



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 21, 2020
MOAHR Docket No.: 19-014045
Agency No.: 112836801
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 15, 2020, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Nichole Phillips, Family Independence Manager.

ISSUE

Did the Department properly close Petitioner's Medical Assistance (MA) benefit case?

Did the Department properly close Petitioner's Medicare Savings Program (MSP) benefit case?

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 MA and MSP benefit recipient.
2. On May 6, 2019, Petitioner completed a redetermination related to her MA and MSP benefit cases (Exhibit A, pp. 22-29).
3. Petitioner had unearned income in the form of a pension in the gross monthly amount of \$95.19 (Exhibit A, p. 30).
4. Petitioner had unearned income in the form of Retirement, Survivors and Disability Insurance (RSDI) benefits as a survivor in the gross monthly amount of \$475 (Exhibit A, p. 31) and as a retired and/or disabled individual in the gross amount of \$1,202 per month (Exhibit A, p. 32).

5. On June 18, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice (HCCDN) informing her that her MSP benefit case was closing effective August 1, 2019 (Exhibit A, pp. 9-12).
6. On July 16, 2019, the Department received asset detection information that Petitioner owned a home at which she did not reside.
7. On July 16, 2019, Petitioner submitted a letter stating that she did not reside at the home that she owned and that her daughter lived at the residence (Exhibit A, p. 37). Petitioner also indicated that her daughter did not pay rent.
8. On July 24, 2019, Petitioner submitted tax information related to her home that verified the State Equalized Value (SEV) of the home (Exhibit A, p. 43).
9. On August 5, 2019, Petitioner submitted a change report indicating that her daughter was paying her \$████ per month in rent (Exhibit A, pp. 38-40).
10. On August 27, 2019, the Department sent Petitioner a HCCDN informing her that her MA benefit case was closing effective October 1, 2019, ongoing (Exhibit A, pp. 6-8).
11. On ██████████ 2019, Petitioner submitted a request for hearing disputing the Department's actions.

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

In this case, Petitioner was an ongoing MSP recipient. On June 6, 2019, the Department processed a redetermination submitted by Petitioner in May 2019, related to her MSP benefit case. The Department discovered that Petitioner had two forms of RSDI benefits, one as a survivor and one as a retired and/or disabled individual. The

Department stated Petitioner's RSDI income was not being properly budgeted. As a result, the Department redetermined Petitioner's MSP eligibility. The Department determined that Petitioner exceeded the income limit for MSP benefits.

MSP are SSI-related MA categories. There are three MSP categories: Qualified Medicare Beneficiaries (QMB); Specified Low-Income Medicare Beneficiaries (SLMB); and Additional Low Income Beneficiaries (ALMB). BEM 165 (January 2018), p. 1. QMB is a full coverage MSP that pays: Medicare premiums (Medicare Part B premiums and Part A premiums for those few people who have them); Medicare coinsurances; and Medicare deductibles. SLMB pays Medicare Part B premiums and ALMB pays Medicare Part B premiums provided funding is available. BEM 165, pp. 1-2. Income eligibility for MSP benefits exists when net income 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, pp1-2; BEM 165, pp. 7-8.

The Department testified that based on Petitioner's household income, she was not eligible for MSP benefits under any of the three categories. As Petitioner is not married, per policy, Petitioner's fiscal group size for SSI-related MA benefits is one. BEM 211 (January 2016), p. 8. Effective April 1, 2019, for QMB, the monthly income limit for a group size of one is \$1,061, which is 100 percent of the Federal Poverty Level, plus the \$20 disregard. RFT 242, p. 1. For SLMB the monthly income limit for Petitioner's group size of one is \$1,269, which is 120 percent of the Federal Poverty Level, plus the \$20 disregard. RFT 242, p. 2. For ALMB, the monthly income limit for Petitioner's group size of one is \$1,426, which is 135 percent of the Federal Poverty Level, plus the \$20 disregard. RFT 242, pp. 1-3. RFT 242, p. 3.

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits. For RSDI, the Department counts the gross benefit amount as unearned income. BEM 503 (January 2020), p. 28. Other retirement income includes annuities, private pensions, military pensions, and state and local government pensions. BEM 503, p. 29. The Department counts the gross benefit amount as unearned income. BEM 503, p. 29. BEM 503, p. 29.

The Department presented the verifications of income submitted by Petitioner. Petitioner received a pension in the gross monthly amount of \$95.19. Petitioner received RSDI benefits as a survivor in the gross amount of \$475 per month and as a retired and/or disabled person in the gross amount of \$1,202 per month. Petitioner's gross monthly unearned income amount was \$1,772, which exceeded the income limit for her group size for MSP benefits. Therefore, the Department acted in accordance with policy when it closed Petitioner's MSP benefit case.

MA

In this case, Petitioner was an ongoing MA recipient under the group 2 SSI-related (G2S) MA category. On July 16, 2020, the Department received asset detection information that Petitioner owned a home at which she was not residing. The Department determined that the home was a countable asset and that Petitioner exceeded the asset limit for her group size.

G2S is an SSI-related Group 2 MA category. BEM 166 (April 2017), p. 1. Under the G2S program, countable assets cannot exceed the asset limit under BEM 400. BEM 166, p. 2. For SSI-related MA categories, the asset limit for a group size of one is \$2,000. BEM 400, p. 8. For SSI-related MA programs, the Department will exclude one homestead for an asset group. BEM 400 (April 2019), p. 34. A homestead is defined as a home where a person lives (unless absent) that they own, are buying, or holding through a life estate or life lease. BEM 400, p. 35. For SSI-related MA, the Department will exclude a homestead if the client is absent from the home, the client lived there prior to the time they left the property and if any of the following are true: (i) the owner intends to return to the homestead; (ii) the owner is in a Long Term Care (LTC) facility, hospital, adult foster care home or home for the aged; or (iii) a co-owner of the homestead uses the property as their home. BEM 400, p. 36. Additionally, the Department will exclude a homestead if the owner is in an institution and the owner's spouse or relative lives in the home. BEM 400, p. 36. The value of real property is determined by: (i) deed, mortgage, purchase agreement or contract; (ii) SEV on current property tax records multiplied by two; (iii) statement of real estate agent or financial institution; (iv) attorney or court records; or (v) county records. BEM 400, p. 32.

The Department testified that Petitioner was residing in an apartment. Petitioner notified the Department that she was not living in her home because the bathroom was not wheelchair accessible and Petitioner was wheelchair bound. The Department presented a letter submitted by Petitioner on July 16, 2019, stating that her daughter lived in her home and was not paying rent. However, on August 5, 2019, Petitioner submitted a change report stating that her daughter was now paying \$[REDACTED] in rent per month. As a result, the Department categorized the property as an income producing property, and not a homestead.

The Department will exclude up to \$6,000 of equity in income-producing real property if it produced annual countable income equal to at least 6 percent of the asset group's equity in the asset. BEM 400, p. 38. Countable income is total proceeds minus actual operating expenses. BEM 400, p. 38.

The Department presented tax documents submitted by Petitioner on July 24, 2019. Per the tax records, the SEV value of Petitioner's home was \$[REDACTED]. The Department stated it multiplied the SEV by two to obtain the home value of \$[REDACTED]. The Department reduced the home value by \$6,000, as it was considered to be an income-producing

property. Petitioner's asset total was \$13,800, which exceeded the income limit for her group size. As a result, the Department closed Petitioner's MA benefit case.

At the hearing, Petitioner disputed the Department's calculation of the value of her home. Petitioner stated that she believed her home was not worth \$19,800. Petitioner desired to obtain an appraisal but did not have the funds to obtain the appraisal. Petitioner stated that she does not reside at the home that she owns because she is wheelchair bound and the home is not wheelchair accessible. Petitioner stated that her daughter is living in her home. Petitioner testified that her daughter paid her rent for a short period of time but lost her job and was no longer paying her rent. Petitioner stated that there is no formal rental agreement and her daughter only gives her money when she is able. Petitioner stated her intent is to return to her home once repairs are made to make the bathroom wheelchair accessible.

The Department properly determined the value of Petitioner's home. Per policy, the Department may multiply the SEV by two to calculate the value of a home. Petitioner did not present any evidence as to an alternate calculation of her home. The Department did not properly follow policy when it categorized Petitioner's home as an income-producing property. Petitioner gave credible testimony that she is not formally renting her home to her daughter and she receives little to no income from the property. The home is a homestead from which Petitioner is absent. Petitioner also gave credible testimony that she intends to return to the home once the necessary repairs are made. Therefore, Petitioner's home is an excludable asset. Thus, the Department did not act in accordance with policy when it closed Petitioner's MA benefit case.

DECISION AND ORDER

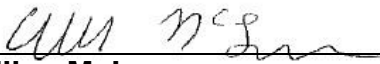
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it closed Petitioner's MSP benefit case. The Department did not act in accordance with Department policy when it closed Petitioner's MA benefit case.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to Petitioner's MSP benefit case and **REVERSED IN PART** with respect to Petitioner's MA benefit case.

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. Redetermine Petitioner's MA eligibility as of October 1, 2019, ongoing;
2. Provide Petitioner with MA benefits she is entitled to receive; and
3. Notify Petitioner of its decision in writing.

EM/tm



Ellen McLemore
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

Tara Roland 82-17
8655 Greenfield
Detroit, MI
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Petitioner

[REDACTED]
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cc: ME—D. Smith; EQADHShearings
AP Specialist-Wayne County