



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: January 17, 2020
MOAHR Docket No.: 19-012627
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 January 8, 2020, from Detroit, Michigan. Petitioner did not appear. [REDACTED], Petitioner's mother, testified and appeared as Petitioner's authorized hearing representative (AHR). The Michigan Department of Health and Human Services (MDHHS) was represented by Cheryl Watkins, supervisor, and Wanda Daniel, specialist.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's Medicare Savings Program (MSP) 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. As of July 2019, Petitioner was an ongoing MSP recipient with a benefit period certified through August 2019.
2. As of July 2019, Petitioner was an ongoing recipient of Medicaid under the category of AD-Care and a recipient of Medicare Part A.
3. On July 4, 2019, MDHHS mailed a Redetermination form for the purpose of redetermining Petitioner's ongoing MSP eligibility.

4. On August 19, 2019, MDHHS terminated Petitioner's MSP eligibility beginning September 2019 due to Petitioner not returning the Redetermination form. The notice stated that Petitioner had through November 18, 2019, to request a hearing.¹
5. On November 18, 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. Exhibit A, pp. 5-8. A Health Care Coverage Determination Notice dated August 19, 2019, stated that Petitioner's MSP eligibility would end beginning September 2019 due to a failure to return a Redetermination.

MSP programs offer three different degrees of assistance with payment toward a client's Medicare premium and deductibles. Qualified Medicare Beneficiaries (QMB) coverage pays for a client's Medicare premiums, coinsurances, and deductibles. BEM 165 (January 2018), p. 2. Specified Low Income Beneficiaries (SLMB) coverage pays for a client's Medicare Part B premium. *Id.* Additional Low Income Beneficiaries (ALMB) coverage pays for a client's Medicare Part B premium if MDHHS funding is available. *Id.*

For all programs, including MSP, MDHHS generates a redetermination packet to the client three days prior to the negative action cut-off date in the month before the redetermination is due. *Id.*, p. 8. For all programs, a redetermination packet is considered complete when all of the sections of the redetermination form including the signature section are completed. *Id.*, p. 12. For Medicaid, benefits stop at the end of the benefit period unless a renewal is completed and a new benefit period is certified.² *Id.*, p. 4. For Medicaid, a written notice must be issued because benefits are not automatically terminated for failure to record receipt of the renewal packet and. *Id.*, p. 13.

¹ Generally, clients have 90 days from the date of disputed written notice to request a hearing. BAM 600 (July 2019) p. 6. The final date to request a hearing is extended when the 90th day following written notice falls on a weekend or other date that MDHHS is closed. In the present case, Petitioner's hearing request was received on the last date for the hearing request to be timely.

² Redetermination policy references Medicaid and other programs (e.g. food, cash, day care...) but does not reference MSP. In the absence of specific MSP policy for redeterminations, Medicaid policy will be applied.

MDHHS presented the first two pages of a Redetermination dated July 4, 2019, concerning redetermining Petitioner's MSP eligibility. Exhibit A, pp. 25-26. Petitioner did not return the Redetermination to MDHHS before the form's due date of August 5, 2019. Petitioner's failure prompted MDHHS to send notice on August 19, 2019, of a pending termination of MSP benefits.

Given a July mailing date, it is presumed that Petitioner's MSP eligibility was certified through August 2019. As stated above, clients have through the end of a benefit period to complete and return a Redetermination form before benefits are stopped. Petitioner also did not return the Redetermination form before the end of August 2019.

Generally, when a client fails to return a Redetermination to MDHHS before the end of a benefit period, the closure is proper. One notable exception is applicable to the present case.

The Medicaid program includes several sub-programs or categories. BEM 105 (April 2017), p. 1. AD-Care is a Medicaid category available to aged or disabled persons. BEM 163 (July 2017) p. 1. Persons receiving Medicaid through AD-Care are considered QMB eligible without a separate QMB determination. BEM 165 (January 2018), p. 3.

It was not disputed that Petitioner received Medicare Part A as of August 2019 (the final month of Petitioner's benefit period). It was also not disputed that Petitioner received Medicaid under the category of AD-Care as of August 2019. Petitioner's circumstances merit *automatic* QMB eligibility. "Automatic" is reasonably interpreted as having no need for a determination or redetermination. In other words, Petitioner did not need to return a Redetermination because her QMB approval is incorporated within her Medicaid eligibility through AD-Care. As a matter of practice, MDHHS probably should certify a client's MSP eligibility whenever the client receives AD-Care and Medicare Part A; MDHHS' failure to do so in the present case led to the improper closure of Petitioner's MSP benefits.

Given the evidence, MDHHS improperly terminated Petitioner's MSP eligibility beginning September 2019. As a remedy, Petitioner is entitled to reinstatement of benefits due to her automatic QMB eligibility as a Medicaid recipient under AD-Care.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's MSP 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 MSP eligibility beginning September 2019 subject to the finding that Petitioner is automatically eligible for QMB based on being a recipient of Medicaid under AD-Care; and
- (2) Issue a supplement of any benefits improperly not issued.

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

CG/cg



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

Via Email:

MDHHS-Washtenaw-20-Hearings
D. Smith
EQAD
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

