



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 26, 2019
MAHS Docket No.: 19-001344
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 20, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Natalie McLaurin, Hearings Facilitator. During the hearing, a 40-page packet of documents was offered and admitted as Exhibit A, pp. 1-40.

ISSUE

Did the Department properly determine Petitioner's eligibility for Medicaid (MA) benefits under the Medicare Sharing Program (MSP), effective December 1, 2018, ongoing?

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 MSP benefits from the Department. Due to her particular situation, Petitioner was enrolled in the Additional Low Income Medicare Beneficiary (ALMB) category of MSP.
2. On November 2, 2018, Petitioner had hip replacement surgery.
3. On November 5, 2018, Petitioner was admitted to a medical facility for inpatient rehabilitation. She was scheduled to be released on November 7, 2018.
4. On November 5, 2018, the medical facility submitted documentation to an automated system indicating that Petitioner was being admitted to the facility from

November 5, 2018, through November 7, 2018. That automated system interfaces with the Department.

5. Upon receiving the notice indicating that Petitioner was admitted for rehabilitation services for a two-day time period, the Department's system was updated to reflect that Petitioner had entered a nursing home.
6. On November 7, 2018, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that she was no longer eligible for MSP, effective December 1, 2018. Exhibit A, pp. 8-11.
7. On December 28, 2018, Petitioner went to a Department office to find out why her case was being closed. She was informed that it was because the Department's system reflected that she was in a nursing home which rendered her ineligible for MSP benefits under the ALMB category. Petitioner informed the Department that she was never in a nursing home and that her hospital stay in November 2018 was only for two nights to do post-surgery rehabilitation. The Department's records were updated to reflect that Petitioner reported a change in her residency on November 28, 2018. Exhibit A, pp. 29-31.
8. On January 16, 2019, the Department issued a Health Care Coverage Determination Notice informing Petitioner that she was eligible for MSP benefits starting February 1, 2019. Exhibit A, pp. 32-35.
9. Thus, Petitioner was left ineligible for MSP for the months of December 2018 and January 2019.
10. On [REDACTED], 2019, Petitioner submitted to the Department a request for hearing objecting to the closure of her MSP case and requesting coverage be provided for those two months.

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.

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. For ALMB clients who are receiving MA coverage through a deductible program, the client becomes ineligible when the person changes to nursing home status. BEM 165, p. 6.

In this case, Petitioner was an ongoing recipient of MSP benefits under the ALMB category. On November 5, 2018, the Department received a notice from an automated system that a healthcare facility Petitioner admitted Petitioner and was going to release Petitioner on November 7, 2018. The Department processed the notice as a change of residence to a nursing home/long-term care facility because the facility was coded as a nursing home. Petitioner was never admitted as a nursing home patient, however. Rather, she was there for a brief, two-night, stint of rehabilitation following a November 2, 2018 hip replacement surgery. The Department then issued to Petitioner a November 7, 2018, Health Care Coverage Determination Notice informing her that her MSP case was closing. At the hearing, the Department witness testified that the closure was necessary because Petitioner to have attained nursing home status as of November 5, 2018, and BEM 165 states that an individual who is in nursing home status is no longer eligible for ALMB benefits.

The Department is correct that attaining nursing home status renders one ineligible for ALMB. However, in making the determination that Petitioner was in nursing home status, the Department violated policy regarding verification of eligibility related factors. When information regarding an eligibility factor is unclear, inconsistent, incomplete, or contradictory, the Department must obtain verification. BAM 130 (April 2017), p. 1. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. The Department allows the client 10 calendar days to provide the verification that is required. BAM 130, p. 8.

When the Department received the notice from the automated system in November 2018, it simply deemed the information correct and implemented the change. As Petitioner's eligibility for ALMB benefits is contingent upon her not being in nursing home status, that report amounted to contradictory, unclear, and inconsistent information regarding an eligibility factor. Accordingly, the Department had an obligation to issue to Petitioner a VCL requesting information regarding her nursing home status or lack thereof. Instead, the Department took the report saying Petitioner was admitted to a facility from November 5, 2018, through November 7, 2018, to be a change of residence that stayed in place until Petitioner inquired further on December 28, 2018 as to why her case had closed. At that point, the Department updated Petitioner's case to reflect that she reported on December 28, 2018 that she was no longer in the facility. Critically, at no point in time before

changing Petitioner's status did the Department give Petitioner the opportunity to dispute the assertion that she was in nursing home status, which, based on the evidence presented at the hearing and the Department witness's admission, she most certainly was not. Thus, the Department failed to follow policy in coming to an erroneous conclusion that caused Petitioner's ALMB case to wrongfully close. Accordingly, the Department's closure of Petitioner's MSP case, effective December 1, 2018, is reversed.

Following the hearing, the Department faxed to my office a number of documents with handwritten notations pointing out, presumably, alleged facts that the undersigned should take into consideration. Those documents and any notations are not a part of the record and have not been considered in any way.

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 failed to act in accordance with Department policy when it closed Petitioner's MSP benefits case, effective December 1, 2018. 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 benefits case, effective December 1, 2018;
2. If Petitioner is eligible for additional benefits, issue Petitioner any supplemental benefits she may thereafter be due; and
3. Issue written notice of any case action(s) in accordance with Department policy.

JM/cg



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 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) 763-0155; 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

Via Email:

MDHHS-Saginaw-Hearings
D. Smith
EQAD
BSC2- Hearing Decisions
MAHS

Petitioner – Via First-Class Mail:

██████████
██
██