



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON  
DIRECTOR



Date Mailed: April 10, 2018  
MAHS Docket No.: 18-001321  
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, a telephone hearing was held on April 9, 2018, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Donna Rojas, Family Independence Manager.

**ISSUE**

Did the Department properly determine Petitioner's eligibility for Medicare Savings Program (MSP) benefits?

**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's MSP benefit case closed in early 2017.
2. On January 3, 2018, Petitioner contacted the Department and stated she was having issues with her medical coverage.
3. On January 3, 2018, the Department reprocessed Petitioner's eligibility for MSP benefits.
4. On January 3, 2018, the Department sent Petitioner a Health Care Coverage Determination Notice informing Petitioner that she was still not eligible for MSP benefits (Exhibit A).

5. On January 29, 2018, 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 previously an MSP recipient under the QMB category. Petitioner's MSP benefit case closed in early 2017. On January 3, 2018, Petitioner contacted the Department to report that she was having issues with her medical coverage. Petitioner was a Medicare Part A recipient and had active MA benefits under the Freedom to Work (FTW) program. As a result of the phone call, the Department also re-evaluated Petitioner's eligibility under the MSP program. The Department issued a Health Care Coverage Determination Notice on January 3, 2018, informing Petitioner that she was not eligible for MSP benefits.

MSP are SSI-related MA categories. There are three MSP categories: Qualified Medicare Beneficiaries (QMB); Specified Low-Income Medicare Beneficiaries (SLMB); and Additional Low Income Beneficiaries (ALMB). BEM 165 (October 2016), p. 1. QMB is a full coverage MSP that pays: Medicare premiums (Medicare Part B premiums and Part A premiums for those few people who have them); Medicare coinsurances; and Medicare deductibles. SLMB pays Medicare Part B premiums and ALMB pays Medicare Part B premiums provided funding is available. BEM 165, pp. 1-2.

The Department testified that Petitioner's income exceeded the limit under the QMB category. Income eligibility for MSP benefits exists when net income is within the limits in RFT 242 or 247. BEM 165 (January 2018), p. 8. The Department is to determine countable income according to the SSI-related MA policies in BEM 500, 501, 502, 503, 504 and 530, except for countable RSDI income explained in BEM 165. BEM 165, p. 8. Effective April 1, 2017, the income limit for a group size of one for full-coverage MSP benefits under the QMB category is \$1,025 per month. RFT 242 (April 2017), p. 1.

The Department testified that it used Petitioner's 2016 tax records to determine Petitioner's household self-employment income (Exhibit B). Individuals who run their own businesses are self-employed. BEM 502 (July 2017), p. 1. This includes but is not

limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board. BEM 502, p. 1. The amount of self-employment income before any deductions is called total proceeds. BEM 502, p. 3. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. BEM 502, p. 3. Allowable expenses (except MAGI related MA) are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502, p. 3. BEM 502 provides a list of expenses that are allowed when determining self-employment countable income, pp. 3-4.

The Department testified that when calculating Petitioner's countable self-employment income to determine MSP eligibility, the Department used the net profit amount of \$14,553 and divided that figure by 12 to determine a monthly income amount of \$1,212.75. The Department stated it did not reduce Petitioner's income by 25% or her actual expenses, because that policy did not apply. That testimony is incorrect. The countable income policy for self-employment income under BEM 502 does apply in MSP program benefit cases. The Department did not follow policy when calculating Petitioner's self-employment income. However, when following proper policy, Petitioner's income still exceeds the income limit under the QMB category. Petitioner stated she never verified her actual expenses, and as a result, her total proceeds should have been reduced by 25%. When reducing Petitioner's total proceeds of \$34,881 by 25%, the monthly amount is \$2,180. Therefore, Petitioner's countable income exceeded the income limit under the QMB category and the Department's miscalculation of Petitioner's self-employment income was a harmless error.

The Department testified that Petitioner was not eligible for MSP benefits under the SLMB category because she exceeded the asset limit. For MSP benefits, countable assets cannot exceed the limit under BEM 400. BEM 165, p. 8. Countable assets are determined based on MA policies in BEM 400, 401 and 402. BEM 165, p. 8. For SSI-Related Medicaid the department will utilize an asset verification program to electronically detect unreported assets belonging to applicants and beneficiaries. BEM 400 (January 2018), p. 1. Asset detection may include the following sources at financial institutions: checking, savings, and investment accounts, IRAs, treasury notes, certificates of deposit (CDs), annuities and any other asset that may be held or managed by a financial institution. BEM 400, p. 1. All types of assets are considered for SSI-related MA categories. BEM 400, p. 3. Effective January 1, 2017, the asset limit for a group of one for MSP benefits is \$7,390. BEM 400, p. 8.

In support of its contention that Petitioner exceeded the asset limit for MSP benefits, the Department presented Petitioner's liquid asset summary (Exhibit 2). The document shows that Petitioner has \$39,261.59 in an Individual Retirement Account (IRA) and \$85,536.72 in an "other retirement account." Petitioner argued that those assets should not be included as she does not have access to the funds. Petitioner clarified that she is not old enough to draw on the funds without being penalized.

An asset must be available to be countable. BEM 400, p.10. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400, p. 10. For retirement plans, the value of these plans is the amount of money the person can currently withdraw from the plan. BEM 400, p. 27. The Department will deduct any early withdrawal penalty, but not the amount of any taxes due. BEM 400, p. 27.

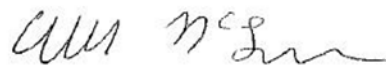
Petitioner specifically stated that she does have access to the retirement funds but would be penalized for an early withdrawal. There was no testimony as to what Petitioner would be penalized if she withdrew the funds early. However, per policy, the Department correctly determined that those assets are countable. Therefore, the Department acted in accordance with policy when it determined Petitioner exceeded the asset limit under the SLMB program.

The Department testified that Petitioner was not eligible for ALMB benefits because she was an active MA recipient under the FTW program. Per policy, a client eligible for MA under FTW is not eligible for ALMB. BEM 174 (January 2017), p. 4. Therefore, the Department acted in accordance with policy when it determined Petitioner was not eligible for MSP benefits.

### **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 Petitioner was not eligible for MSP benefits. Accordingly, the Department's decision is **AFFIRMED**.

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**Ellen McLemore**

Administrative Law Judge

for Nick Lyon, 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) 335-6088; 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

**DHHS**

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

