



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 22, 2019
MOAHR Docket No.: 19-003222
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 May 20, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. Also appearing on behalf of Petitioner was [REDACTED]. The Department of Health and Human Services (Department) was represented by Kenitha Brown, Assistance Payments Worker, and Eileen Kott, Family Independence Manager. During the hearing, a 34-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-34.

ISSUE

Does the undersigned Administrative Law Judge (ALJ) have jurisdiction to address the issues raised by Petitioner's hearing request?

If so, did the Department properly close Petitioner's Medicare Savings Plan (MSP) benefits case, effective January 1, 2019?

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 recipient of MSP benefits and Medicaid (MA) benefits under the full-coverage AD-Care program. Petitioner had an Authorized Representative (AR), [REDACTED], on file with the Department.

2. On November 5, 2018, the Department issued to Petitioner a Redetermination form to gather relevant information regarding Petitioner's ongoing eligibility for the programs in which she was enrolled. The form indicated that it had to be filled out and returned to the Department by December 5, 2018 in order to avoid having her case be closed. Notably, the Redetermination **was not sent to Petitioner's AR**. Exhibit A, pp. 5-12.
3. Neither Petitioner nor her AR returned the completed Redetermination to the Department.
4. On December 14, 2018, the Department issued to Petitioner and her AR each a copy of a Health Care Coverage Determination Notice informing them that Petitioner's MA and MSP benefits cases were closing, effective January 1, 2019 due to the failure to return the Redetermination form in a timely manner. Exhibit A, pp. 13-20.
5. The copy sent to Petitioner's AR was returned to the Department as undeliverable. Thus, Petitioner's AR was not provided the Redetermination or the Health Care Coverage Determination Notice.
6. Petitioner became aware of a problem when she noticed that her checks from the Social Security Administration were reduced to pay the Medicare premium that Petitioner's MSP benefits were previously covering.
7. On February 1, 2019, Petitioner went to a Department office where she submitted a new application for MA and MSP benefits.
8. Petitioner's MA benefits were restored retroactively back to the date of closure. Thus, Petitioner suffered no loss of MA benefits. Exhibit A, pp. 27-30.
9. On March 18, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that her MSP benefits case was approved, effective March 1, 2019. Exhibit A, pp. 27-30.
10. On March 28, 2019, Petitioner submitted to the Department a request for hearing objecting to actions taken with respect to her MSP and MA benefits cases.
11. During the hearing, Petitioner acknowledged that the dispute with respect to the MA benefits under the AD-Care program had been resolved to Petitioner's satisfaction. Petitioner withdrew her hearing request with respect to that program. Thus, the only issues in this case concern Petitioner's MSP benefits for the months of January 2019 and February 2019.

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.

There are three categories of MSP benefits including the Qualified Medicare Beneficiary (QMB), the Special Low Income Medicare Beneficiary (SLMB), and the Additional Low Income Medicare Beneficiary (ALMB). QMB pays Medicare premiums, and Medicare coinsurances, and Medicare deductibles. QMB coverage begins the calendar month after the processing month. SLMB pays Medicare Part B premiums. SLMB coverage is available for retro MA months and later months. ALMB pays Medicare Part B premiums provided funding is available. The Department of Community Health notifies the Department of Human Services if funding is available. ALMB coverage is available for retro MA months and later months. BEM 165 (January 2018), pp. 2-4. Full-coverage QMB eligibility cannot be retroactive. BAM 115 (October 2018), p. 12.

In this case, Petitioner was an ongoing recipient of MSP benefits from the Department. Petitioner designated [REDACTED] as Petitioner's Authorized Representative (AR) for the purposes of communicating with the Department. One of the reasons cited for naming an AR is that Petitioner is blind. On November 5, 2018, the Department issued a Redetermination document to Petitioner. It was required to be filled out and returned to the Department by December 5, 2018 in order to ensure that Petitioner had uninterrupted benefits. Despite having a properly designated AR, the Department did not send the Redetermination to the AR.

When the inevitable non-return of the completed Redetermination happened, the Department issued a Health Care Coverage Determination Notice to both Petitioner and Petitioner's AR indicating that the case was closing, effective January 1, 2019. That document included instructions on how and when to file a hearing request objecting to the closure. The copy sent to Petitioner's AR, for some reason, was returned to the Department as undeliverable.

Petitioner finally received notice that something was amiss when she discovered that her check from the Social Security Administration was reduced in order to pay the Medicare premium the Department was previously covering under the MSP benefits case. Petitioner went to a Department office on February 1, 2019, where she was instructed to fill out another application. For some reason, it took until March 18, 2019 for the Department to issue any kind of adjudication on that application. Ultimately, Petitioner was approved for MSP benefits, effective March 1, 2019, ongoing. As a

result of the closure and delay in filing another application, Petitioner ended up with a lapse in her MSP benefits covering January 2019 and February 2019.

Benefits stop at the end of the benefit period unless a redetermination is completed and a new benefit period is certified. BAM 210 (January 2018), p. 4. To start the redetermination process, the Department issues to the client and the client's AR a redetermination packet that includes instructions on how to avoid the closure of the program and a due date. BAM 210, p. 8.

Petitioner's benefit period was set to expire on December 31, 2018. By that date, the redetermination process was not complete. Accordingly, the Department closed petitioner's MSP benefits case, effective January 1, 2019.

That, however, does not end the inquiry. Petitioner was entitled to have the Redetermination form provided to her designated AR, per Department policy. Petitioner prudently named an AR to assist her in her dealings with the Department, as she is blind, making it difficult to handle the necessary paperwork. Because the Department did not issue the Redetermination to Petitioner's AR, Petitioner cannot be held responsible for the consequences of failing to timely return the completed form.

Additionally, there is a question over whether Petitioner's hearing request, which came more than 90 days after the Health Care Coverage Determination Notice, was timely with respect to challenging the closure of Petitioner's MSP case. It is true that hearing requests must be filed within 90 days of written notice of the case action. BAM 600 (October 2018), p. 6. However, as explained above, there was no written notice of case action provided to Petitioner's AR, as the notice was returned to the Department as undeliverable, despite it being a valid address at which Petitioner's AR was actively receiving mail at the time. Because no written notice was provided, the clock on the 90 days did not start running. Accordingly, the hearing request was timely.

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 benefits case, effective January 1, 2019.

DECISION AND ORDER

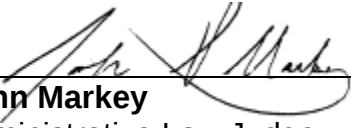
Accordingly, the Department's decision is **REVERSED**.

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:

1. Reinstate Petitioner's MSP benefits case, effective January 1, 2019;
2. Complete the redetermination process pursuant to Department policy and law;

3. If Petitioner is eligible for additional benefits, ensure that Petitioner receives them; and
4. Issue written notice of any case action(s) in accordance with Department policy.

JM/cg


John Markey
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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR 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-Wayne-76-Hearings
D. Smith
EQAD
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

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