



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: March 13, 2020
MOAHR Docket No.: 20-000688
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 9, 2020 from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Karen Smalls, Assistance Payments Supervisor, and Juwana Holley-Woods, Assistance Payments Worker. During the hearing, a 13-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-13.

ISSUE

Did the Department properly determine Petitioner's eligibility for Medicaid (MA) benefits, effective February 1, 2020?

Did the Department follow law and policy when, in January 2020, it retroactively stripped the full-coverage MA benefits it had been providing to Petitioner's husband and fellow group member, [REDACTED], all the way back to May 2019 and replaced it with a less-favorable deductible plan?

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 and her husband were ongoing recipients of full-coverage MA benefits from the Department. Petitioner's household consists of her, her husband, and their three children.

2. Petitioner's household income consists of Petitioner's income from her employment and her husband's income from the Social Security Administration. Exhibit A, pp. 10-13.
3. On January 7, 2020, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that effective February 1, 2020, Petitioner was eligible for MA benefits subject to a monthly deductible of [REDACTED]. The notice further indicated that [REDACTED] full-coverage MA had been stripped and replaced with a deductible plan covering each month from May 2019 through the end of December 2019. Effective January 1, 2020, ongoing, Andy was determined to be eligible for MA subject to a [REDACTED] monthly deductible. In the "Appeal information" section of the notice, Petitioner was informed that "MDHHS must receive your request for an appeal by **01/31/2020** to continue receiving your benefits." Exhibit A, pp. 4-9.
4. On [REDACTED] 2020, Petitioner submitted to the Department a request for hearing objecting to the Department's actions concerning the MA coverage of herself and her husband.
5. Despite receiving the request for hearing by the deadline on the January 7, 2020 notice, the Department still went ahead with the negative action anyways in violation of Department policy, federal regulation, and the clear language on the notice itself.

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 contested the Department's actions with respect to her and [REDACTED] MA benefits. Petitioner was informed of the actions on January 7, 2020. Prior to the change, both individuals were receiving full-coverage MA benefits from the Department. With respect to Petitioner's benefits, the Department determined that effective February 1, 2020, Petitioner was eligible for MA benefits subject to a [REDACTED] monthly deductible. With respect to [REDACTED], the Department stripped his full-coverage

MA all the way back to May 2019, imposed a deductible to cover that whole period, then determined he was eligible for MA subject to a [REDACTED] deductible, effective January 1, 2020.

PETITIONER'S MA BENEFITS

The January 7, 2020 Health Care Coverage Determination Notice informed Petitioner that the Department determined that Petitioner's annual income was [REDACTED] and Andy's annual income was [REDACTED]. Using those income figures and Petitioner's household situation, the Department determined that Petitioner was eligible for MA benefits subject to a \$[REDACTED] monthly deductible. The Department did not include any budgets to determine how it reached the deductible figure or how it determined that [REDACTED] had an annual income of [REDACTED].

HMP is a MAGI-related MA category that provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income at or below 133% of the federal poverty level (FPL) under the Modified Adjusted Gross Income (MAGI) methodology; (iii) do not qualify for or are not enrolled in Medicare; (iv) do not qualify for or are not enrolled in other MA programs; (v) are not pregnant at the time of application; and (vi) are residents of the State of Michigan. BEM 137 (January 2020), p. 1.

Petitioner is under age 65, not disabled, and not enrolled in Medicare. Thus, she is potentially eligible for MA under the HMP if the household's income does not exceed 133% of the FPL applicable to the individual's group size. In this case, the parties agree and the facts dictate that Petitioner's household size is five.

133% of the 2020 annual FPL for a household with five members is \$40,804. <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's household annual MAGI cannot exceed \$40,804. This figure breaks down a monthly income threshold of \$3,400.¹ However, if an individual's group's income is within 5% of the FPL for the applicable group size, a disregard is applied, making the person eligible for MA. MREM, § 7.2. 5% of the FPL for a five-person group is \$1,534, bringing the total annual income threshold to \$42,338. This figure breaks down to a monthly income threshold of \$3,528.²

To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500 (July 2017), pp. 3-4. Income is verified via electronic federal data sources in compliance with MAGI methodology. MREM, § 1. Effective November 1, 2017, when determining eligibility for new applicants for MAGI

¹ \$40,804 divided by twelve.

² \$42,338 divided by twelve.

related MA, financial eligibility is determined based on current monthly income and family size. https://www.michigan.gov/documents/mdhhs/MAGI-Based_Income_Methodologies_SPA_17-0100_-_Submission_615009_7.pdf. However, in determining current monthly income, the Department must account for reasonably predicable decreases in income. *Id.*

The Department presented wage information during the hearing in an effort to justify its conclusions that the household's total annual income was [REDACTED], which amounts to an alleged monthly MAGI income of [REDACTED], with [REDACTED] attributable to Petitioner and [REDACTED] attributable to [REDACTED]. Thus, according to the Department, Petitioner's household income rendered Petitioner ineligible for HMP because it exceeded the monthly threshold of \$3,528 by [REDACTED]. The Department was correct that based on its income determinations and budgeting, Petitioner was not eligible for HMP coverage. However, the Department failed to substantiate its income determinations.

For MA, the Department uses actual amounts that were received for budgeting the processing month. For future months, the Department multiplies a weekly amount received by four to get a monthly income figure. BEM 530, p. 3; https://www.michigan.gov/documents/mdhhs/MAGI-Based_Income_Methodologies_SPA_17-0100_-_Submission_615009_7.pdf; 42 CFR 435.603(h)(3).

The income information presented by the Department shows that in the thirty days prior to the negative action notice, Petitioner had monthly gross wages of [REDACTED]. Thus, the Department incorrectly inflated Petitioner's income from employment to [REDACTED]. Additionally, Petitioner contested the amount of income the Department attributed to [REDACTED] though she could not be sure as to the exact figure. When asked to substantiate its conclusion that [REDACTED] had annual income of [REDACTED], the Department witness was unwilling to do so because he is purportedly prohibited by law from submitting the documentation relied upon. Petitioner's testimony that [REDACTED] income was inflated combined with the Department's unwillingness to introduce the source of its conclusion into evidence result in the undersigned Administrative Law Judge not being able to conclude with any confidence that Petitioner's household income exceeded the threshold for HMP eligibility.

While the above findings are not sufficient to determine that Petitioner's household income is below the threshold of [REDACTED] it is enough to determine that the Department did not meet its burden of proving that it properly determined Petitioner's eligibility for MA benefits.

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 act in accordance with Department policy when it determined Petitioner's eligibility for MA benefits, effective February 1, 2020.

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 (April 2019), 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. 2. 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, pp. 3-4. 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. If an error leads to a client receiving MA coverage that he or she was not entitled to, the period of erroneous coverage cannot be removed or reduced. BAM 115 (October 2019), p. 34.

At some point, Petitioner received a Health Care Coverage Determination Notice informing her that ██████ was approved for full-coverage MA benefits for an ongoing period. Petitioner received that coverage all the way through January 7, 2020, when the Department issued the January 7, 2020 Health Care Coverage Determination Notice stripping ██████ of that coverage and imposing a new deductible.

First, the Department was prohibited from retroactively stripping coverage it had already provided, whether it was provided in error or not. BAM 115, p. 34. Thus, the January 7, 2020 notice failed in that regard with respect to the period from May 1, 2019 through December 31, 2019. Likewise, the document is fatally flawed with respect to ██████ benefits for the period of January 1, 2020, ongoing. As the document constituted a negative action, the Department was required to provide timely notice. However, the document was issued January 7, 2020 and went into effect on January 1, 2020. As the notice was not issued in a timely manner to impact January 2020 benefits, the Department violated law and Department policy.

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 act in accordance with Department policy when it retroactively stripped ██████ of his MA benefits back to May 1, 2019 and took negative action with respect to ██████ MA benefits, effective January 1, 2020, without providing timely notice.

DECISION AND ORDER

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 back to February 1, 2020 and provide those benefits unless and until the Department decides to take negative action pursuant to law and Department policy concerning the provision of timely notice;
2. Reinstate ██████ full-coverage MA benefits back to May 1, 2019 and provide those benefits unless and until the Department decides to take negative action pursuant to law and Department policy concerning the provision of timely notice;
3. If any eligibility-related factors are unclear, inconsistent, contradictory, or incomplete, follow Department policy in requested and obtaining verifications;
4. If Petitioner and/or ██████ is eligible for additional benefits that were not provided, ensure that a supplement is promptly issued; and
5. Notify Petitioner in writing of its decisions.

JM/tm



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 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

Linda Gooden
25620 W. 8 Mile Rd
Southfield, MI
48033

Petitioner

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

cc: ME—D. Smith; EQADHShearings
Oakland County AP Specialist (4)