



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: July 23, 2018
MAHS Docket No.: 18-004745
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 18, 2018, from Detroit, Michigan. The Petitioner appeared for the hearing and was represented by Attorney Gregory Ridella. The Department of Health and Human Services (Department) was represented by Kathleen Scorpio-Butina, Hearing Facilitator.

ISSUE

Did the Department properly determine Petitioner's Medical Assistance (MA) program 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. Since sometime in 2015, Petitioner has been a Medicare Part A recipient; however, he declined Medicare Part B coverage.
2. On July 15, 2016, the Department issued a Health Care Coverage Determination Notice (HCCDN) notifying Petitioner he was eligible for full coverage, presumably Healthy Michigan Plan (HMP) coverage based upon testimony although the document is unclear.

3. On May 23, 2017, the Department issued a HCCDN again notifying Petitioner he was eligible for full coverage, presumably through the HMP; this approval was made through the automatic renewal process.
4. On April 24, 2018, the Department issued a HCCDN notifying Petitioner that he was not eligible for MA coverage effective May 1, 2018, because he is not under age 18, not pregnant, not a parent or caretaker of someone under age 19, not a former foster child, is eligible for or enrolled in Medicare, is not under 21, not 65, not blind, not disabled, and has assets greater than the Medicare Savings Program (MSP) asset limit.
5. On May 7, 2018, the Department received Petitioner's hearing request disputing the denial of MA coverage.
6. On May 22, 2018, the Department issued a new HCCDN notifying Petitioner that he was not eligible for MA coverage because his assets were greater than the asset limit for the MSP program and a Medicaid program Group 2S (G2S).
7. The Department concedes that the asset tests were incorrect because the assets used in the calculation were from 2015 and not current.

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 this case, Petitioner was denied all MA coverage effective May 1, 2018. Based upon the evidence presented, the programs in dispute for Petitioner's eligibility are the MSP, G2S, and the HMP.

The Department concedes that its denial of MA coverage under the MSP and G2S programs was incorrect because the assets used in making its determination were three years old, and no effort was made to update Petitioner's assets. Both MSP and G2S eligibility is determined by evaluating countable assets. BEM 166 (April 2017), p. 2; BEM 165 (January 2018), p. 8; BEM 400 (May 2018), p. 1. There is no asset test for

Modified Adjusted Gross Income (MAGI)-related MA categories such as the HMP. BEM 400, p. 3. As of January 1, 2018, the asset limit for MSP is \$7,560.00. BEM 440, p. 8. The asset limit for G2S, an SSI-related MA category, is \$2,000 for a group size of one and \$3,000 for a group size of two. Since the Department concedes that it did not properly review Petitioner's asset eligibility, the denial of MA eligibility based upon excess assets is reversed.

The HMP is a MAGI-related MA category; therefore, no asset test applies. BEM 137 (April 2018), p. 1; BEM 400, p. 3. It provides health care coverage for individuals who:

- Are aged 19-64
- Do not qualify for or are not enrolled in Medicare
- Do not qualify for or are not enrolled in other Medicaid programs.
- Are not pregnant at the time of application.
- Meet Michigan residency requirements.
- Meet Medicaid citizenship requirements.
- And have income at or below 133% of the Federal Poverty Level (FPL).

Id. Petitioner's Attorney argues that the Department's implementation of 42 CFR 435.119 is inaccurate when it applies BEM 137 specifically as it relates to language about eligibility or enrollment in Medicare. The Code of Federal Regulations provides that individuals who "are not entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act" must be provided Medicaid coverage if the individual meets all other eligibility requirements. Petitioner is entitled to receive full Medicare coverage under Part A and Part B, but has elected not to receive Part B coverage. Since Petitioner is entitled to and enrolled in at least Medicare Part A coverage, he is not entitled to receive Medicaid coverage under the Medicaid expansion program, specifically the HMP as implemented in Michigan. While the Department had been providing the HMP coverage to Petitioner prior to May 1, 2018, this coverage appears to have been in error since the date of Petitioner's enrollment in Medicare Part A in 2015. The Department's determination to end the HMP coverage effective May 1, 2018, is in accordance with Department policy as well as the Code of Federal Regulations.

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 acted in accordance with Department policy when it closed Petitioner's HMP coverage but did not act in accordance with Department policy when it denied Petitioner's MSP and G2S coverage based upon excess assets.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the closure of Petitioner's HMP coverage and **REVERSED IN PART** with respect to the denial of MSP and G2S coverage based upon excess assets.

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. Redetermine Petitioner's eligibility for MA coverage effective May 1, 2018;
2. If otherwise eligible, issue supplements to Petitioner or on Petitioner's behalf for MA benefits not previously received effective May 1, 2018; and
3. Notify Petitioner in writing of its decision.



AMTM/

Amanda M. T. Marler

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) 763-0155; 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

Lauren Casper
MDHHS-Macomb 20-Hearings

Petitioner

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