



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: April 15, 2019
MAHS Docket No.: 19-002300
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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, an in-person hearing was held on April 8, 2019, from [REDACTED] Michigan. Petitioner was represented by Sarah Munro. The Department of Health and Human Services (Department) was represented by Sha-Re Clayton, Eligibility Specialist, and Ryan Clemons, Family Independence Manager.

ISSUE

1. Did the Department properly close and reinstate Petitioner's Medicare Savings Program (MSP) benefit case?
2. Did the Department properly determine 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 MA and MSP benefit recipient.
2. In January 2019, the Department received verification of assets held in a trust with Petitioner as the beneficiary (Exhibit C).
3. On January 15, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice (HCCDN) informing her that her MSP benefit case was

closing effective February 1, 2019, ongoing (Exhibit A). Petitioner's MSP benefit case actually closed effective January 1, 2019 (Exhibit D).

4. On February 14, 2019, the Department sent Petitioner a HCCDN informing her that her MA benefit case was closing effective January 1, 2019, ongoing (Exhibit B).
5. On March 5, 2019, Petitioner submitted a request for hearing disputing the Department's actions.

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 an ongoing MA and MSP benefit recipient. In January 2019, the Department received verification of an asset held in a trust that was created for the benefit of Petitioner.

For MSP and MA benefits, countable assets cannot exceed the limit under BEM 400. BEM 165 (January 2019), p. 8. Countable assets are determined based on MA policies in BEM 400, 401 and 402. BEM 165, p. 8. MSPs are SSI-related MA categories. BEM 165, p. 1. Ad-Care is an SSI-related full-coverage MA program. BEM 163 (July 2017), p. 1. For SSI-related MA categories, the asset limit for a group size of one is \$2,000. BEM 400, p. 8. Effective January 1, 2018, the asset limit for a group of one for MSP benefits is \$7,560. BEM 400, p. 8.

For MA benefits, how much of the principle of a trust is a countable asset depends on the terms of the trust and whether any of the principal consists of countable assets or countable income. BEM 401 (October 2018), p. 11. An exception to the Medicaid trust rules is a Special Needs Trust. BEM 401, p. 8. A trust is not a Medicaid trust if it meets the following conditions: (i) the trust must be unchangeable with regard to the provisions that make it a Special Needs Trust; (ii) the trust contains the resources of a person who is under the age 65 and is disabled; (iii) the trust was established for the person described in condition ii; (iv) the trust was established by a court, by the person

described in condition ii or by the person's parent, grandparent or legal guardian/conservator; (v) the trust imposes on the trustee and automatic duty to repay Medicaid upon the person's death up to an amount equal to the total MA paid on behalf of the person. BEM 401, p. 8. The Department will treat assets transferred into a Special Needs Trust as part of the trust for the entire month of transfer. BEM 401, p. 9. A trust that is a Special Needs Trust when the person was under the age 65 continues to be a Special Needs Trust after the person attains age 65. BEM 401, p. 9. However, any additions or augmentations to the trust after the person attains age 65 are not protected by the exception. BEM 401, p. 9.

The Department testified that initially the assets in the trust were counted, which resulted in the closure of Petitioner's MA and MSP benefit cases for exceeding the asset limit. However, the Department stated that the benefit cases were closed in error, as the trust qualified as a Special Needs Trust.

At the hearing the Department testified that Petitioner's MA and MSP benefit cases were reinstated (Exhibit D). However, Petitioner's eligibility summary shows that in January 2019 and March 2019, she was not eligible for MSP benefits. The Department stated Petitioner should qualify for MSP benefits under the Qualified Medicare Beneficiaries (QMB) category. Therefore, the Department did not act in accordance with policy when it closed Petitioner's MSP benefit case and did not fully process the reinstatement of her benefits.

According to Petitioner's eligibility summary, she was approved for MA benefits effective January 1, 2019, ongoing, with no loss in benefits. However, Petitioner was approved for MA benefits under the Healthy Michigan Plan (HMP) program for the period of January 1, 2019 through April 30, 2019. Effective May 1, 2019, ongoing, Petitioner was approved for MA benefits under the Ad-Care program.

The HMP program provides health care coverage for individuals who are: (i) 19-64 years of age; (ii) do not qualify for or are not enrolled in Medicare; (iii) do not qualify for or are not enrolled in other Medicaid programs; (iv) are not pregnant at the time of application; (v) meet Michigan residency requirements; (vi) meet Medicaid citizenship requirements; and (vii) have income at or below 133% of the Federal Poverty Level. BEM 137 (January 2018), p. 1. Petitioner is a Medicare recipient, and therefore, does not qualify for HMP. As Petitioner is eligible for QMB MSP benefits effective January 1, 2019, it is likely she would be eligible for benefits under the Ad-Care program. Thus, the Department did not properly determine Petitioner's MA eligibility.

DECISION AND ORDER

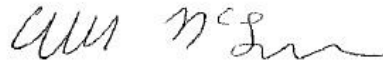
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it redetermined Petitioner's MA and MSP benefit eligibility.

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:

1. Redetermine Petitioner's MA and MSP benefit eligibility as of January 1, 2019, ongoing;
2. If Petitioner is eligible for MA benefits, provide her with MA coverage she is entitled to receive;
3. If Petitioner is eligible for MSP benefits, issue supplements she is entitled to receive in accordance with Department policy;
4. Notify Petitioner of its MSP and MA decision in writing.

EM/jaf



Ellen McLemore
Administrative Law Judge
for Robert Gordon, 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

Sarina Baber
MDHHS-Washtenaw-Hearings

Petitioner

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

BSC4
D Smith
EQAD