



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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Date Mailed: May 17, 2019
MOAHR Docket No.: 18-014112
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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. After due notice, telephone hearing was held on April 17, 2019, from Lansing, Michigan. Petitioner represented himself. The Department was represented by Gregory Folsom.

ISSUE

Did the Department of Health and Human Services (Department) properly determine Petitioner's eligibility for Medical Assistance (MA)?

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 ██████ ██████ 2018, the Department received Petitioner's application for Medical Assistance (MA) benefits. Exhibit A, pp 1-5.
2. Petitioner receives monthly Retirement, Survivors, and Disability Insurance (RSDI) in the gross monthly amount of ██████. Exhibit A, pp 34-36.
3. Department records indicate that Petitioner has declined Medicare Part B coverage. Exhibit A, p 34.
4. On July 18, 2018, the Department notified Petitioner that he was eligible for the Medicare Savings Program (MSP). Exhibit A, pp 10-12.
5. On October 26, 2018, the Department received copies of medical bills not covered by any type of medical insurance. Exhibit A, pp 13-25.

6. On October 31, 2018, the Department notified Petitioner that he is eligible for Medical Assistance (MA) from July 1, 2018, through December 1, 2018. Exhibit A, pp 26-28.
7. On December 3, 2018, the Department received Petitioner's request for a hearing. Exhibit A, pp 29-30.
8. On February 6, 2019, the Department notified Petitioner that he was eligible for Medical Assistance (MA). Exhibit A, pp 37.

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.

As a condition of eligibility, the client must identify all third-party resources unless he/she has good cause for not cooperating. Failure, without good cause, to identify a third-party resource results in disqualification. Usually, the resource is Medicare or a health/casualty insurance company. Medicare Part B is not mandatory to pursue as a potential resource. However, when an individual refuses Medicare Part B, Medicaid will not pay for any Medicare Part B covered services they receive. Department of Health and Human Services Bridges Eligibility Manual (BEM) 257 (October 1, 2018), pp 1-2.

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness. The Michigan Administrative Hearing System (MAHS) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.

- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service. Department of Human Services Bridges Administrative Manual (BAM) 600 (October 1, 2018), pp 3-4.

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Rule 400.904(1). Moreover, the Department of Human Services Bridges Administrative Manual (BAM) 600 (October 1, 2018), p 6, provides in relevant part as follows:

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days.

Petitioner was an ongoing Medicaid and Medicare recipient when he incurred medical expenses that were not covered by any Medicaid or Medicare program. The Department received verification of the expenses that were not covered on October 26, 2018. On December 3, 2018, the Department received a timely request for a hearing protesting the denial of medical coverage.

Petitioner is eligible for Medicare benefits but has declined Medicare Part B coverage. As a result of this choice, he is not eligible to have any medical expenses that would have been covered by Medicare Part B if he had enrolled in that program as directed by BEM 257.

However, as an ongoing recipient of MA benefits, Petitioner was eligible for coverage for services not covered by Medicare Part B.

The production of evidence to support the department's position is clearly required under BAM 600 as well as general case law (see e.g., *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 [1976]). In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich167; 405 NW2d 88 (1987), the Michigan Supreme Court addressed the issue of burden of proof, stating in part:

The term "burden of proof" encompasses two separate meanings. [citation omitted.] One of these meanings is the burden of persuasion or the risk of nonpersuasion. The other is the risk of going forward or the risk of nonproduction. The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually on the party who has pleaded the existence of the fact, but..., the burden may shift to the adversary when the pleader has discharged [its] initial duty. The burden of producing evidence is a critical mechanism[.]

The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced.

McKinstry, 428 Mich at 93-94, quoting McCormick, Evidence (3d ed), Sec. 336, p 946.

The Department alleges that the services verified by the copies of invoices received on October 26, 2018, would have been covered by Medicare Part B if Petitioner had been enrolled in that program. Denial of such expenses is directed by BEM 257.

The Department has the burden of establishing that the uncovered expenses would have been covered by Medicare Part B. This Administrative Law Judge finds that the Department has failed to meet that burden. It is possible that the expenses were improperly billed by Petitioner's medical service provider, and it is possible that the services would have been covered by Medicare Part B, but is not possible to determine this with any sense of accuracy from the Department's evidence.

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 determined that the medical expenses could not be covered by the Medical Assistance (MA) benefits Petitioner was eligible for.

DECISION AND ORDER

Accordingly, the Department's 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:

Redetermine Petitioner's eligibility for Medical Assistance (MA) that could potentially cover the Medical expenses verified by Petitioner on October 26, 2018.

KS/dh



Kevin Scully
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

