



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: July 9, 2019
MOAHR Docket No.: 19-006037
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 July 3, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Haysem Hosny, Eligibility Specialist. During the hearing, a 19-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-19.

ISSUE

Did the Department properly determine Petitioner's Medicaid (MA) eligibility for January 2019 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 is a disabled adult living in a household that included only herself. She was receiving benefits from the Social Security Administration (SSA) until sometime in late 2018 when the SSA determined that Petitioner's income from her part-time employment with [REDACTED] was sufficiently high to render her income ineligible for continued benefits. At all times relevant, Petitioner was enrolled in Medicare Part B.
2. On [REDACTED] 2019, Petitioner filed with the Department an application for MA benefits. Petitioner requested medical coverage and assistance in paying her

Medicare premiums through the Medicare Savings Program (MSP). Exhibit A, pp. 3-8.

3. On January 7, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that she was eligible for full-coverage MA, effective January 1, 2019. During the hearing, the Department stated that this approval was for benefits under the Healthy Michigan Program (HMP). Exhibit A, pp. 9-11.
4. On January 24, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that she was eligible for MSP benefits, effective February 1, 2019. However, it also informing Petitioner that her MA coverage under the HMP was closing, effective March 1, 2019, as a result of its finding that Petitioner was enrolled in Medicare. Exhibit A, pp. 12-16.
5. On April 30, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that she was ineligible for MA coverage, effective January 1, 2019, as a result of the Department's finding that Petitioner's income exceeded the limit for program eligibility. During the hearing, the Department stated that this denial was for benefits under the AD-Care program. Exhibit A, pp. 9-11.
6. On ██████ 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's April 30, 2019 Health Care Coverage Determination Notice.

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, Petitioner is a disabled adult living in a household that included only herself. She was receiving benefits from the SSA until sometime in late 2018 when the SSA determined that Petitioner's income from her part-time employment with [REDACTED] was sufficiently high to render her income ineligible for continued benefits. At all times relevant, Petitioner was enrolled in Medicare Part B. On [REDACTED] 2019, Petitioner submitted to the Department an application for MA benefits that she hoped would result in her receiving healthcare coverage and assistance with her Medicare premiums.

Over the next few months, Petitioner received no fewer than three contradictory and confusing Health Care Coverage Determination Notices. The first one stated Petitioner was eligible for full-coverage, effective January 1, 2019. The second one stated that Petitioner was eligible for full-coverage under the MSP, effective February 1, 2019 but that Petitioner was ineligible, effective March 1, 2019. The third one stated that Petitioner was ineligible, effective January 1, 2019, as a result of the Department's finding that Petitioner's income exceeded the limit for program eligibility. The document then states that Petitioner's annual income of \$[REDACTED] was used in making its determination. Petitioner then filed a timely hearing request objecting to the Department's final Health Care Coverage Determination Notice.

Before closing any type of MA case, the Department must conduct an *ex parte* review to determine whether the client may be eligible under another category. BAM 220 (January 2019), pp. 18-19. When the review shows that the client may be eligible under another MA category, the Department must either change the coverage to that category or attempt to clarify any questions regarding eligibility by sending out verification checklist(s) to gather the missing eligibility-related information. BAM 220, pp. 18-19. The Department may only issue a notice closing the MA case after the *ex parte* review reveals that there is no potential eligibility under another MA category. BAM 220, p. 19.

Each time the Department issued a notice closing Petitioner's MA benefits cases, it failed to appropriately analyze Petitioner's eligibility under other categories. According to a brief review of Petitioner's information, it appears that Petitioner may be eligible for coverage under the Freedom to Work (FTW) program, which is available to clients with disabilities aged 16 through 64 who have earned income. BEM 174 (January 2017), p. 1. During the hearing, the Department witness conceded that the *ex parte* review was not properly done in this case and could not adequately explain why Petitioner was not eligible for any MA benefits from the Department given her situation.

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 determined Petitioner's eligibility for MA and MSP benefits, effective January 1, 2019.

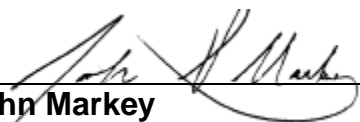
DECISION AND ORDER

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. Reregister Petitioner's [REDACTED] 2019 application for MA and MSP benefits;
2. Determine Petitioner's eligibility for MA and MSP benefits from the time of application going forward, which involves analyzing Petitioner's eligibility under all MA categories, including Freedom to Work;
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 she 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-Macomb-36-Hearings
D. Smith
EQAD
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

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