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GOVERNOR

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

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DIRECTOR

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Date Mailed: September 3, 2019
MOAHR Docket No.: 19-008149
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 scheduled for August 29, 2019, from ██████████ Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled hearing time. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) failed to participate in the hearing.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's eligibility for Medicare Savings Program (MSP).

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. As of April 2019, Petitioner was an ongoing recipient of MSP.
2. On May 15, 2019, MDHHS terminated Petitioner's MSP eligibility beginning May 2019 due to alleged excess assets.
3. On July 29, 2019, Petitioner requested a hearing to dispute the termination of MSP.

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 termination of MSP benefits. A Health Care Coverage Determination Notice dated May 15, 2019, stated that Petitioner was ineligible for MSP, effective May 2019, due to excess assets. Exhibit A, pp. 1-2.

For MSP eligibility, countable assets may not exceed the asset limits of BEM 400. *Id.*, p. 8. Effective April 2019, the MSP asset limit for a one-person group is \$7,730. BEM 400 (April 2019), p. 8.

As part of a hearing packet, MDHHS submitted Petitioner's MSP budget which factored liquid assets of \$8,152. Neither MDHHS nor Petitioner presented documentation of Petitioner's assets. Petitioner testified that he cannot recall what his liquid assets were in May 2019 and that he did not have immediate access to a bank statement. MDHHS did not participate in the hearing to give any evidence of how Petitioner's assets were determined.

MDHHS has the burden to prove that a correct determination of assets was made. By not participating in the hearing or submitting documentation before the hearing, MDHHS failed to meet its burden. Under the circumstances, MDHHS will be ordered to redetermine Petitioner's MSP eligibility from May 2019.

Insufficient evidence of Petitioner's assets precludes a finding that MDHHS incorrectly determined Petitioner's asset eligibility. Thus, when reprocessing Petitioner's MSP eligibility, MDHHS may yet again deny Petitioner while making no changes to the budget. As a courtesy to Petitioner and MDHHS, there are two asset policies which merit discussion because they are occasionally overlooked by MDHHS specialists.

Petitioner testified that he receives monthly income from the Social Security Administration (SSA). Petitioner also testified that his benefits are directly deposited into a savings account. MDHHS cannot count a client's current income as income and assets in the same benefit month. *Id.*, p. 23. Presumably, MDHHS counted Petitioner's RSDI benefits as income; in so doing, MDHHS must subtract the amount of RSDI in determining the amount of assets in the account for which the RSDI is directly deposited. Notably, if MDHHS did not take this step, the failure to do so was the difference between Petitioner's eligibility and ineligibility.

In determining asset eligibility, MDHHS sometimes only factors a client's assets as of the end of the benefit month. For Supplemental Security Income (SSI)-related MA, asset-eligibility exists when the group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. *Id.* Thus, for a client to be ineligible due to assets, a client must exceed the asset limit for all days in

the benefit month. Again, it is not known if MDHHS considered Petitioner's assets over an entire benefit month but MDHHS should ensure to do so when reprocessing Petitioner's eligibility.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish that Petitioner's MSP eligibility was properly terminated. It is ordered that MDHHS initiate the following actions within 10 days of the date of mailing of this decision:

- (1) Redetermine Petitioner's asset eligibility for MSP, effective May 2019;
- (2) Upon reprocessing, adhere to BEM 400 which prevents MDHHS from counting income as an asset in the same month and authorizes asset-eligibility if a client falls below the asset limit one day within a benefit month; and
- (3) Issue a supplement for any benefits improperly not issued.

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

CG/jaf



Christian Gardocki

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 Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Linda Gooden
MDHHS-Oakland-3-Hearings

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Petitioner

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