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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: September 10, 2018
MAHS Docket No.: 18-007574
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; 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 August 29, 2018, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Darlean Shaw, specialist, and Rosalyn Boyle, supervisor.

ISSUE

The issue is whether MDHHS properly suspended Petitioner's Medical Assistance (MA) 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 Medicaid recipient.
2. On ██████████ 2018, Petitioner turned ██████ years old.
3. Beginning July 2018, MDHHS suspended Petitioner's Medicaid eligibility. MDHHS did not mail Petitioner timely notice of the Medicaid suspension.
4. On July 17, 2018, Petitioner requested a hearing to dispute the suspension of Medicaid.

CONCLUSIONS OF LAW

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. 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 suspension of Medicaid beginning July 2018. MDHHS testimony indicated that Petitioner's Medicaid coverage was temporarily stopped due to Petitioner's alleged failure to pursue Medicare benefits.

As a condition of Medicaid eligibility, individuals must apply for any state and/or federal benefits for which they may be eligible. BEM 270 (January 2018), p. 2. This requirement includes taking action to make the entire benefit amount available to the group. *Id.* Any action by the individual or other group members to restrict the amount of the benefit made available to the group causes ineligibility. *Id.* Medicare Part B is not mandatory to pursue as a potential resource. *Id.* However, when an individual refuses Medicare Part B, Medicaid will not pay for any Medicare Part B covered services received. *Id.* and BEM 257 (April 2018), pp. 1-2.

Generally, a person who is eligible for Medicare Part B and is enrolled in Part A is automatically enrolled in Part B. BAM 810 (January 2018), p. 4. He/she may refuse Medicare Part B. *Id.* A person who is not automatically enrolled must apply for enrollment at the local Social Security Administration (SSA) office during his/her Initial Enrollment Period or a General Enrollment Period. *Id.*

MDHHS alleged that Petitioner turned ■ years of age and was still not eligible for Medicare Part B; Petitioner did not dispute the allegations. Given the evidence, Petitioner is ■ years old and has not yet enrolled in Medicare Part B.

Policy allows Petitioner to refuse Medicare Part B, but policy also authorizes MDHHS to refuse to pay for medical services covered by Part B. Suspending Petitioner's Medicaid appears to be MDHHS' method of refusing to pay for medical services for persons who could be enrolled in Medicare. Suspending a client's Medicaid could be construed as inappropriately overbroad if Petitioner medical expenses are potentially covered by Medicaid but not Medicare. For purposes of this decision, it will be assumed that suspending Petitioner's Medicaid eligibility is authorized by MDHHS policy. In suspending Petitioner's Medicaid eligibility, MDHHS must also follow their procedural requirements.

For all programs, Bridges automatically notifies clients in writing upon certification of eligibility. BAM 220 (July 2018), p. 2. The written notice must include the action taken, reason for action, effective date of action, and policy supporting the actions. *Id.*

A negative action is a MDHHS action to deny an application or to reduce, suspend or terminate a benefit. BAM 220 (July 2018), p. 1. Generally, timely notice must be given for all negative actions to ongoing eligibility; a suspension of Medicaid is not among the actions in which timely notice cannot be given.¹ A timely notice is mailed at least 11 days before the intended negative action takes effect. *Id.* The action is pended to provide the client a chance to react to the proposed action. *Id.*

MDHHS acknowledged that Petitioner was never mailed timely notice of the Medicaid suspension. Had MDHHS done so, Petitioner might have been aware of MDHHS' requirement to enroll in Medicare Part B. MDHHS testimony indicated that Petitioner was made aware to pursue Medicare based on verbal statements from his specialist. The verbal statements of Petitioner's specialist do not satisfy the timely notice requirements of MDHHS policy. The failure of MDHHS to mail Petitioner timely notice of the MA suspension justifies a reversal of the action.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly suspended Petitioner's Medicaid eligibility. 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 Medicaid eligibility effective July 2018 subject to the finding that MDHSH failed to provide Petitioner with timely notice of the action; and
- (2) Initiate a supplement of any benefits improperly not issue.

The actions taken by MDHHS are **REVERSED**.

CG/



Christian Gardocki

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

¹ See BAM 220 (July 2018) p. 5 for a list of actions which do not require issuance of timely notice.

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

Lori Duda
MDHHS-Oakland-2-Hearings

Petitioner

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