case Summary) (Exhibit 1 Pages 2-5) that the hearing was being requested because of the Department's failure "to implement automatic QMB for a Medicaid recipient to the date of dual eligibility for Medicaid and Medicare Part A entitlement." She also contended that Medicaid did not pay for services that would normally be covered by Medicaid. As a remedy, she asked that the Department be ordered to:

1. Enroll Petitioner in Medicare Part B to the date of dual eligible (sic) for Medicaid and Medicare Part A.

2. Pay Medicare Part B premiums under QMB eligibility for the period of eligibility from November 2014 through July 2015 to allow continuous coverage.

3. Alternatively, instruct the Department to pay the medical expenses for the months of November 2014 and December 2014 and any other months until July 2015 since the Petitioner did not have other insurance (Medicare Part B) to cover the expense and therefore Medicare Part B is not liable for the expense.

Department policy provides that: "Medicare Part B is not mandatory to pursue as a potential resource. However, when an individual refuses Medicare Part B, Medicaid will not pay for any Medicare Part B covered services the individual receives." BEM 257 (5/1/15), p. 2. Therefore, Petitioner is not eligible for Medicaid coverage for expenses that would be Medicare Part B covered services.

Even if the Department is not obligate to pay Petitioner's medical expenses, the AHR contends that the Department was obligated to activate MSP coverage for Petitioner to pay for her Part B premiums from November 2014 through July 2015.

Medicare has three parts: Part A (hospital insurance (HI)), Part B (supplementary medical insurance (SMI)), and Part D (prescription drug coverage). BAM 810 (7/1/15), p. 1. A person is eligible for Part B if she (i) is eligible for Part A, or (ii) is at least age 65, lives in the U.S., and is either a U.S. citizen or an alien lawfully admitted for permanent residence who has lived in the U.S. five consecutive years. BAM 810, p. 3. Generally, a person who is eligible for Part B and is enrolled in Part A is automatically enrolled in Part B, but she may refuse Part B. BAM 810, p. 4.

MSP is a State-administered program in which the State pays an income-eligible client's Medicare premiums, coinsurances, and deductibles. BEM 165 (1/1/16), pp 1-2; BAM 810 (7/1/15), pp. 1, 4. There are three MSP categories: (1) Qualified Medicare Beneficiaries (QMB), which pays for a client's Medicare premiums (both Part A, if any, and Part B), Medicare coinsurances and Medicare deductibles; (2) Specified Low-Income Medicare Beneficiaries (SLMB), which pays for a client's Medicare Part B premiums; and (3) Additional Low Income Medicare Beneficiaries (ALMB), which pays for a client's Medicare Part B premiums when funding is available. BEM 165, pp. 1-2. The MSP category a client is eligible for is dependent on the client's income. BAM 810,

p. 6; BEM 165 (1/1/16), p. 1. A client income-eligible for full coverage MA under the AD-Care program is also income-eligible for MSP under the QMB program. RFT 242 (5/1/15), p. 1.

The AHR alleges that the Department erred when it failed to activate Petitioner's MSP coverage under QMB and pay her Part B premiums between November 2014 and July 2015.

Department policy provides that the Department must do a MSP determination for individuals who are entitled to Medicare Part A and who are recipients of (i) MSP only, (ii) Group 2 Medicaid (both FIP-related and SSI-related), (iii) Extended Care Medicaid, or (iv) Healthy Kids Medicaid. BEM 165, pp. 2-3. In those cases, QMB coverage begins the calendar month after the processing month (the month during which an eligibility determination is made). BEM 165, p. 3. However, individuals who are entitled to Medicare Part A (other than under section 1818A of the Social Security Act, which generally applies when the person is under age 65 and there is a premium charged for Medicare Part A) **and** who receive Medicaid under the AD-Care program are considered QMB eligible without a separate QMB determination. BEM 165, p. 3. For purposes of the QMB program, entitled to Medicare Part A means the person either (i) receives Medicare Part A with no premium being charged (as shown on the State Online Query (SOLQ), or (ii) refused premium-free Medicare Part A (indicated by a claim number suffix of M1), or (iii) is eligible for, or receiving, Premium HI (hospital insurance) (indicated by claim number suffix "M"). BEM 165, p. 5.

In this case, Petitioner became eligible for Medicare Part A (hospital insurance) in November 2012, and Part B (medical insurance) in July 2015. She has hospital bills from November and December 2014 (Exhibit A Page 6). She applied for health coverage on June 19, 2015 (Exhibit A Pages 8-15). She was approved for the MSP starting July 1, 2015 (Exhibit A Pages 21-22). In her hearing request (Exhibit A Page 3) she argues that the MSP with Medicare Part B eligibility "was not properly effectuated back to the date of dual eligibility of Medicare and Fee for Service Medicaid. Medicaid began November 2014 however Medicare Buy-In for Part B began July 2015. The Claimant is in the category of Ad-Care (Aged/disabled) with income and asset eligibility. BEM pg. 2-3 states Medicare savings begin date is the calendar month following the processing month (of Medicaid)."

BAM 810 (10/1/16) states at p. 8:

Part B Buy-In Effective Date

The Part B buy-in effective date is:

- Determined by SSA for SSI recipients.
- The month QMB or SLMB coverage begins if the only basis for buy-in is Medicare Savings Program eligibility.

- Determined by DCH for ALMB.

- The earliest date the client is both MA and Medicare Part B eligible for all other persons covered by the Buy-In Program, except that buy-in **under** Group 2 MA is **not** retroactive more than two years.

The buy-in is usually processed at the end of the calendar month that a case is opened in Bridges. It takes SSA about 120 days after that to adjust the client's RSDI check. The client will receive a refund for premiums paid while the buy-in was being processed.

At pages 7-8, BAM 810 explains the Part B Buy-in Program

Part B Buy-In Program

The Part B Buy-In program is used to pay Part B premiums. The program is an agreement between DCH and SSA. The program covers persons who are eligible for both Medicare Part B and are:

- BEM 110, Low Income Families and FIP recipients.
- BEM 150, SSI recipients.
- BEM 155, 503 individuals.
- BEM 156, COBRA widow(er)s.
- BEM 158, DAC recipients.
- BEM 163, AD-Care recipients.
- BEM 164, Extended-Care recipients eligible for QMB.
- QMB, SLMB and ALMB recipients (BEM 165).
- BEM 174, Freedom to Work.
- Group 2 MA recipients (most).

For persons included in the Part B Buy-In program, Medicaid:

- Pays the Medicare premiums; and
- Enrolls persons eligible for, but **not** enrolled in, Medicare Part B if they are enrolled in Medicare Part A or have refused Medicare Part B enrollment.

Generally, the Buy-In program operates automatically based on computer tapes from SSA and central office. Other insurance codes and social security claim numbers may be changed in Bridges by the Buy-In program activities.

In BEM 165 (4/1/14) p. 7, the Department is instructed to determine eligibility for Part B:

> Individuals who receive Medicare part A (free or with a premium) but do not show receipt of part B, may not show part B coverage in Bridges because they refused it.
>
> Because it is advantageous for the state to enroll every person who is entitled to MSP into the program, a determination of eligibility should be made even if a person shows only entitlement for Medicare part A.

There are three categories that make up the MSP: Qualified Medicare Beneficiaries (QMB), Specified Low-Income Beneficiaries (SLMB), and Q1 Additional Low-Income Medicare Beneficiaries (ALMB). BEM 165 p. 1. Income is the major determiner of category. QMB cannot exceed 100% of poverty. SLMB is over 100% of poverty, but not over 120% of poverty. ALMB is over 120% of poverty, not over 135% of poverty. If the person is QMB eligible, QMB pays Medicare premiums (Part B premiums, and Part A premiums for those few people that have them), Medicare coinsurances, and Medicare deductibles. SLMB pays Medicare Part B premiums. ALMB pays Medicare Part B premiums provided funding is available. BEM 165 p. 2.

In this case, Petitioner became eligible for Medicare Part A in November 2012, but her AHR has stated that "she did not have Medicaid until November 2014 and it is with that application that the buy in was missed." (Petitioner's Exhibit 3.) As stated above, it is advantageous for the state to enroll every person who is entitled to MSP into the program, and a determination of eligibility should be made even if a person only shows entitlement for Medicare Part A. The Department did not produce any evidence that they made a determination of her eligibility for Part B when she applied for Part A in November 2014. Instead, it provided evidence (Exhibit A Pages 21-22) that she was not provided MSP until July 1, 2015.

DECISION AND ORDER

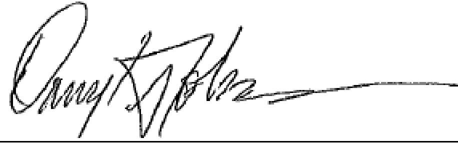
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it did not determine Petitioner's eligibility for MSP when she became eligible for Part A.

Accordingly, the Department's decision is **MODIFIED.**

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. Issue QMB benefits to Petitioner from November 2014, subject to the finding that she was entitled to automatic QMB eligibility; and

2. Supplement Petitioner for any Medicare premiums not previously reimbursed.



DJ/mc

Darryl Johnson
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

Petitioner

Counsel for Petitioner