



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: April 24, 2017  
MAHS Docket No.: 17-003292  
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 three-way telephone hearing was held on [REDACTED], from Detroit, Michigan. The Petitioner was represented by his Authorized Hearing Representative (AHR), [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED] Hearings Facilitator.

### **ISSUES**

1. Did the Department properly calculate Petitioner's Medical Assistance (MA) – Group 2 Spend-Down (G2S) deductible for [REDACTED], ongoing?
2. Did the Department properly determine Petitioner's eligibility for the Medicare Savings Programs (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. On [REDACTED], Petitioner applied for MA benefits and informed the Department in the "Additional Information" section of the application that the Social Security Administration (SSA) is retaining his monthly Retirement, Survivors and Disability Insurance (RSDI) benefits. Exhibit A, pp. 1 and 5-10.

2. On [REDACTED], the Department sent Petitioner a Health Care Coverage Determination Notice (HCCDN) notifying him that he was eligible for full coverage MA benefits effective [REDACTED], ongoing. Exhibit B, pp. 1-2.
3. On [REDACTED], the Department sent Petitioner a HCCDN notifying him that he was eligible for MA benefits effective [REDACTED], ongoing (with a [REDACTED] monthly deductible). Exhibit B, pp. 3-4.
4. The Department failed to process Petitioner's eligibility for MSP benefits for the application dated [REDACTED].
5. Petitioner received ongoing MA – G2S coverage, subject to a deductible, until [REDACTED]. Exhibit B, p. 5.
6. On [REDACTED], Petitioner had an emergency room visit and had incurred medical expenses. Exhibit A, p. 2, and Exhibit 1, p. 1.
7. For [REDACTED], to [REDACTED], Petitioner received MA – G2S coverage, subject to a [REDACTED] deductible. Exhibit B, p. 5.
8. The Department improperly budgeted Petitioner's Retirement, Survivors and Disability Insurance (RSDI) income because income was being withheld from RSDI payment by SSA due to an overpayment.
9. On [REDACTED], an AHR representative sent an e-mail to the Department informing it about the following: (i) Petitioner had an emergency room visit on [REDACTED]; (ii) at that time, he had a Medicaid with a deductible; (iii) his Medicare Part A started in [REDACTED]; (iv) he had Medicare Part B in the past but stopped paying the premium when SSA began withholding his entire SSA benefits to repay an overpayment; (v) he indicated Petitioner provided proof to the Department that the income was being withheld; and (vi) he applied for Medicare Part B again with SSA, but needs help with his premium. Exhibit 1, p. 1.
10. On [REDACTED], the AHR filed a hearing request, protesting the Department's action. Exhibit A, pp. 2-4.

### **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 the present case, the AHR is disputing the following: (i) the Department needs to redetermine Petitioner's MA eligibility for [REDACTED], using zero income, due to his RSDI benefits being withheld by SSA; and (ii) determine Petitioner's MSP eligibility so that his Medicare Part B premium can be paid. Exhibit A, p. 2. The undersigned will address each issue separately below:

### **MA eligibility**

On [REDACTED], Petitioner applied for MA benefits and informed the Department in the "Additional Information" section of the application that SSA is retaining his monthly RSDI benefits. Exhibit A, pp. 1 and 5-10. Based on this information, the Department was aware that Petitioner's RSDI check was being withheld due to an overpayment since [REDACTED]; yet, the Department kept budgeting his RSDI benefit as income. Turning now to [REDACTED], Petitioner had an emergency room visit and had incurred medical expenses. Exhibit A, p. 2, and Exhibit 1, p. 1. For [REDACTED], to [REDACTED], Petitioner received MA – G2S coverage, subject to a [REDACTED] deductible. Exhibit B, p. 5. However, the AHR argued that the Department improperly calculated the MA – G2S budget because it should have excluded his RSDI benefits from being budgeted since this income was being withheld by SSA due to an overpayment. The Department agreed and so does the undersigned, based on the following policies:

For all programs, gross income is the amount of income before any deductions such as taxes or garnishments. BEM 500 (January 2016), p. 4. This may be more than the actual amount an individual receives. BEM 500, p. 4.

Amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income. These amounts are excluded as income.

Exceptions: The following overpayment amounts must be included in gross income:

- Any portion of an overpayment (that is normally countable) if the original payment was excluded income when received.
- Cash assistance recoupment amounts due to Intentional Program Violation (IPV) are automatically counted for FAP in Bridges.
- Supplemental Security Income (SSI) amounts recouped due to IPV are included in countable gross income for cash assistance programs and FAP.

IPV means there is a finding of fraud or an agreement to repay in lieu of prosecution. Do not exclude recouped SSI when IPV information is volunteered by the SSI recipient or other reliable source. Do not initiate any contacts to obtain this information.

BEM 500, p. 6.

Based on the foregoing information and evidence, the Department improperly calculated Petitioner's MA – G2S budget effective [REDACTED], ongoing. Since [REDACTED] the Department was aware that Petitioner's RSDI check was being withheld by SSA due to an overpayment; yet, it failed to act on his reported change. Exhibit A, pp. 5-10. Both parties agreed that the amount being withheld from his RSDI check is not part of the gross income. See BEM 500, p. 6. The evidence indicated that Petitioner did not meet the exceptions listed in BEM 500, p. 6, which would require the overpayment amount to be included in the gross income. As such, the Department is ordered to redetermine Petitioner's MA eligibility for [REDACTED], ongoing and exclude the amount from his Social Security benefits that is being withheld for an overpayment, in accordance with Department policy. See BEM 500, pp. 4-6.

### **MSP eligibility**

The Medicare Savings Programs are Supplemental Security Income (SSI) - related MA Categories. BEM 165 (January 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.

A person who is eligible for one of these categories cannot choose to receive a different MSP category. BEM 165, p. 1. All eligibility factors must be met in the calendar month being tested.

In this case, the AHR also argued that the Department should determine Petitioner's MSP eligibility so that his Medicare Part B premium can be paid due to his RSDI check being withheld for an overpayment. The AHR argued that Petitioner has had Medicare Part A since [REDACTED]. Exhibit 1, p. 1.

In response, the Department indicated that Petitioner's State On-Line Query (SOLQ) shows that his Medicare Part B premium does not exist until [REDACTED]. However, the Department failed to present the SOLQ as part of the evidence record in order to confirm this information and whether the Medicare Part A was active.

There is policy guidance when the Department is supposed to do MSP determinations. The Department does MSP determinations for the following clients if they are entitled to Medicare Part A:

- Medicare Savings Programs-only.
- Group 2 MA (FIP-related and SSI-related).
- Extended Care (BEM 164)
- Healthy Kids.

BEM 165, p. 2.

Based on the foregoing information and evidence, the undersigned finds that the Department failed to process Petitioner's eligibility for MSP benefits. The AHR provided credible testimony and evidence showing that Petitioner has had Medicare Part A since [REDACTED]. Exhibit 1, p. 1. Thus, at the time of Petitioner's MA application dated [REDACTED], he was enrolled in Medicare Part A. Exhibit A, pp. 5-10. Policy states that the Department does MSP determinations for clients who are entitled to Medicare Part A. See BEM 165, p. 2. Yet, a review of the subsequent HCCDNs that were issued in response to the [REDACTED], application, neither showed that the Department processed his eligibility for MSP benefits. Exhibit B, pp. 1-5. As such, the undersigned finds that the Department failed to process Petitioner's eligibility for MSP benefits. Accordingly, the Department is ordered to process the MA application dated [REDACTED] to determine Petitioner's eligibility for MSP benefits, in accordance with Department policy. See BEM 165, pp. 1-9.

#### **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 did not act in accordance with Department policy when it improperly calculated Petitioner's MA – G2S deductible effective [REDACTED], ongoing; and (ii) the Department did not act in accordance with Department policy when it failed to process Petitioner's eligibility for MSP when it processed his MA application dated [REDACTED].

Accordingly, the Department's MA and MSP 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. Process the MA application dated [REDACTED], to determine Petitioner's eligibility for MSP benefits;
2. Issue supplements to Petitioner for any MSP benefits he was eligible to receive but did not in accordance with Department policy;
3. Redetermine Petitioner's MA eligibility for [REDACTED], ongoing;

4. Recalculate the MA budget for [REDACTED], ongoing, and exclude the amount from his Social Security benefits that is being withheld for an overpayment, in accordance with Department policy;
5. Issue supplements to Petitioner for any MA benefits he was eligible to receive but did not from [REDACTED], ongoing; and
6. Notify Petitioner of its MA and MSP decision.

EJF/jaf



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**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

**Counsel for Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]

**DHHS**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Petitioner**

[REDACTED]  
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