[redacted]

Date Mailed: March 28, 2019
MAHS Docket No.: 19-000778
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 March 13, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Candice Benns, Hearings Facilitator, and Mildred Wheeler, Supervisor.

ISSUE

Did the Department act in compliance with law and policy when, in November 2018, it retroactively stripped Petitioner of her full coverage Medicaid (MA) back to February 1, 2018?

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 MA benefits from the Department.

2. On [redacted], 2017, Petitioner submitted to the Department a completed Redetermination form wherein she provided the Department with relevant information regarding her ongoing eligibility for MA benefits. Petitioner reported accurate income information to the Department.

3. On [redacted], 2018, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that she was eligible for full-coverage

MA benefits under the Healthy Michigan Plan (HMP), effective [redacted], 2018, ongoing.

4. On [redacted], 2018, Petitioner submitted to the Department an online document to renew her benefits with the Department. Petitioner reported to the Department that her income and expenses had not changed.

5. On [redacted] 2018, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that she was not eligible for MA benefits, effective [redacted] 2018. Thus, more than nine months after being approved for and receiving full-coverage MA, the Department retroactively stripped that coverage.

6. On [redacted] 2018, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that she was eligible for MA benefits, effective [redacted] 2018, subject to a deductible.

7. On [redacted] 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's decision to retroactively take reduce her MA benefits.

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 recipient of full-coverage MA benefits from the Department when she filed a [redacted] 2017 Redetermination. On that Redetermination, Petitioner accurately reported her household income and other relevant, eligibility-related facts. On [redacted], 2018, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that she was approved for full-coverage MA under the HMP, effective [redacted], 2018, ongoing.

As her case was due to be renewed at some point near the beginning of 2019, Petitioner submitted to the Department an online renewal of benefits form on [redacted]

[redacted], 2018. On that form, Petitioner reported no relevant changes. When the Department processed Petitioner's submission, the Department concluded that Petitioner's income was not properly budgeted. When the Department worker included Petitioner's actual and reported income into the budget, it showed that Petitioner was not eligible for the MA coverage she was receiving since [redacted], 2018. On [redacted], 2018, the Department issued to Petitioner a Health Care Coverage Determination Notice retroactively stripping Petitioner's MA benefits all the way back to [redacted], 2018. On [redacted] 2018, the Department issued another Health Care Coverage Determination Notice. That notice informed Petitioner that she was eligible for MA coverage under a deductible plan, effective [redacted], 2018.

Shortly after receiving those notices retroactively stripping Petitioner's MA coverage for all but [redacted] 2018, Petitioner received a 1095-B form from the Department indicating that Petitioner only had healthcare coverage from the Department for the month of [redacted] 2018. As the federal government assesses tax penalties on those who do not have healthcare coverage, Petitioner was concerned about having to pay a penalty for not having coverage she in fact had. On [redacted], 2019, Petitioner submitted a request for hearing to the Department challenging its actions with respect to her MA benefits.

Upon certification of eligibility results, the Department notifies a client in writing of positive and negative actions by generating an appropriate notice of case action. BAM 220 (October 2018), p. 2. A notice of case action must inform the client of (1) the action being taken by the Department, (2) the reason or reasons for the action, (3) the basis in policy for the action, (4) how to contest the action, and (5) the conditions under which benefits are continued if a hearing is requested. BAM 220, pp. 2-3. A positive action is a Department action to approve an application or increase a benefit. BAM 220, p. 1. A negative action is a Department action to deny an application or to reduce, suspend, or terminate a benefit. BAM 220, p. 1.

There are two types of notices, adequate notice and timely notice. BAM 220, p. 3. Adequate notice is a written notice sent to the client at the same time an action takes effect and is given for an approval or denial of an application and for increases in benefits. BAM 220, p. 3. Timely notice is given for a negative action unless policy specifies adequate notice or no notice applies. BAM 220, p. 4. A timely notice is mailed at least 11 days before the intended negative action take effect. BAM 220, p. 5. The action is pended to provide the client a chance to react to the proposed action. BAM 220, p. 5.

In [redacted] 2018, Petitioner was informed by the Department that she was approved for full-coverage MA benefits, effective [redacted] 2018. Petitioner received that coverage all the way through the end of [redacted] 2018. On [redacted], 2018, the Department informed Petitioner that she was ineligible for MA benefits, effective [redacted], 2018. Effectively, the Department's action amounted to a retroactive stripping of Petitioner's MA benefits.

When the Department issued the [redacted], 2018 Health Care Coverage Determination Notice, Petitioner was actively receiving full-coverage MA from the Department. Thus, the action being taken by the Department, the closure of Petitioner's ongoing and certified MA benefits case, was a negative action. In those circumstances, timely notice of case action is required by Department policy. As discussed above, timely notice must be issued at least 11 days before the intended negative action takes effect. BAM 220, p. 5. The effective date of the negative action taken was [redacted] 2018. Notice of that action was provided [redacted], 2018, almost ten full months **after** the effective date of the negative action. Clearly, timely notice was not provided in this matter. Based on the date the Department first provided any notice with respect to a change in Petitioner's MA coverage, the Department could not provide any timely notice with respect to any month of MA coverage before [redacted], 2019. Accordingly, Petitioner is entitled to full-coverage MA benefits until at least that time. Thus, the Department failed to follow Department policy and law and must be reversed.

At the hearing, the Department argued that it took the correct action because after budgeting previously unbudgeted income, Petitioner was shown to be ineligible for the MA benefits she was receiving. The record is unclear whether Petitioner's income was actually too high. However, while it may be true that Petitioner's income was too high for program eligibility, that is a separate question from the issue of providing timely notice of a negative case action. When the Department discovered that Petitioner's income was allegedly higher than it previously had budgeted, it could only take action prospectively by providing timely notice. If those benefits from previous months were improperly provided, the Department may seek to establish an overissuance of benefits and require the client to repay any improperly received benefits, subject to certain exceptions. One of those exceptions holds that the Department may not seek an overissuance of MA benefits that was created by the Department's error, which would be the case for any overissuance in this case, if one exists. Petitioner had properly reported her income. The Department failed to budget that income and because of that failure, provided Petitioner with benefits to which she may have not been entitled. Because any alleged overissuance related to these benefits would have been on account of a Department error, the Department is prohibited from pursuing an overissuance.

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 act in accordance with Department policy when in [redacted] 2018 it retroactively closed Petitioner's full-coverage MA benefits, effective [redacted] 2018. 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 full-coverage MA benefits, effective [redacted], 2018, ongoing;

2. Provide full-coverage MA benefits to Petitioner through at least [redacted], 2018, and ensure that all records and documents accurately reflect the fact that Petitioner had full-coverage MA for at least the entire period from [redacted], 2018, through December 31, 2018;

3. If the wrongful closure resulted in benefits not being provided that were required to be provided, ensure that supplements are issued; and

4. Notify Petitioner in writing of its determination.

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 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

Via Email:

MDHHS-Wayne-49-Hearings
D. Smith
EQAD
BSC4- Hearing Decisions
MAHS

Petitioner – Via First-Class Mail:

[redacted]