



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.: 20-000778  
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 9, 2020 from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Marcus Weston, Eligibility Specialist. During the hearing, a 16-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-16.

**ISSUE**

Did the Department properly close Petitioner's Medicaid (MA) benefits case under the Freedom to Work (FTW) program, effective [REDACTED] 2020?

Did the Department properly close Petitioner's Medicare Savings Program (MSP) benefits case, effective [REDACTED], 2020?

**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 under the FTW program and also received MSP benefits.
2. On [REDACTED] 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that she was eligible for MSP benefits, effective [REDACTED] 2020, ongoing. The Department did not include the notice in the hearing packet.

3. On [REDACTED] 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that Petitioner was not eligible for MSP under the ALMB program because policy dictates that a recipient of MA-FTW cannot receive MSP benefits under the ALMB category. The Department did not include the notice in the hearing packet. However, the Department witness conceded that the [REDACTED], 2019 notice did not include an effective date.
4. On [REDACTED] 2020, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that her MA benefits case would be closing, effective [REDACTED], 2020 as a result of Petitioner's alleged failure to pay a required premium. In the "Appeal information" section of the notice, Petitioner was informed that "MDHHS must receive your request for an appeal by [REDACTED]/2020 to continue receiving your benefits." Exhibit A, pp. 7-10.
5. On [REDACTED] 2020, Petitioner submitted to the Department a request for hearing objecting to the closure of her MA-FTW and MSP benefits cases.
6. Despite receiving the request for hearing in a timely manner, the Department still closed Petitioner's MA-FTW and MSP benefits cases, effective [REDACTED] 2020 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 closure of Petitioner's MA-FTW and MSP benefits cases, effective [REDACTED], 2020.<sup>1</sup> The Department's position was that the MA-FTW benefits case was closed because Petitioner failed to pay a required

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<sup>1</sup> The MA-FTW benefits closed on [REDACTED] 2020. Although the record is not clear, it appears that the MSP benefits closed on [REDACTED] 2020 as well. However, as noted above, Petitioner was never given notice as to the date of closure. Mr. Weston testified that the Department's eligibility information shows that Petitioner's eligibility ended, effective [REDACTED], 2020.

premium, and the MSP benefits case was closed because an active recipient of MA-FTW cannot receive MSP benefits under the ALMB category. Notably, prior to the change in ██████ 2020, Petitioner had been receiving both MA-FTW and MSP benefits from the Department, and upon the effective date of both changes, she was receiving neither.

## **MA-FTW CLOSURE**

As a disabled individual with earned income, Petitioner was eligible for benefits under the FTW MA program. FTW is an SSI-related full-coverage MA program. BEM 174 (January 2020), p. 1. Initial income eligibility exists when the client's countable income does not exceed 250 percent of the Federal Poverty Level (FPL). BEM 174, p. 3. Ongoing eligibility exists when the client's unearned income does not exceed 250 percent of the FPL. BEM 174, p. 3. The Department determines countable earned and unearned income according to SSI-related MA policies in BEM 500, 501, 502, 503, 504, and 530. BEM 174, p. 3. The Department determines income deductions using BEM 540 (for children) or 541 (for adults). BEM 174. Unemployment compensation benefits are not countable income for FTW. BEM 174, p. 3.

Petitioner was not married, and per policy, her fiscal group size for SSI-related MA benefits is one. BEM 211 (July 2019), p. 8. 250% of the annual FPL in 2020 for a household with one member is \$31,900. See <https://aspe.hhs.gov/poverty-guidelines>. As Petitioner's income was below that amount, Petitioner was eligible for FTW coverage.

Depending on an individual's income, FTW coverage may be provided either with or without a premium. BEM 174, p. 3. There are no premiums for individuals with Modified Adjusted Gross Income (MAGI) less than 138% of the FPL. BEM 174, p. 3. 138% of the annual FPL in 2020 for a household of one member is \$17,608.80. A premium of 2.5% of income will be charged for an individual with MAGI income of between 138% of the FPL and \$75,000 annually. BEM 174, p. 3.

The record shows that Petitioner's income totaled approximately \$█████ per month. Annualized, the Department showed that Petitioner's income was approximately \$█████, which is between 138% of the FPL and \$75,000. Based on that annual income, Petitioner was responsible for an annual premium for FTW.

Petitioner admittedly did not pay any premiums during the many months that she was receiving MA-FTW. The evidence on the record, however, does not include any information upon which to conclude that Petitioner was given proper notice of the premium or even told what it was. The only evidence that Petitioner was aware of the premium at all came from Petitioner's own testimony that she received a letter back in ██████ 2019 from some unknown third-party saying she had a premium related to something she was not familiar with. That is not sufficient to establish that Petitioner was given proper notice of the premium and the consequences for failing to pay.

Without any directive in the record ordering Petitioner to pay a premium, it is impossible to determine whether the Department followed law and Department policy when it closed Petitioner's MA-FTW benefits case for non-payment of the premium.

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 closed Petitioner's MA-FTW benefits case, effective [REDACTED] 2020.

## **MSP CLOSURE**

MSP benefits are SSI-related MA categories. There are three categories of MSP benefits including the Qualified Medicare Beneficiary (QMB), the Special Low Income Medicare Beneficiary (SLMB), and the Additional Low Income Medicare Beneficiary (ALMB). QMB pays Medicare premiums, and Medicare coinsurances, and Medicare deductibles. QMB coverage begins the calendar month after the processing month. SLMB pays Medicare Part B premiums. SLMB coverage is available for retro MA months and later months. ALMB pays Medicare Part B premiums provided funding is available. ALMB coverage is available for retro MA months and later months. BEM 165 (January 2018), pp. 2-4. Income eligibility for MSP benefits exists when net income for the fiscal group is within the limits in RFT 242 or 247. The Department is to determine countable income according to the SSI-related MA policies in BEM 500 and 530, except as otherwise explained in BEM 165. RFT 242 (April 2019), pp. 1-2; BEM 165 (January 2018), pp. 7-8. RSDI income is counted. BEM 165, p. 8. The highest allowable income for eligibility is \$1,426 per month. RFT 242, p. 2. A client eligible for MA-FTW is not eligible for ALMB. BEM 174, p. 3.

The Department witness testified at the hearing that the Department closed Petitioner's MSP benefits case, effective [REDACTED], 2020, as a result of the Department's discovery that Petitioner was receiving both MA-FTW and MSP under the ALMB category at the same time, which is prohibited by policy. Furthermore, Petitioner's income appears to be over the limit for eligibility. While the Department is correct regarding the substantive policy, it still has to follow law and policy with respect to notice. The applicable law concerning the content a document must have to constitute notice requires the document to include an effective date of the action. 42 CFR 431.210(a).

The Department never issued an effective notice informing Petitioner of the negative action. The Department's defective notice renders the Department's action null and void. While not provided in the evidence packet submitted by the Department, the Department witness testified as to its contents without objection from Petitioner. Mr. Weston testified that on [REDACTED], 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that she was not eligible for MSP benefits anymore. Notably, the notice did not include an effective date. As there was no effective date on the only notice issued to Petitioner notifying her of the

negative action, it is as though no notice was issued at all. Thus, without notice of the negative action, the Department was precluded from taking the action to close Petitioner's MSP benefits case.

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 closed Petitioner's MSP benefits case.

### **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 MSP and MA-FTW benefits back to the date of closure 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 of the same;
2. If any eligibility-related factors are unclear, inconsistent, contradictory, or incomplete, follow Department policy in requested and obtaining verifications;
3. If Petitioner is eligible for additional benefits that were not provided, ensure that a supplement is promptly issued; and
4. Notify Petitioner in writing of its decisions.

JM/tm



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**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**

Dawn Tromontine  
41227 Mound Rd.  
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48314

**Petitioner**

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

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