



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: August 9, 2019
MOAHR Docket No.: 19-006943
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 August 8, 2019 from Detroit, Michigan. Petitioner appeared and represented herself. Also appearing on behalf of Petitioner was [REDACTED]. The Department of Health and Human Services (Department) was represented by Crystal Hackney, Assistance Payments Supervisor. During the hearing, a 27-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-27.

ISSUE

Did the Department act in compliance with law and policy when, in June 2019, it retroactively stripped Petitioner's daughter, of her full coverage Medicaid (MA) back to August 1, 2018?

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 household includes Petitioner, her husband, and their daughter, [REDACTED]
2. [REDACTED] was receiving full-coverage MA from the Department throughout all of 2018 and into 2019.
3. On [REDACTED], 2019, Petitioner submitted to the Department an online document to renew her household's benefits with the Department. Exhibit A, pp. 10-17.

4. On April 29, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner, in relevant part, that [REDACTED] was approved for full-coverage MA, effective May 1, 2019, ongoing. Exhibit A, pp. 18-20.
5. On June 11, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner, in relevant part, that [REDACTED] was approved for full-coverage MA, effective Ma 1, 2019, ongoing. Additionally, the Notice informed Petitioner that Vivian's full-coverage MA that she had from August 1, 2018 through April 30, 2019 had been stripped from her. In its place, the Department imposed an MA plan subject to a deductible or found her entirely ineligible. Exhibit A, pp. 21-25.
6. On [REDACTED] 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's decision to retroactively reduce [REDACTED] MA benefits.

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's daughter, [REDACTED], was an ongoing recipient of full-coverage MA benefits from the Department when Petitioner filed an [REDACTED] 2019 Redetermination. On that Redetermination, Petitioner accurately reported her household income and other relevant, eligibility-related facts. On April 29, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that [REDACTED] was approved for full-coverage MA, effective May 1, 2019, ongoing.

For some unknown reason, on June 11, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice retroactively stripping [REDACTED] full-coverage MA benefits all the way back to August 1, 2018. The notice further informed Petitioner that [REDACTED] was eligible for MA coverage under a deductible plan, effective August 1, 2018.

Upon certification of eligibility results, the Department notifies a client in writing of positive and negative actions by generating an appropriate notice of case action. BAM

220 (October 2018), p. 2. A notice of case action must inform the client of (1) the action being taken by the Department, (2) the reason or reasons for the action, (3) the basis in policy for the action, (4) how to contest the action, and (5) the conditions under which benefits are continued if a hearing is requested. BAM 220, pp. 2-3. A positive action is a Department action to approve an application or increase a benefit. BAM 220, p. 1. A negative action is a Department action to deny an application or to reduce, suspend, or terminate a benefit. BAM 220, p. 1.

There are two types of notices, adequate notice and timely notice. BAM 220, p. 3. Adequate notice is a written notice sent to the client at the same time an action takes effect and is given for an approval or denial of an application and for increases in benefits. BAM 220, p. 3. Timely notice is given for a negative action unless policy specifies adequate notice or no notice applies. BAM 220, p. 4. A timely notice is mailed at least 11 days before the intended negative action take effect. BAM 220, p. 5. The action is pended to provide the client a chance to react to the proposed action. BAM 220, p. 5.

In 2018, Petitioner was informed by the Department that ██████ was approved for full-coverage MA benefits for an ongoing period. ██████ received that coverage all the way through the date of the hearing. On June 11, 2019, the Department informed Petitioner that ██████ was ineligible for full-coverage MA benefits, effective August 1, 2018 through April 30, 2019. Effectively, the Department's action amounted to a retroactive stripping of ██████ MA benefits.

When the Department issued the June 11, 2019 Health Care Coverage Determination Notice, ██████ was actively receiving full-coverage MA from the Department. Thus, the action being taken by the Department, the reduction of Petitioner's ongoing and certified MA benefits case, was a negative action. In those circumstances, timely notice of case action is required by Department policy. As discussed above, timely notice must be issued at least 11 days before the intended negative action takes effect. BAM 220, p. 5. The effective date of the negative action taken was August 1, 2018. Notice of that action was provided June 11, 2019, more than ten full months **after** the effective date of the negative action. Clearly, timely notice was not provided in this matter. Based on the date the Department first provided any notice with respect to a change in ██████ MA coverage, the Department could not provide any timely notice with respect to any month of MA coverage before July 1, 2019. Accordingly, ██████ is entitled to full-coverage MA benefits until at least that time. Thus, the Department failed to follow Department policy and law and must be 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 in June 2019 it retroactively stripped ██████ of full-coverage MA benefits, effective August 1, 2018.


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 ██████ full-coverage MA benefits, effective August 1, 2018, ongoing;
2. Provide the coverage that ██████ was entitled to from August 1, 2018 through at least May 1, 2019 and ensure that all record and documents accurately reflect the fact that ██████ had full-coverage MA for at least the entire period from August 1, 2018 through May 1, 2019;
3. If the wrongful retroactive reduction in benefits without proper notice resulted in benefits not being provided that were required to be provided, ensure that supplements are issued; and
4. 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-Oakland-3-Hearings
D. Smith
EQAD
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

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