



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: August 2, 2017
MAHS Docket No.: 17-006348
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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; 42 CFR 438.400 to 438.424; 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 July 6, 2017, from Detroit, Michigan. The Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Shana Hook, Hearing Facilitator and Brenda Moorehead, Eligibility Specialist.

ISSUE

Did the Department properly process and close Petitioner's Medicare Savings Program (MSP) case?

Did the Department properly process Petitioner's State Emergency Relief (SER) benefits?

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 did not have an active SER case and had not applied for SER assistance since [REDACTED] 2015. There was no negative action taken with respect to the SER program prior to Petitioner's hearing request.
2. Petitioner was an ongoing recipient of MSP benefits under the Additional Low-Income Medicare Beneficiaries (ALMB) category.

3. Petitioner was approved for MSP benefits for the period of May 1, 2016, to September 30, 2016, but the Department did not timely process the Part B Buy-In, as the SOLQ shows a Part B Buy-In State Date of October 1, 2016. (Exhibit A, pp. 10-12; Exhibit 1)
4. According to documentation from the Social Security Administration (SSA) presented by Petitioner, beginning March 2016 and continuing through September 2016, the SSA was withholding \$121.80 from Petitioner's monthly RSDI benefits for Medicare premiums. The SSA stopped withholding effective October 2016. (Exhibit 2, pp. 8-15)
5. Petitioner asserted that there was a lapse in her MSP coverage and that she was entitled to a refund/reimbursement for Medicare premiums withheld to cover the period in which she was approved for MSP benefits, specifically, May 2016 to September 2016.
6. On April 18, 2017, the Department sent Petitioner a Health Care Coverage Determination Notice (Notice) advising her that effective June 1, 2017, she would no longer be eligible for MSP benefits on the basis that her gross monthly income exceeded the limit for MSP eligibility. (Exhibit A, pp. 5-7)
7. Although the Notice advises Petitioner that her MSP case would close effective June 1, 2017, the eligibility summary shows that her MSP benefits were terminated effective March 31, 2017, and the SOLQ shows a Part B Buy-In Stop Date of March 1, 2017. (Exhibit A, pp. 10-12; Exhibit B)
8. Petitioner receives gross monthly unearned income from RSDI benefits in the amount of \$1338. (Exhibit A, pp. 10-12)
9. Petitioner is enrolled in an Incentive Therapy Program (ITP) through the Department of Veterans Affairs. Petitioner receives benefit payments for her participation in the program. (Exhibit A, p. 4,8)
10. On May 4, 2017, Petitioner requested a hearing disputing the Department's actions with respect to her SER and MSP benefits, asserting among other things that the VA benefit she receives from the ITP is not countable for MSP income purposes. (Exhibit A, pp. 2-3)

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).

SER

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

In the present case, Petitioner's hearing request indicates that she requested a hearing to dispute the Department's actions concerning the SER program. At the hearing, Petitioner confirmed that prior to her hearing request, she had neither submitted an application for SER benefits (since [REDACTED] 2015) nor had she been an active and ongoing recipient of SER benefits with the Department. Thus, Petitioner failed to establish that the Department had taken any negative action on her SER cases prior to the hearing request. Therefore, because the Department had neither determined Petitioner's eligibility for SER benefits nor had the Department taken any negative action with respect to Petitioner's SER benefits prior to her hearing request, Petitioner's hearing request with respect to SER is **DISMISSED** for lack of jurisdiction. BAM 600 (October 2016), pp. 4-6.

MA

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.

MSP are SSI-related MA categories. There are three MSP categories: Qualified Medicare Beneficiaries (QMB); Specified Low-Income Medicare Beneficiaries (SLMB); and Additional Low Income Beneficiaries (ALMB). BEM 165 (October 2016), p. 1. QMB is a full coverage MSP that pays: Medicare premiums (Medicare Part B premiums and Part A premiums for those few people who have them); Medicare coinsurances; and Medicare deductibles. SLMB pays Medicare Part B premiums and ALMB pays Medicare Part B premiums provided funding is available. BEM 165, pp. 1-2. Income eligibility for MSP benefits exists when net income is within the limits in RFT 242 or 247. The Department is to determine countable income according to the SSI-related MA policies in BEM 500 and 530, except as otherwise explained in BEM 165. RFT 242 (April 2017), pp1-2; BEM 165, pp. 7-8.

In this case, the Department testified that Petitioner was no longer income eligible for MSP benefits under the ALMB category because she was now receiving income from her participation in the ITP through the VA Hospital. For QMB, the monthly income limit for a group size of one is \$1005, which is which is 100 percent of the Federal Poverty Level, plus the \$20 disregard. For SLMB the monthly income limit for Petitioner's group size of one is \$1206, which is 120 percent of the Federal Poverty Level, plus the \$20 disregard. For ALMB, the monthly income limit for Petitioner's group size of one is

\$1356.75, which is 135 percent of the Federal Poverty Level, plus the \$20 disregard. RFT 242 (April 2017), pp. 1-2.

The Department failed to present a SSI Related MA Income Results Budgets in support of its contention that Petitioner's income exceeded the limit for MSP eligibility but testified that it considered Petitioner's monthly RSDI benefit of \$1338 and additional monthly earnings from the ITP. The Department stated that it took the average of Petitioner's weekly earnings from the ITP and determined that Petitioner's average monthly ITP income was \$389. (Exhibit A, pp. 4,10-12). However, it was unclear what Department policy was relied upon when making this calculation, as the prospective budgeting policy or other averaging income policy is not applicable to this case. The Department testified that with Petitioner's combined RSDI and ITP income, she was no longer income eligible for MSP benefits under any of the three MSP categories.

At the hearing, Petitioner disputed that her participation in the ITP through the Department of Veteran Affairs resulted in countable earned income from employment or unearned income and asserted that the money she received is considered a donation from a public or private relief or welfare organization that is excluded from her income. (See 38 U.S.C. § 1718 and 38 U.S.C. § 1503). BEM 500 (January 2016); BEM 501 (July 2016); BEM 503 (April 2017). Petitioner presented a letter from the Department of Veterans Affairs Medical Center confirming that she participates in the ITP which is a vocational therapeutic program helping veterans return to productive healthy lifestyles and possible employment. The letter indicates that veterans are not considered employees of the Medical Center but rather are just involved in an outpatient therapeutic program where they receive benefits for their participation. Additionally, the letter further notes that benefit payments to participants in the ITP are not considered income for VA compensation, pension, or IRS purposes (VHA Handbook 1163.02 Section 12 a). (Exhibit A, p. 8). (See also 38 U.S.C. § 1718 and 38 U.S.C. § 1503).

Petitioner also presented a decision from the United States Tax Court in *Roosevelt Wallace v Commissioner of Internal Revenue Service* (128 T.C. No. 11 (2007)) holding that payments made to veterans by the VA for work performed under a VA-administered compensated work therapy program (like ITP) are veterans' benefits excluded from taxable income and further that the ITP payments did not need to be reported on an information return (like a Form 1099). (Exhibit 2). In response to the *Wallace* decision, on December 3, 2007, the IRS issued Internal Revenue Bulletin: 2007-49 Rev. Rul. 2007-69 ruling that payments made by the Department of VA under the compensated work therapy program are exempt from federal income tax as veterans' benefits. Additionally, the Social Security Administration (SSA) considers payments received from a veteran's participation in the ITP a medical service, and thus, is excluded as income for SSI purposes. (SSA POMS: SI 00830.311).

While BEM 503 does not specifically indicate that payments received by veterans from participation in an ITP are to be included in or excluded (as an allowance, benefit, or expense) from the calculation of income for MSP purposes, based on the evidence presented and additional research conducted, the payments received do not meet the

definitions of earned income or unearned pension or compensation as referenced in policy and thus, should not be included in the calculation of Petitioner's income for MSP purposes. Therefore, the Department did not establish that Petitioner had excess income and was ineligible for MSP benefits. Additionally, although the Notice advises Petitioner that her MSP case would be closed effective June 1, 2017, the SOLQ and eligibility summary show that the Buy-In was stopped and Petitioner did not have active or approved Part B coverage effective March 2017. Thus, the Department will be ordered to reinstate Petitioner's MSP case effective March 1, 2017, as that was the Buy-In stop date identified on the SOLQ.

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 did not act in accordance with Department policy when it closed Petitioner's MSP case due to excess income.

Petitioner raised additional concerns regarding a lapse in MSP coverage/benefits and a refund/reimbursement that she asserted she is entitled to. Petitioner maintained that the SSA withheld money from her RSDI benefits in order to pay for her Medicare premium for the period of May 2016 to September 2016, despite being approved for MSP benefits through the Department. (Exhibit 1). Petitioner requested reimbursement of the premiums withheld. The Department could not explain the discrepancies in the documents presented and testified that Petitioner was approved for MSP coverage for the period at issue. BAM 810 provides that the Part B Buy-In program is used to pay Part B premiums and the program is an agreement between DCH and SSA. The buy-in is processed at the end of the calendar month that a case is opened in Bridges and that it takes SSA about 120 days after that date in order to adjust the RSDI check and issue a refund for premiums paid while the buy-in was being processed. See BAM 810 (July 2015), pp.7-9.

The evidence established that the Department processed the Buy-In with an incorrect start date of October 1, 2016, rather than the date Petitioner was approved for MSP benefits, May 1, 2016. Further, it was unclear whether the Department, through the Buy-In unit, had made payments to SSA for amounts due for Medicare premiums owed that had been withheld from Petitioner's RSDI benefit for the period at issue May 2016 to September 2016. There was no evidence presented by the Department establishing that Petitioner was not eligible for or not entitled to MSP benefits during this period. Thus, because Petitioner was approved for MSP coverage for the time period at issue, Petitioner should receive a refund for premiums withheld.

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 processed Petitioner's MSP benefits for the period of May 2016 to September 2016.

DECISION AND ORDER

Accordingly, the hearing request with respect to SER is DISMISSED and the Department's 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. Reinstate Petitioner's MSP case effective March 1, 2017;
2. Provide Petitioner with MSP benefits under the most beneficial category from March 1, 2017, ongoing, in accordance with Department policy;
3. Process Petitioner's MSP benefits/Buy-In for the period May 1, 2016, to September 30, 2016;
4. Issue supplements to SSA for any MSP benefits Petitioner should have received but did not, from May 1, 2016, to September 30, 2016; and
5. Notify Petitioner in writing of its decision.

ZB/tlf



Zainab A. Baydoun
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

Via Email:

MDHHS-Calhoun-Hearings
EQAD
M. Best
MAHS

Petitioner – Via First-Class Mail:

