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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 6, 2017
MAHS Docket No.: 17-001144
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on March 8, 2017, from Detroit, Michigan. The Petitioner appeared for the hearing with her Authorized Hearing Representative (AHR) [REDACTED] who also served as Arabic Interpreter. Petitioner's grandson [REDACTED] was also present as a witness on Petitioner's behalf. The Department of Health and Human Services (Department) was represented by Juanita Munoz, Hearing Facilitator.

ISSUE

Did the Department properly process and close Petitioner's Medicare Savings Program (MSP) case?

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 under the Qualified Medicare Beneficiaries (QMB) category which pays Medicare Part A and Part B premiums, Medicare coinsurances, and Medicare deductibles.
2. According to the SOLQ and correspondence from the Social Security Administration (SSA), Petitioner had a Medicare Part A start date and Part A Buy-In start date of January 1, 2013. Petitioner also had a Medicare Part B start date and Part B Buy-In start date of October 1, 2011. (Exhibit A, pp. 17-20)

3. On an unverified date, Petitioner's MSP case closed. The Department did not present any evidence that it sent Petitioner a Health Care Coverage Determination Notice or other eligibility notice advising her of the closure of her MSP case.
4. On or around [REDACTED], 2016, Petitioner submitted an application for health care coverage through the Department and sought MSP benefits.
5. On November 17, 2016, the Department sent Petitioner a Health Care Coverage Determination Notice (Notice) advising her that for the period April 1, 2016, through September 1, 2016, she was eligible for Full Coverage MSP benefits. (Exhibit A, pp. 5-8)
6. The November 17, 2016, Notice further advised Petitioner that effective December 1, 2016, she was ineligible for MSP benefits on the basis that she is not enrolled in Medicare Part A and does not meet basic MSP criteria. (Exhibit A, pp. 5-8)
7. The Department's eligibility summary indicates that Petitioner was approved for and eligible to receive MSP benefits under the QMB category through September 1, 2016. (Exhibit A, p. 21)
8. The November 17, 2016, Notice does not advise Petitioner of her MSP eligibility from September 1, 2016, to November 30, 2016, and the eligibility summary provided does not clearly reference Petitioner's MSP eligibility for this period. (Exhibit A, pp. 5-8; 21)
9. Although the Notice and eligibility summary indicate that Petitioner was approved for MSP benefits under the QMB category through September 1, 2016, the SOLQ shows a Medicare Part A Buy-In stop date of April 1, 2016, and a Part A stop date of September 1, 2016. The SOLQ shows a Medicare Part B Buy-In stop date of March 1, 2016, and a Part B stop date of September 1, 2016. (Exhibit A, pp. 17-20)
10. Despite the Department approving Petitioner for MSP benefits under the QMB category and the SOLQ/SSA Correspondence indicating State Billing-Michigan for Part A and Part B premiums, Petitioner's Medicare Part A and B coverage was terminated for nonpayment of premiums. (Exhibit A, pp. 17-20)
11. On or around [REDACTED], 2017, Petitioner's AHR requested a hearing on her behalf disputing the Department's actions with respect to Petitioner's MSP benefits, indicating that Petitioner's Medicare Part A and Part B coverage was discontinued due to the State not paying Petitioner's premiums. (Exhibit A, pp. 3-4)

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. The Medicare Savings Program (MSP) is part of the Medical Assistance (MA) program.

Medicare has three parts: Part A (hospital insurance (HI)), Part B (supplementary medical insurance (SMI)), and Part D (prescription drug coverage). BAM 810 (July 2015), p. 1. A person is eligible for Part B if he (i) is eligible for Part A, or (ii) is at least age 65, lives in the U.S., and is either a U.S. citizen or an alien lawfully admitted for permanent residence who has lived in the U.S. five consecutive years. BAM 810, p. 3. Generally, a person who is eligible for Part B and is enrolled in Part A is automatically enrolled in Part B, but he may refuse Part B. BAM 810, p. 4. A person who is not automatically enrolled in Part B must apply for enrollment at the local SSA office during his "initial enrollment period" or a "general enrollment period," but this general enrollment period is waived for persons eligible for MSP and covered by the Part B Buy-In Program. BAM 810, p. 4.

MSP is a State-administered program in which the State pays an income-eligible client's Medicare premiums, coinsurances, and deductibles. BEM 165 (January 2016), pp 1-2; BAM 810, pp. 1, 6. Medicare Savings Programs are SSI-related MA categories. The QMB category is a full coverage MSP that pays: Medicare premiums (Medicare Part B premiums and Part A premiums for those few people who have them); Medicare coinsurances; and Medicare deductibles. BEM 165, pp. 1-2.

In this case, Petitioner requested a hearing disputing the Department's actions with respect to her MSP case. At the hearing, the Department testified that because Petitioner's permanent resident alien card expired on [REDACTED], 2016, the SSA terminated her Medicare Part A coverage, and thus, she was no longer eligible for MSP benefits through the Department. The Department did not provide an effective date of the case closure but stated that Petitioner reapplied for MSP benefits in [REDACTED] 2016 and in response, the Department issued the November 17, 2016, Health Care Coverage Determination Notice advising that for the period of April 1, 2016, through September 1, 2016, Petitioner was eligible for full coverage MSP benefits and that effective December

1, 2016, she was ineligible for MSP benefits on the basis that she is not enrolled in Medicare Part A and does not meet basic MSP criteria. As referenced above, the Notice does not advise Petitioner of her MSP eligibility from September 1, 2016, to November 30, 2016, and there is no clear reference to Petitioner's MSP eligibility for this period on the eligibility summary.

Petitioner's AHR disputed that Petitioner was approved for MSP benefits through September 1, 2016, and stated that Petitioner's MSP benefits were terminated in April 2016, which is consistent with the Part B Buy-In stop date of March 1, 2016 reflected on the SOLQ, as the SSA deducts Medicare Part B premiums one month in advance. According to the hearing request, Petitioner asserted that her Medicare Part A and Part B coverage was terminated because the State stopped paying Medicare Premiums that Petitioner had been approved for through the MSP.

While BAM 600 provides that requests for hearing must be filed within 90 days of the negative action, the evidence established that the Department did not notify Petitioner in writing of the closure or termination of her MSP benefits, thus, Petitioner's MSP eligibility from March 1, 2016, ongoing will be reviewed, as the only relevant written notice presented at the hearing was the Health Care Coverage Determination Notice dated November 17, 2016. BAM 600 (October 2016), p. 6.

MSP Eligibility from March 2016 to September 2016

At the hearing, the Department presented evidence through its eligibility summary and Health Care Coverage Determination Notice establishing that Petitioner was approved for MSP benefits under the full coverage QMB category from April 2016, to September 2016. (Exhibit A, pp. 5-8, 21). The Department asserted that Petitioner's MSP case remained open through September 2016, and that after that period, her eligibility was terminated because she was no longer enrolled in Medicare Part A. The Department's testimony, eligibility summary, and Notice are in direct conflict with the SOLQ presented and the documentation provided to the Department by Petitioner from the SSA, however.

While Petitioner was approved for MSP through the Department, the SOLQ and SSA correspondence show the State was not paying SSA for her Medicare Part A and Part B premiums as required, resulting in the SSA terminating her Part A and Part B coverage effective September 1, 2016. (Exhibit A, pp. 17-20). Despite the Department's testimony that Petitioner only became ineligible for MSP after her permanent resident alien card expired in ████████ 2016, the evidence established that for an unexplained reason, the State of Michigan/Department stopped paying Petitioner's Medicare premiums and terminated her buy-in eligibility for Part A and Part B in April 1, 2016, and March 1, 2016, respectively. (Exhibit A, pp. 17-20).

Department policy provides that, through the Part A and Part B Buy-In program, which administers MSP cases, Medicaid pays the Medicare premiums **and** enrolls persons

eligible for, but not enrolled in, Medicare Part A, and enrolls persons eligible for, but not enrolled in, Medicare Part B, if they are enrolled in Medicare Part A or have refused Medicare Part B enrollment. BAM 810, pp. 7-8. Generally, the Buy-In program operates automatically based on computer tapes from SSA and the Department's central office. BAM 810, p. 8.

In this case, the Department failed to present any evidence in support of its termination of Petitioner's Buy-In eligibility and failure to pay Petitioner's Medicare premiums for March 1, 2016, ongoing, which resulted in SSA terminating Petitioner's Part A and Part B coverage effective September 1, 2016.

MSP Eligibility from September 1, 2016, to November 30, 2016

At the hearing, the Department did not present sufficient evidence to establish that it properly processed Petitioner's MSP eligibility for the period between September 2016 and November 2016. Although the Department testified that Petitioner would be ineligible for MSP after October 2016, there was no evidence presented to establish that the Department actually determined Petitioner's MSP eligibility for that period or notified her of her eligibility. As referenced above, the Notice presented at the hearing indicates that the Department determined Petitioner was ineligible for MSP benefits effective December 1, 2016, but makes no reference to Petitioner's MSP eligibility for September 2016 to November 2016. The eligibility summary shows a lapse for this period. Thus, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy in processing Petitioner's MSP eligibility from September 2016 to November 2016.

MSP Eligibility from December 1, 2016, ongoing

A review of Department policy indicates that individuals who are eligible for Medicare Part A (other than under section 1818A of the Social Security Act, which generally applies when the person is under age 65 and there is a premium charged for Medicare Part A) and who receive Medicaid under the AD-Care program are considered QMB eligible without a separate QMB determination. BEM 165, pp. 1-3. For purposes of the QMB program, entitled to Medicare Part A means the person either (i) receives Medicare Part A with no premium being charged (as shown on the State Online Query (SOLQ), or (ii) refused premium-free Medicare Part A (indicated by a claim number suffix of M1), or (iii) is eligible for, or receiving, Premium HI (hospital insurance) (indicated by claim number suffix "M"). BEM 165, pp. 4-5.

The Department testified that Petitioner was ineligible for MSP effective December 1, 2016, because she was not enrolled in Medicare Part A. The Department stated that SSA terminated Petitioner's Medicare Part A and Part B coverage because her permanent resident alien card had expired. However, the SOLQ and SSA document suggest that Petitioner's Part A and Part B coverage was terminated due to the Department's nonpayment of premiums, prior to the expiration of the permanent resident alien card. (Exhibit A, pp. 17-20).

Petitioner became eligible for Medicare Part A in January 2013 and there was no evidence presented that she had a premium. The Department did not establish that Petitioner was no longer eligible for Part A based on her alien status or other eligibility factor. Thus, because Petitioner was an AD-Care MA recipient, the Department should have included Petitioner in the Buy-In program and paid Medicare premiums on her behalf until such time that it was established she was no longer eligible for or entitled to Part A.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it processed and closed Petitioner's MSP case.

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. Process Petitioner's MSP eligibility and the Buy-In for March 1, 2016, ongoing, in accordance with Department policy; and
2. Issue supplements to SSA for any MSP benefits Petitioner should have received from March 1, 2016, ongoing.



Zainab A. Baydoun

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

ZB/tlf

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) 335-6088; 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

Via Email:

DHHS Hearings Coordinator – 41 – 1843
BSC4 Hearing Decisions
EQAD
M. Best
MAHS

Via First-Class Mail:

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
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