



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

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Date Mailed: June 13, 2019
MOAHR Docket No.: 19-004661
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 June 6, 2019, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Valarie Foley, hearing facilitator.

ISSUES

The first issue is whether MDHHS properly determined Petitioner's Medicaid (MA) eligibility.

The second issue is whether MDHHS properly terminated Petitioner's Medicare Savings Program (MSP) eligibility.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. As of March 2019, Petitioner was an ongoing recipient of MSP. Petitioner also received Medicaid under the Freedom-to-Work (FTW) category and had no monthly premiums.
2. On an unspecified date, MDHHS terminated Petitioner's MSP eligibility effective April 2019.

3. On April 22, 2019, MDHHS mailed Petitioner notice that Petitioner was eligible for Medicaid under FTW, effective June 2019, subject to a monthly premium of \$77.28/month. Exhibit A, p. 3.
4. On April 30, 2019, Petitioner requested a hearing to dispute the amount of FTW premium and termination of MSP benefits.
5. As of the date of hearing, MDHHS had not mailed Petitioner written notice of MSP termination.

CONCLUSIONS OF LAW

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a termination of MSP benefits. Medicaid and MSP benefits are each available through the MA program. MSP assists clients in payments of Medicare premiums, coinsurances, and/or deductibles. BEM 165 (January 2018) p. 2.

MDHHS did not present a written notice explaining the basis for MSP termination as part of a hearing packet. During the hearing, MDHHS was given additional time to locate a written notice explaining the basis for terminating Petitioner's MSP eligibility; MDHHS was unable to locate any written notice sent to Petitioner.

For all programs, upon certification of eligibility results, Bridges automatically notifies the client in writing of positive and negative actions by generating the appropriate notice of case action. BAM 220 (January 2019), p. 2. A notice of case action must specify the following: the action(s) being taken by the department; the reason(s) for the action; the specific manual item which cites the legal base for an action or the regulation or law itself; an explanation of the right to request a hearing; and the conditions under which benefits are continued if a hearing is requested. *Id.*, pp. 2-3.

MDHHS may have sent Petitioner notice of MSP termination but the evidence failed to establish such a possibility. Without written notice, Petitioner is entitled to reinstatement of the benefits.

It should be noted that the testifying facilitator hypothesized that Petitioner may not be eligible for MSP due to excess income. The hypothesis was based on Petitioner's

undisputed monthly income of \$ [REDACTED] exceeding the MSP income limit of \$1,923 for a 2-person group (see RFT 242 (April 2019), p. 2). The possibility of Petitioner being ineligible for MSP due to excess income will not be considered in this decision because MDHHS did not present sufficient evidence (e.g., a budget) or verification of proper notice.

An absence of written notice renders it problematic in determining why MDHHS took an action, but also what action MDHHS took. Petitioner testified that his MSP benefits ceased beginning April 2019. The MDHHS hearing facilitator credibly stated that Petitioner's Social Security Administration documentation indicated that MDHHS stopped paying for Petitioner's Medicare premiums after March 2019. Given the evidence, Petitioner's MSP eligibility ended beginning April 2019 and MDHHS will be ordered to reinstate Petitioner's eligibility for April 2019.¹

Petitioner also requested a hearing to dispute implementation of a monthly premium of for FTW. MDHHS presented one page of a notice informing Petitioner that he was responsible for payment of a \$77.28/month premium beginning June 2019. Exhibit A, p. 1. Charging Petitioner for a FTW premium was a change from past months when Petitioner had no monthly premium for FTW coverage.

There are no premiums for individuals with MAGI (Modified Adjusted Gross Income) less than 138 percent of the federal poverty level (FPL). BEM 174 (January 2017) p. 1. A premium of 2.5 percent of income will be charged for an individual with MAGI income between 138 percent of the FPL and \$75,000 annually. *Id.* A premium of 100 percent of the average FTW participant cost will be assessed for an enrolled individual with MAGI income over \$75,000. *Id.*

MDHHS presented no evidence justifying imposing a \$77.28/month premium for Petitioner's FTW coverage. MDHHS also admitted that imposing a monthly premium was an improper action and claimed that the action was corrected. MDHHS presented a budget for April 2019 which stated that Petitioner was eligible for FTW in April 2019 with no monthly premium. The documentation fails to verify that Petitioner would be eligible for FTW with no premium in June 2019 or subsequent months. MDHHS provided no other documentation to justify its actions. Given the limited evidence, MDHHS will have to reinstate Petitioner's FTW eligibility, with no monthly premium.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's MSP and Medicaid eligibility under FTW. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

¹ MDHHS' Hearing Summary (Exhibit A, p. 1) claimed that Petitioner's MSP eligibility was reinstated. MDHHS did not provide documentation of reinstatement.

- (1) Reinstate Petitioner's MSP eligibility effective April 2019 subject to the finding that MDHHS failed to establish any basis for termination; and
- (2) Reinstate Petitioner's Medicaid eligibility through FTW effective June 2019 subject to the finding that MDHHS failed to establish any basis for imposing a premium.

The actions taken by MDHHS are **REVERSED**.

CG/jaf



Christian Gardocki
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

Susan Noel
MDHHS-Wayne-19-Hearings

Petitioner

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