



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI

Date Mailed: March 24, 2020
MOAHR Docket No.: 20-000536
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 February 25, 2020, from Lansing, Michigan. The Petitioner was represented by his wife, [REDACTED] and Attorney, Michelle P. Biddinger, P#39162. The Department of Health and Human Services (Department) was represented by Assistant Attorney General, H. Daniel Beaton, Jr. and Rolando Gomez, Hearing Facilitator.

ISSUE

Did the Department properly determine that Petitioner was entitled to a divestment penalty?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED] 2018, Petitioner submitted a Redetermination Application for Medical Assistance (MA) Long Term Care that included an ongoing payment for Petitioner and his spouse for Blue Cross Blue Shield (BCBS) of \$1,483.56 (\$741.78 per person). Department Exhibit 1, pgs. 3-11.
2. On October 11, 2018, the Department Caseworker sent Petitioner a Health Care Coverage Determination Notice, DHS-1606, that he was eligible for full coverage from August 1, 2018, through October 31, 2018, and from November 1, 2018, ongoing with a \$1,185 monthly patient pay. Department Exhibit 1, pgs. 15-18.

3. On [REDACTED] 2019, Petitioner submitted a redetermination application with Medicare Part B premiums, but no longer reports the BCBS payment. Department Exhibit 1, pgs. 25-29.
4. On October 24, 2019, the Department Caseworker received verification that BCBS premium payments ended on July 22, 2018. Department Exhibit 1, pgs.37-38.
5. On December 11, 2018, the Department Caseworker sent Petitioner a Health Care Coverage Determination Notice, DHS-1606, that he was eligible from November 1, 2019, through December 31, 2019, with a \$1,198 monthly patient pay and from January 1, 2020, ongoing with a \$3,237 monthly patient pay. Department Exhibit 1, pgs. 51-54.
6. On December 26, 2019, the Department Caseworker sent Petitioner a Benefit Notice, DHS-176, stating that MA will not pay long term care from February 1, 2020, through April 28, 2020, because Petitioner and his spouse gave away assets or income for less than their value. Department Exhibit 1, pgs. 59-64.
7. On January 6, 2020, the Department received a hearing request from Petitioner, contesting the Department's negative action.

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, through his wife and his attorney, failed to let the Department know that they were no longer paying BCBS of \$1,483.56 (\$741.78 per person) per month when the payments stopped on July 22, 2018. Department policy requires that the Department be informed within 10 days of a change. The change was not reported to the Department until October 24, 2019, that monthly BCBS premium payments ended on July 22, 2018. In addition, the BCBS payments not made have not been accounted for to the Department. The Department should have used the monthly BCBS payments for Petitioner's monthly patient pay amount. Therefore, divestment had occurred because the Department was counting the patient pay amount that included the monthly BCBS of \$1,483.56 that was not being paid as of July 2018.

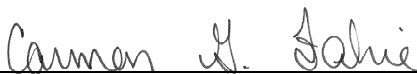
As a result, the Department correctly determined that a divestment had occurred resulting in a divestment penalty from February 1, 2020, through April 28, 2020. Since Petitioner was not paying the monthly BCBS, the \$1,483.56 should have gone to his patient pay for MA during the contested time period. Department policy is very clear about MA long term care with the patient pay amount and the spousal support allowed. BEM 405.

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 acted in accordance with Department policy when it determined that a divestment had occurred resulting in a divestment penalty of from February 1, 2020, through April 28, 2020.

Accordingly, the Department's decision is **AFFIRMED**.

CF/hb



Carmen G. Fahie
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

Tuscola County via electronic mail

BSC2 via electronic mail

D. Smith via electronic mail

EQADHS via electronic mail

Counsel for Respondent

H. Daniel Beaton, AAG
(AG-HEFS-MAHS@michigan.gov)

Petitioner

[REDACTED]
MI

Counsel for Petitioner

Michelle P. Biddinger
4415 S Seeger St
Cass City, MI 48726