



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 29, 2017
MAHS Docket No.: 16-019161
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 March 23, 2017, from Detroit, Michigan. The Petitioner was represented by her [REDACTED] Authorized Hearing Representative (AHR), [REDACTED]; and Petitioner was also present for the hearing and provided testimony. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator.

ISSUES

Did the Department properly provide Petitioner with Medical Assistance (MA) coverage she is eligible to receive from October 1, 2016, ongoing?

Did the Department properly calculate Petitioner's MA – Group 2 Spend-Down (G2S) deductible effective October 1, 2016, ongoing?

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) allotment effective December 1, 2016?

Did the Department properly close Petitioner's Medicare Savings Program (MSP) benefits effective November 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 is an ongoing recipient of FAP benefits.

2. Petitioner was an ongoing recipient of MSP – Qualified Medicare Beneficiaries (QMB) coverage.
3. Effective October 1, 2016, ongoing, Petitioner’s full coverage MA benefits had closed.
4. On October 14, 2016, Petitioner applied for MA benefits.
5. Petitioner receives monthly Retirement, Survivors and Disability Insurance (RSDI) income. Exhibit A, p. 19.
6. On October 14, 2016, the Department sent Petitioner a Health Care Coverage Determination Notice notifying her that her MSP – QMB coverage would close effective November 1, 2016, due to excess income. Exhibit B, pp. 4-6.
7. On November 26, 2016, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits increased to [REDACTED] effective December 1, 2016. Exhibit C, pp. 1-4.
8. On November 28, 2016, the Department sent Petitioner a Health Care Coverage Determination Notice notifying her that she was eligible for MA – G2S coverage (with a [REDACTED] deductible) effective October 1, 2016 to October 31, 2016, and an [REDACTED] monthly deductible effective November 1, 2016, ongoing. Exhibit B, pp. 7-11.
9. The determination notice also indicated that Petitioner was not eligible for MSP coverage due to excess income effective November 1, 2016, ongoing. Exhibit B, pp. 7-11.
10. On December 20, 2016, Petitioner’s AHR filed a hearing request, protesting the Department’s action. Exhibit A, pp. 2 and 9-13.

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 Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

Preliminary matters

First, the AHR disputed the Department's failure to process the medical bills. However, the AHR failed to present any medical bills for the record. Moreover, the undersigned Administrative Law Judge (ALJ) reviewed Petitioner's hearing request and could not find any dispute with the processing of her medical bills. Based on this information, the undersigned ALJ lacks the jurisdiction to address Petitioner/AHR concerns regarding the processing of her medical bills. See BAM 600 (October 2016), pp. 1-6. Petitioner or her AHR can attempt to file another hearing request if she is disputing the failure to process any medical bills. See BAM 600, pp. 1-6.

Second, the AHR testified that Petitioner's Adult Home Help program had ended. However, the undersigned ALJ lacks any jurisdiction to address this program. See BAM 600, pp. 1-6. As such, the undersigned ALJ will not further address Petitioner's concerns regarding the Adult Home Help program.

Third, based on Petitioner's hearing request and testimony, the undersigned ALJ will address her following concerns: (i) whether the Department processed Petitioner's eligibility for the most beneficial MA category for October 1, 2016; (ii) whether the Department properly calculated Petitioner's G2S deductible effective October 1, 2016 to October 31, 2016; (iii) whether the Department properly calculated Petitioner's G2S deductible effective November 1, 2016; (iv) whether the Department properly calculated Petitioner's FAP benefits effective December 1, 2016; and (v) whether Petitioner is eligible for MSP coverage effective November 1, 2016.

Most Beneficial Program

In the present case, the AHR argued that the deductible coverage provided by the Department was inadequate. Petitioner is [REDACTED] years-old (date of birth [REDACTED]), she receives Medicare coverage, and she receives a monthly gross RSDI income of [REDACTED] for October 2016. Exhibit A, p. 19.

Persons may qualify under more than one MA category. BEM 105 (October 2016), p. 2. Federal law gives them the right to the most beneficial category. BEM 105, p. 2. The

most beneficial category is the one that results in eligibility, the least amount of excess income or the lowest cost share. BEM 105, p. 2.

Based on the foregoing information, the evidence and testimony is persuasive to conclude that the Department acted in accordance with Department policy when it processed Petitioner's eligibility for the most beneficial MA category for October 1, 2016, ongoing. BEM 105, pp. 2-5. In this case, Petitioner's most beneficial MA category was G2S. Petitioner would not be eligible for full MA coverage. For example, AD-Care is a Supplemental Security Income (SSI)-related Group 1 MA category, which offers full coverage MA. See BEM 163 (July 2013), p. 1. For AD-Care eligibility, policy states that net income cannot exceed 100% of the poverty level. BEM 163, p. 1. RFT 242 states that the income limit for AD-Care for a fiscal group of one effective April 1, 2016 is [REDACTED]. See RFT 242 (October 2016), p. 1. Based on this policy, Petitioner's income, even if accounting for the premium deductions, clearly exceeds the income limit of [REDACTED] for purposes of AD-Care eligibility. As such, the Department properly determined that Petitioner is eligible for G2S coverage, subject to a deductible.

MA – G2S deductible for October 2016

Next, Petitioner may still receive MA benefits subject to a monthly deductible through the G2S program. In this case, Petitioner was found eligible for G2S subject to an [REDACTED] deductible for October 2016. The undersigned ALJ will now determine if the Department properly calculated Petitioner's G2S budget for October 2016.

In the present case, Petitioner's group size is one and she resides in [REDACTED]. The Department presented the G2S budget for the benefit period of October 2016. See Exhibit B, p. 13.

G2S is an SSI-related Group 2 MA category. See BEM 166 (July 2013), p. 1. BEM 166 outlines the proper procedures for determining G2S eligibility. BEM 166, p. 1.

In this case, the Department properly calculated Petitioner's gross total unearned income to be [REDACTED], which consisted of her RSDI income. See Exhibit B, p. 13 and BEM 503 (July 2016), p. 28 (The Department counts the gross benefit amount as unearned income).

The Department then properly subtracted the [REDACTED] disregard to establish Petitioner's total net unearned income of [REDACTED]. See Exhibit B, p. 13 and BEM 541 (January 2016), p. 3.

Next, the Department does provide budget credits, which can reduce the total net income and more importantly, the deductible amount. In this instance, policy allows that Department to take into account health insurance premiums. Policy states that the Department counts as a need item the cost of any health insurance premiums (including vision and dental insurance) and Medicare premiums paid by the medical group

(defined in “EXHIBIT I”) regardless of who the coverage is for. BEM 544 (July 2016), p. 1. In this case, Petitioner is responsible for \$ [REDACTED] in insurance premiums, which is comprised of her Medicare premium. Exhibit B, p. 13. As a result, when the Department subtracts the [REDACTED] in health insurance premiums from the total net income of [REDACTED], the resulting countable income is [REDACTED]. Exhibit B, p. 13.

Finally, individuals are eligible for Group 2 MA coverage when net income (countable income minus allowable income deductions) does not exceed the applicable Group 2 MA protected income levels (PIL), which is based on shelter area and fiscal group size. BEM 105, p. 1; BEM 166, p. 2; BEM 544, p. 1; and RFT 240 (December 2013), p. 1. The monthly PIL for an MA group of one living in Macomb County is [REDACTED] per month. RFT 200 (December 2013), pp. 1-2 and RFT 240, p. 1. Moreover, an individual whose monthly income is in excess of [REDACTED] may become eligible for assistance under the deductible program, with the deductible being equal to the amount that the group’s monthly income exceeds the PIL. BEM 545 (October 2016), p. 1.

Based on the above policy, Petitioner’s countable income of [REDACTED] for MA purposes exceeds the monthly protected income level of [REDACTED]. Exhibit B, p. 13. Thus, the Department properly calculated Petitioner’s G2S deductible to be [REDACTED] effective October 1, 2016 to October 31, 2016, in accordance with Department policy.

MA – G2S deductible for November 2016

For November 2016, the determination notice indicated that Petitioner’s MA deductible increased to [REDACTED] effective November 1, 2016, ongoing. Exhibit B, pp. 7-11. The Department presented the G2S budget for the benefit period of November 2016. Exhibit B, p. 14. However, the Department conceded the budget was improperly calculated. Specifically, the Department testified that it improperly calculated Petitioner’s gross unearned income and the insurance premium deduction. As such, the undersigned ALJ finds that the Department miscalculated Petitioner’s MA-G2S budget effective November 1, 2016 and is therefore, ordered to recalculate it in accordance with Department policy. See BEM 503, p. 28 and BEM 544, pp. 1-2.

FAP benefits

In the present case, the AHR also disputed the calculation of Petitioner’s FAP benefits. Specifically, in a letter included with Petitioner’s hearing request, she disputed the calculation of her FAP benefits in the amount of [REDACTED]. Exhibit A, p. 12. The Department presented a FAP budget summary from the Notice of Case Action dated November 26, 2016. Exhibit C, p. 2. However again, the Department testified that it improperly calculated the FAP budget because the income, medical, and shelter expenses were not calculated correctly. As such, the undersigned ALJ finds that the Department miscalculated Petitioner’s FAP benefits effective December 1, 2016 and is therefore, ordered to recalculate it in accordance with Department policy.

MSP benefits

In this case, the Department also found Petitioner was not eligible for MSP coverage effective November 1, 2016, due to excess income.

The Medicare Savings Programs are Supplemental Security Income (SSI) - related MA Categories. BEM 165 (October 2016), p. 1. They are neither Group 1 nor Group 2. BEM 165, p. 1. The three Medicare Savings Programs are Qualified Medicare Beneficiaries (also known as full-coverage QMB); Specified Low-Income Medicare Beneficiaries (also referred to as limited coverage QMB and SLMB); and Additional Low-Income Medicare Beneficiaries (also known as ALMB or Q1). BEM 165, p. 1.

The QMB program exists when net income cannot exceed 100%. BEM 165, p. 1. SLMB program exists when the net income is over 100% of poverty, but not over 120% of poverty. BEM 165, p. 1. ALMB program exists when net income is over 120%, but not over 135% of poverty. BEM 165, p. 1. All eligibility factors must be met in the calendar month being tested. BEM 165, p. 1.

Income eligibility exists when net income is within the limits in RFT 242 or 247. BEM 165, p. 8. Income eligibility cannot be established with a patient-pay amount or by meeting a deductible. BEM 165, p. 8. 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.

BEM 165, p. 8.

For all other months, countable RSDI means the countable amount for the month being tested. BEM 165, p. 8. For all other persons whose income must be considered, the RSDI cost-of-living increase is not disregarded. BEM 165, p. 8.

In the present case, Petitioner's group size is one and the Department presented the ALMB budget for the benefit period of November 2016. Exhibit B, p. 12.

First, the Department properly calculated Petitioner's gross total unearned income to be [REDACTED] which consisted of her RSDI income. Exhibit B, p. 12.

The Department then properly subtracted the [REDACTED] disregard to establish Petitioner's total net unearned income of [REDACTED]. Exhibit B, p. 12 and BEM 541, p. 3.

Next, the Department does provide budget credits, which can reduce the total net income and more importantly, the deductible amount. However, she was not eligible for

any such deductions. As a result, Petitioner's countable income remains at [REDACTED]. Exhibit B, p. 12.

Finally, RFT 242 states that the income limit for ALMB program for a fiscal group of one effective April 1, 2016, is [REDACTED]. RFT 242 (October 2016), p. 1. However, it should be noted that RFT 242 policy includes the following statement with the table, "Income limits are 135 percent of the Federal Poverty Level (FPL) + \$20 disregard." RFT 242, p. 1. Thus, the undersigned interprets this statement to mean that the [REDACTED] limit is comprised of 135% of the FPL plus the [REDACTED] disregard. Therefore, technically the income limit for ALMB is [REDACTED] when subtracting [REDACTED] disregard because this amount was already applied for Petitioner's budget.

Based on the above policy, Petitioner's countable income of \$[REDACTED] for ALMB purposes exceeds the income limit of [REDACTED] Exhibit B, p. 12. As such, it is found that the Department properly determined that Petitioner's is not eligible for MSP coverage effective November 1, 2016, due to excess income. It should be noted that the undersigned ALJ did not review the SLMB or QMB budgets because if Petitioner is not eligible for the ALMB coverage, she would not be eligible for the other MSP categories. See RFT 242, pp. 1-2.

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 (i) the Department acted in accordance with Department policy when it processed Petitioner's eligibility for the most beneficial MA category for October 1, 2016, ongoing; (ii) the Department acted in accordance with Department policy when it properly calculated Petitioner's MA – G2S deductible amount of [REDACTED] effective October 1, 2016 to October 31, 2016; (iii) the Department did not act in accordance with Department policy when it improperly calculated Petitioner's MA-G2S deductible effective November 1, 2016, ongoing; (iv) the Department did not act in accordance with Department policy when it improperly calculated Petitioner's FAP benefits effective December 1, 2016, ongoing; and (v) the Department acted in accordance with Department policy when it properly determined that Petitioner is not eligible for MSP coverage effective November 1, 2016, ongoing.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to Petitioner's most beneficial MA category for October 1, 2016, ongoing; MA-G2S deductible calculation for October 2016; and MSP eligibility effective November 1, 2016, ongoing; and **REVERSED IN PART** with respect to the MA-G2S deductible effective November 1, 2016, ongoing; and the FAP benefits effective December 1, 2016, ongoing.

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. Recalculate the MA budget for November 1, 2016, ongoing;
2. Issue supplements to Petitioner for any MA benefits she was eligible to receive but did not from November 1, 2016, ongoing;
3. Recalculate Petitioner's FAP budget for December 1, 2016, ongoing;
4. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from December 1, 2016, ongoing; and
5. Notify Petitioner of its decision.

IT IS ALSO ORDERED that Petitioner's concerns regarding the Adult Home Help program and her medical bills is **DISMISSED** for lack of jurisdiction.

EF/tm



Eric J. Feldman
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]
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CC: [REDACTED]
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