



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: July 19, 2019
MOAHR Docket No.: 19-005166
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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, an in-person hearing was held on July 15, 2019, from Detroit, Michigan. Petitioner was present with his daughter in-law, [REDACTED]. The Department of Health and Human Services (Department) was represented by Richkelle Curney, Hearing Facilitator.

ISSUE

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

Did the Department properly approve Petitioner's Medical Assistance (MA) benefit 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. Petitioner was an ongoing MSP benefit recipient under the Additional Low-Income Beneficiaries (ALMB) category. Petitioner was also an ongoing MA recipient under the full-coverage Ad-Care program.
2. In March 2019, the Department discovered that Petitioner's wife had an increase in earned income that was not being properly budgeted.

3. In March 2019, the Department retroactively approved Petitioner for MA benefits subject to a deductible under the Group 2 SSI-related (G2S) program as of November 1, 2018.
4. In March 2019, the Department retroactively closed Petitioner's MSP benefit case as of February 1, 2019.
5. On [REDACTED], 2019, Petitioner submitted a request for hearing.

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 MA recipient under the full-coverage Ad-Care program. Petitioner was also an MSP benefit recipient under the ALMB category. In March 2019, the Department discovered that Petitioner's wife's earned income was not being properly budgeted. The Department included Petitioner's wife's current income in his MA and MSP benefit budgets. The Department determined that Petitioner's household's income was over the income limit under the Ad-Care MA program and all MSP benefit categories. The Department retroactively approved Petitioner for MA benefits under the G2S program subject to a deductible as of November 1, 2018. The Department also retroactively closed Petitioner's MSP benefit case as of February 1, 2019. Petitioner argued that he was not given proper notice of the negative actions taken by the Department for his MA and MSP benefit cases.

Upon certification of eligibility results, the Department automatically notifies the client in writing of positive and negative actions by generating the appropriate notice of case action. BAM 220 (January 2019), p. 2. A notice of case action must specify the following: the action(s) being taken by the department, the reason(s) for the action, the specific manual item which cites the legal base for an action or the regulation or law itself, an explanation of the right to request a hearing and the conditions under which benefits are continued if a hearing is requested. BAM 220, p. 3. Timely notice is given for a negative action unless policy specifies adequate notice or no notice. BAM 220, p. 5. A timely notice is mailed at least 11 days before the intended negative action takes effect. BAM 220, p. 5. The action is pending to provide the client a chance to react to the

proposed action. BAM 220, p. 5. If timely notice is required, the negative action date must be the first workday at least 11 days after the notice was sent, or the date the change is expected to occur if that is later. BAM 220, p. 10.

The Department testified at the hearing that it could not locate a Health Care Coverage Determination Notice (HCCDN) that was sent to Petitioner advising him of the closure of his MSP benefit case and the approval of his MA benefits subject to a deductible. The only notice presented was a HCCDN mailed to Petitioner on March 4, 2019, advising him that he was eligible for full-coverage MA benefits effective April 4, 2019, ongoing (Exhibit A). Petitioner stated he only received HCCDNs stating that he was approved for full-coverage MA benefits.

The Department did not provide Petitioner with adequate notice of the negative actions taken related to his MA and MSP benefit cases, as required by policy. Additionally, the Department retroactively applied the negative actions. Per policy, the Department must provide advance notice of at least 11 days before taking a negative action. As such the Department erred when retroactively applying the negative actions. Therefore, the Department did not properly follow policy when it closed Petitioner's MA benefit case and transitioned him from a full-coverage MA program to a program with a deductible.

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 did not properly follow policy when it closed Petitioner's MA benefit case and transitioned him from a full-coverage MA program to a program with a deductible.

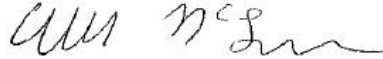
Accordingly, the Department's decisions are **REVERSED**.

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 MA benefits effective November 1, 2018, ongoing under the Ad-Care program until notice of change is provided;
2. Reinstate Petitioner's MSP benefit case effective February 1, 2019, ongoing under the ALMB category until notice of change is provided;

3. Issue Petitioner MSP benefit supplements effective February 1, 2019, ongoing in accordance with Department policy until notice of change is provided.

EM/cg



Ellen McLemore
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-Wayne-17-Hearings
D. Smith
EQAD
BSC4- Hearing Decisions
MOAHR

**Authorized Hearing Rep. –
Via First-Class Mail:**

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**Petitioner –
Via First-Class Mail:**

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