



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: June 28, 2019
MOAHR Docket No.: 19-004816
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, an in-person hearing was held on June 19, 2019, in Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Juanita Munoz, Hearings Facilitator. During the hearing, two multi-page packets of documents were offered and admitted into evidence as Exhibit A, pp. 1-5, and Exhibit 1, pp. 1-27.

ISSUE

Did the Department properly close Petitioner's Medicaid (MA) coverage case, effective March 1, 2019?

Did the Department properly close Petitioner's Medicare Savings Program (MSP) benefits case, effective March 1, 2019?

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 FAP, MA, and MSP benefits from the Department. Petitioner lived in a household that included himself and his two grandchildren.
2. On January 25, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that his MA and MSP benefits cases

would close, effective March 1, 2019, as a result of the Department's determination that Petitioner failed to cooperate with child support requirements. The Notice stated that "[y]ou must call the Office of Child Support at 1-866-540-0008 if the non-cooperating person wishes to cooperate, or has good cause not to cooperate." Exhibit 1, pp. 1-4.

3. Upon receiving the Health Care Coverage Determination Notice, Petitioner called the number listed for the Office of Child Support (OCS).
4. On February 4, 2019, the Department's OCS issued to Petitioner a Cooperation Notice. The Notice stated "[w]e previously notified you that you were not cooperating with the Office of Child Support. We now consider you cooperative in establishing paternity and/or child support. Effective 10/21/2018." The document then states "[y]our MDHHS worker is aware of this letter and will inform you in writing how this finding will affect your case." Exhibit 1, p. 5.
5. Petitioner considered the matter settled as he had followed the instructions on the Health Care Coverage and received a follow-up letter from the Department's OCS stating that he was no longer noncooperative as of October 21, 2018.
6. Petitioner's MA and MSP cases closed, effective March 1, 2019.
7. On March 25, 2019, Petitioner discovered that his cases had closed.
8. At that point, Petitioner began regularly attempting to contact his worker with the Department, to no avail. He tried many times through the end of April 2019. Finally, on May 3, 2019, the worker called him back.
9. Also in late March 2019, someone either with one of Petitioner's doctors or with the Department applied for MA and MSP benefits for Petitioner.
10. On April 5, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that he was eligible for MA benefits subject to a monthly deductible that was \$733 from March 1, 2019 through March 31, 2019 and \$770 thereafter. Additionally, Petitioner was approved for MSP benefits starting April 1, 2019. However, Petitioner was found to be ineligible for MSP benefits from March 1, 2019 through March 31, 2019 as an applicant is not eligible during the month in which he applied. Exhibit 1, pp. 6-13.
11. On April 17, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that he was ineligible for MSP benefits from March 1, 2019 through March 31, 2019 as an applicant is not eligible during the month in which he applied. Exhibit 1, pp. 14-16.
12. On May 6, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that he was ineligible for MSP benefits from March 1, 2019 through March 31, 2019 as an applicant is not eligible during the month in which he applied. The Notice also informed Petitioner that he was

not eligible for some unknown program from March 1, 2019 through March 31, 2019 because he allegedly failed to provide to the Department all documentation that was asked for. What was asked for, when it was asked for, and what program was impacted are left unidentified. Exhibit 1, pp. 17-20.

13. On [REDACTED] 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's actions with respect to his MA, MSP and FAP cases.
14. At the beginning of the hearing on June 19, 2019, Petitioner voluntarily withdrew his hearing request as it related to FAP. That request was approved.

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.

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.

In this case, the Department issued to Petitioner a Health Care Coverage Determination Notice on January 25, 2019 informing Petitioner that his MA and MSP benefits cases were closing, effective March 1, 2019, as a result of Petitioner's alleged failure to cooperate with the Department's OCS concerning two children in Petitioner's care. The Notice stated that "[y]ou must call the Office of Child Support at 1-866-540-0008 if the non-cooperating person wishes to cooperate, or has good cause not to cooperate."

Petitioner followed those instructions and called the Department's OCS at the number listed. On February 4, 2019, the Department's OCS issued a Cooperation Notice. The Notice stated "[w]e previously notified you that you were not cooperating with the Office of Child Support. We now consider you cooperative in establishing paternity and/or child support. Effective 10/21/2018." The document then states "[y]our MDHHS worker is aware of this letter and will inform you in writing how this finding will affect your case."

While the Department told Petitioner that the reason for the impending closure of his MA and MSP cases was resolved and that said resolution would be processed, the closures simply went ahead as though Petitioner had done nothing. However, given that the last notice Petitioner received was the February 4, 2019 Notice of Cooperation, Petitioner had no idea until he was told by one of his medical providers that he no longer had MA coverage in late March 2019. At that point, Petitioner began calling his worker repeatedly to try to address the situation. Those calls went unreturned for well over a month. When Petitioner finally was able to speak with his worker in early May 2019, he learned what had happened and requested a hearing to protest the Department's failure to process the removal of the noncooperation sanction.

Parents have a responsibility to meet their children's needs by providing support and/or cooperating with the department, including OCS, the Friend of the Court (FOC) and the prosecuting attorney to establish paternity and/or obtain support from an absent parent. BEM 255 (July 2018), p. 1. Cooperation is required in all phases of the process to establish paternity and obtain support. It includes all of the following: contacting the support specialist when requested; providing all known information about the absent parent; appearing at the office of the prosecuting attorney when requested; and taking any actions needed to establish paternity and obtain child support (including but not limited to testifying at hearings or obtaining genetic tests). BEM 255, p. 9. Cooperation is assumed until negative action is applied as a result of non-cooperation being entered. The non-cooperation continues until a comply date is entered by the primary support specialist or cooperation is no longer an eligibility factor. BEM 255, p. 10. Cooperation is a condition of MA and MSP eligibility. BEM 255, p. 9. The disqualification is not imposed if the OCS records the comply date on or before the date for a timely hearing request. BEM 255, pp. 11-12.

The January 25, 2019 Health Care Coverage Determination Notice notifying Petitioner of the noncooperation disqualification had a timely appeal date of April 25, 2019. When the Department issued the February 4, 2019 Cooperation Notice to Petitioner that deemed Petitioner to be compliant with OCS as of October 21, 2018, it was required to delete the disqualification pursuant to BEM 255.¹ The failure to caused Petitioner to miss out on March 2019 MSP benefits and caused his MA coverage to fluctuate all over the place, as exemplified by the four Health Care Coverage Determination Notices issued from April 5, 2019 through May 13, 2019. It is unclear what coverage Petitioner had when. However, it is absolutely clear that the Department's failure to process the

¹ The Department's delay in processing the OCS comply date was not discovered by Petitioner until late March 2019. Thus, Petitioner's [REDACTED], 2019 hearing request was timely with respect to the delay.

its own decision to remove the noncooperation disqualification was incorrect. Thus, the Department is reversed.

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 failed to process the February 4, 2019 Cooperation Notice and determined Petitioner's MA and MSP benefits, effective March 1, 2019, ongoing.

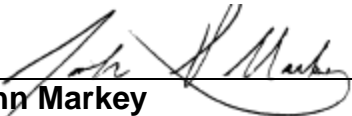
DECISION AND ORDER

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 MA and MSP benefits back to March 1, 2019;
2. Redetermine Petitioner's eligibility for MA and MSP benefits going forward;
3. If there are any eligibility-related factors that remain unclear, inconsistent, contradictory, or incomplete, request verifications pursuant to Department policy;
4. If Petitioner is eligible for additional benefits that he did not receive, promptly issue a supplement; and
5. Notify Petitioner in writing of its decisions.

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 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

Via Email:

MDHHS-Wayne-41-Hearings
M. Holden
D. Sweeney
D. Smith
EQAD
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail;;

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