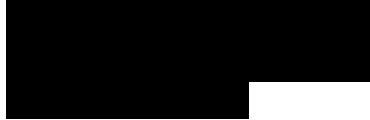




GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR



Date Mailed: March 13, 2020
MOAHR Docket No.: 20-000438
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 February 13, 2019 from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by April Nemec, Hearings Facilitator. During the hearing, a 67-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-67.

ISSUE

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

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

Did the Department properly determine Larry's eligibility for MA benefits, effective October 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 lives in a household that includes herself, her husband [REDACTED], and their adult child. Prior to the actions taken in this case, Petitioner was receiving full-coverage MA under the Health Michigan Plan (HMP), and Larry was receiving

MSP benefits but had no other MA benefits. Their adult child's MA benefits are not at issue in this case.

2. On October 4, 2019, the Department issued to Petitioner a Redetermination to gather relevant information regarding the household's ongoing eligibility for benefits. Petitioner completed the Redetermination and returned it to the Department on October 28, 2019. Exhibit A, pp. 9-16.
3. On the completed Redetermination, Petitioner indicated that she was disabled. Exhibit A, p. 10.
4. On November 15, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that her MA benefits case would close, effective December 1, 2019 as a result of the Department's determination that her household income exceeded the limit for program eligibility. Notably, the Department did not follow up on Petitioner's assertion of disability or otherwise assess her eligibility under the disability-related MA categories. The document did not address Larry's benefits. Exhibit A, pp. 26-31.
5. On December 1, 2019, Petitioner's MA benefits case closed, and Larry's MSP benefits case closed. Exhibit A, pp. 32; 47.
6. On January 3, 2020, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner once again that her MA benefits case was closed, effective December 1, 2019, as a result of the Department's determination that her household income exceeded the limit for program eligibility. Again, Petitioner's assertion of disability was not addressed in any way. Additionally, the notice approved [REDACTED] for MA benefits subject to a deductible, effective October 1, 2019. Apparently, the Department had designated the completed Redetermination from October 2019 as an application for MA benefits for [REDACTED] despite the document containing no request for coverage. Additionally, [REDACTED]'s MSP benefits were left unaddressed once again. Exhibit A, pp. 40-46.
7. On January 7, 2020, Petitioner submitted to the Department a request for hearing objecting to the Department's actions concerning her and Larry's 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 submitted to the Department a January 7, 2020 request for hearing objecting to the Department's actions concerning her and [REDACTED]'s benefits. The Department's actions were set in motion upon processing Petitioner's October 2019 Redetermination paperwork. During that process, the Department discovered that it had been improperly budgeting the household's income, resulting in the Department basing eligibility on an improperly deflated income figure. Once the Department input the allegedly correct information into the equation, the Department found that Petitioner was no longer eligible for full-coverage MA under the HMP and that [REDACTED] was no longer eligible for MSP benefits. Additionally, the Department for some reason determined that the October 2019 Redetermination served as an application for MA benefits for [REDACTED] and found [REDACTED] eligible for MA subject to a high deductible, effective October 1, 2019.

PETITIONER'S MA CLOSURE, EFFECTIVE DECEMBER 1, 2019

The Department closed Petitioner's MA case under the HMP after concluding that Petitioner's countable earnings exceeding the limit for program eligibility.

HMP is a MAGI-related MA category that provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income at or below 133% of the federal poverty level (FPL) under the Modified Adjusted Gross Income (MAGI) methodology; (iii) do not qualify for or are not enrolled in Medicare; (iv) do not qualify for or are not enrolled in other MA programs; (v) are not pregnant at the time of application; and (vi) are residents of the State of Michigan. BEM 137 (January 2019), p. 1. 133% of the FPL for 2019 for a household of three is \$28,368.90. See <https://aspe.hhs.gov/poverty-guidelines>.

Petitioner's income exceeded the limit for program eligibility when one counts only the unearned income received by Petitioner and [REDACTED], which amounts to \$31,848 per year. When one adds the earned income to mix, it is absolutely clear that household income exceeds the limit. Thus, the Department was correct that Petitioner's household income rendered her ineligible for HMP coverage.

As Petitioner is disabled and had been for quite a while before the Department issued its decision, Petitioner was not even eligible for HMP before the decision was made to remove the coverage due to excess income. However, due to an oversight on the part of the Department, the Department failed to recognize that Petitioner asserted a disability.

Although Petitioner was not eligible for MA under the HMP, before closing a client's MA benefits case, the Department must conduct an ex parte review to consider the

individual's eligibility for other MA categories. BAM 220 (January 2019), pp. 18-20. When the ex parte review shows that the MA recipient is eligible for MA under another category, the Department must change the coverage. BAM 220, p. 18. If the ex parte review shows that the MA recipient may have continuing eligibility under another category but there is not enough information in the case record to determine continued eligibility, the Department must send a verification checklist to proceed with the ex parte review; if the MA recipient fails to return the requested information or the information returned establishes that the MA recipient is not eligible under any MA category, the Department must send timely notice of MA case closure. BAM 220, pp. 18-19. If during the ex parte review, it is determined that the MA recipient has indicated or demonstrated a disability, the Department must request additional information needed to proceed with a disability determination; pending the determination, the Department must continue the recipient's MA coverage while requesting verifications. BAM 220, p. 19. If the ex parte review shows that there is no potential eligibility under another MA category, the Department must send timely notice of MA case closure. BAM 220, p. 19.

Petitioner indicated a disability, and the Department was aware of Petitioner's disability. Based on the information presented at the hearing, the information the Department had at the time it issued the November 15, 2019 and January 3, 2020 Health Care Coverage Determination Notices was sufficient to at the very least compel the Department to assess Petitioner's eligibility for MA benefits under the disability based MA categories. The Department failed to do that and instead closed Petitioner's case without conducting the required ex parte review. Had it been done, it would have been discovered that the Department was aware of a disability and that Petitioner was probably eligible for MA coverage under a disability-related MA category.

The ex parte review is required prior to closing any MA case. Until the ex parte review is completed, the Department must continue to provide coverage under the type of assistance already provided, which in this case was HMP. BAM 220, pp. 18-19. The Department failed to do the ex parte review. Thus, the Department must reinstate the coverage Petitioner previously had and continue to provide the same unless and until timely notice is given.

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 closed Petitioner's MA benefits case under the HMP, effective December 1, 2019.

LARRY'S MA BENEFITS CASE

The evidence on the record shows that [REDACTED] never applied for MA benefits, whether on October 28, 2019 or otherwise. Despite not filing an application for MA benefits, the Department determined that Larry was eligible for MA subject to a deductible, effective October 1, 2019.

Subject to limited exceptions not applicable to this case, in order to become eligible for MA benefits, an individual must first apply for those benefits. BAM 115 (October 2019), p. 1; BAM 110 (October 2019), p. 1.

In this case, no application for MA benefits was filed by [REDACTED] or on his behalf. The Department deemed the Redetermination as an application, but after reviewing that document, it is clear that it in no way is a request for benefits for [REDACTED]. As there was no application or request for MA benefits for [REDACTED], the Department was precluded from determining his eligibility and enrolling him in MA coverage. If [REDACTED] would like coverage, an application would have to be filed. The application can request retroactive MA coverage up to three full months before the month of application.

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 determined [REDACTED]'s eligibility for MA benefits, effective October 1, 2019, ongoing.

LARRY'S MSP CLOSURE, EFFECTIVE DECEMBER 1, 2019

[REDACTED] was an ongoing recipient of MSP benefits through the end of November 2019. Effective December 1, 2019, the Department closed [REDACTED]'s MSP benefits case without notice. During the hearing, the Department explained that Larry was ineligible because his countable income exceeded the limit for program eligibility.

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 (April 2019), 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. 2. 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, pp. 3-4. 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. If an error leads to a client receiving MA coverage that he or she was not entitled to, the period of erroneous coverage cannot be removed or reduced. BAM 115 (April 2019), p. 33.

The closure of [REDACTED]'s MSP benefits case, effective December 1, 2019, was a negative action. Based on the evidence on the record, the Department failed to provide any notice at all regarding the closure. Instead, it just determined that household income was over the limit and closed the case without notice. While the Department may be correct regarding the underlying reason for the closure, the Department is precluded from taking such action until it provide timely notice of the negative action. As the Department failed to meet that necessary precondition for closure, the Department's closure 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 it closed [REDACTED]'s MSP benefits case, effective December 1, 2019, ongoing.


DECISION AND ORDER

Accordingly, the Department's decisions are **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. Close Larry's MA benefits case back to the date of opening;
2. Reinstate Petitioner's MA benefits case under the full-coverage HMP back to December 1, 2019 and provide such coverage unless and until the Department properly provides timely notice of a negative action;
3. Reinstate Larry's MSP benefits case back to December 1, 2019 and provide such benefits unless and until the Department properly provides timely notice of a negative action;
4. If either Petitioner or Larry are entitled to additional benefits, ensure that a prompt supplement is issued; and
5. Notify Petitioner in writing of its decisions.

JM/tm


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

DHHS

Tamara Morris
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Petitioner



cc: ME—D. Smith; EQADHShearings
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