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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: April 7, 2017
MAHS Docket No.: 17-000350
Agency No.: ██████████
Petitioner: ██████████

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, an in-person hearing was held on ██████████, from Detroit, Michigan. Petitioner did not appear for the hearing. ██████████ of ██████████ testified and appeared as Petitioner's authorized hearing representative (AHR). The Michigan Department of Health and Human Services (MDHHS) was represented by ██████████, manager.

ISSUE

The issue is whether MDHHS properly terminated 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 recipient of RSDI benefits.
2. Petitioner was an ongoing MSP benefit recipient who received MSP benefits for ██████████
3. On an unspecified date, MDHHS garnished Petitioner's RSDI benefits for repayment of allegedly improperly issued MSP benefits from ██████████.
4. MDHHS did not provide Petitioner with notice of the recoupment.

5. On [REDACTED], Petitioner requested a hearing to dispute the recoupment of MSP benefits.

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 stoppage in MSP eligibility. Petitioner's AHR testified Petitioner seeks MSP eligibility for the period from [REDACTED].

MSP programs offer three different degrees of assistance with payment toward a client's Medicare premium and deductibles. Qualified Medicare Beneficiaries (QMB) coverage pays for a client's Medicare premiums, coinsurances, and deductibles (see BEM 165 (October 2015), p. 2). Specified Low Income Beneficiaries (SLMB) coverage pays for a client's Medicare Part B premium (see *Id.*). Additional Low Income Beneficiaries (ALMB) coverage pays for a client's Medicare Part B premium if DHHS funding is available. (see *Id.*).

Much of the hearing discussion concerned what months of MSP benefits were issued and when MSP benefits stopped. Evidence was presented verifying this information.

MDHHS presented an Eligibility Summary (Exhibit 1, p. 13) dated [REDACTED]. The document stated "no change" to Respondent's MSP benefits for [REDACTED]. MSP benefits for [REDACTED] and [REDACTED] were stated to be over-issued and recouped.

Petitioner's AHR testified that she went to an SSA office with Petitioner and was told by an SSA representative that Petitioner's MSP eligibility was recouped for [REDACTED] through [REDACTED]. The testimony was consistent with presented evidence from MDHHS for [REDACTED] and [REDACTED]. The testimony was not consistent with the presented Eligibility Summary. MDHHS presented other evidence reflecting Petitioner's updated MSP eligibility for [REDACTED].

MDHHS presented Respondent's SOLQ (Exhibit 1, pp. 7-9). A SOLQ is a document MDHHS with information obtained in an exchange of information with SSA. Petitioner's SOLQ indicated MSP benefits were not issued beginning [REDACTED].

MDHHS' testimony eventually conceded that Petitioner did not receive MSP benefits for [REDACTED]. MDHHS also conceded that the presented SOLQ was a superior verification of Petitioner's MSP eligibility (compared to the Eligibility Summary). It is found Petitioner established a loss of MSP eligibility for [REDACTED].

MDHHS presented a Notice of Case Action (Exhibit 1, pp. 1-5) dated [REDACTED]. The notice informed Petitioner of an approval of "Full Coverage" for MSP benefits beginning [REDACTED].

The presented Eligibility Summary specifically stated that Petitioner's MSP benefits were recouped (at least for [REDACTED] and [REDACTED]). Recoupment is indicative of an issuance of benefits that are later repaid. All presented evidence was highly indicative that Petitioner received monthly MSP benefits from [REDACTED] [REDACTED] [REDACTED] but the benefits were later recouped by MDHHS by garnishment of Petitioner's SSA income. A consideration of the procedures required for such recoupment is appropriate.

Medicare Savings Programs are SSI-related MA categories. BEM 165 ([REDACTED]), p. 1. They are neither Group 1 nor Group 2. *Id.*

The description of MSPs as "MA categories" is highly indicative that MSP over-issuances are subject to MA recoupment procedures. The only known relevant policy concerning MSP recoupment would fall under MA overissuances; such overissuances are covered by BAM 710.

[MDHHS is to] initiate recoupment of an overissuance (OI) [of MA benefits] due to client error or intentional program violation (IPV), not when due to agency error. BAM 710 (October 2016), p. 1. Before recoupment is initiated, a manager or a designee must review the MA case. *Id.*, p. 2. After review, notify the client (or legal guardian) in writing that... MDHHS must seek recoupment, but... refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. *Id.* If recoupment is agreed to, complete a DHS-4358B, Recoupment Agreement, have the client/guardian sign it, then forward the original to the local office for collection. *Id.* If he/she refuses to sign it, inform the local office in writing. *Id.*

During the hearing, MDHHS was asked to provide any notice to Petitioner of an intent to recoup MSP benefits. No such evidence was provided. Presumably, no such notice was given. The failure by MDHHS to provide notice of the recoupment is a procedural violation justifying a reversal of the recoupment. It is found that MDHHS improperly recouped Petitioner's MSP benefits.

It should be noted that MDHHS alleged that Petitioner was ineligible for MSP benefits from [REDACTED]. The allegation was consistent with presented documents (see Exhibit 1, pp. 13-18) which were supportive in finding that Petitioner's monthly income exceeded MSP income limits. This decision does not prevent MDHHS from pursuing future MSP recoupment against Petitioner for [REDACTED] [REDACTED] [REDACTED] [REDACTED]. This decision does reverse MDHHS' previous recoupment due to MDHHS' failure to properly follow recoupment procedures.

DECISION AND ORDER

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

- (1) Reinstate Petitioner's MSP eligibility for the months from [REDACTED] [REDACTED] [REDACTED], subject to the finding that MDHHS failed to follow MA recoupment procedures; and
- (2) Supplement Petitioner for any improperly recouped MSP benefits.

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]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Counsel for Petitioner

[REDACTED]
[REDACTED]
[REDACTED]