



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: March 11, 2020
MOAHR Docket No.: 20-000667
Agency No.: ██████████
Petitioner: ██████████████████████

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 March 4, 2020 from ████████ Michigan. The Petitioner was represented by her husband and Authorized Hearing Representative, ██████████████████████ (AHR). The Department of Health and Human Services (Department) was represented by Melissa Stanley, Hearings Facilitator, and Rollin Carter, Hearings Facilitator.

ISSUE

Did the Department properly deny Petitioner’s and AHR’s Medical Assistance (MA) Application for Medicare Savings Program (MSP) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On ██████████, 2019, the Department received Petitioner’s Application for MA benefits for herself and AHR.
2. On November 22, 2019, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner informing her that neither she nor AHR were eligible for MA benefits because they were not under age 21, pregnant, a caretaker of someone under age 19, had Medicare coverage therefore could not receive Healthy Michigan Plan (HMP), not blind, not disabled, and did not “meet age requirements.”
3. On January 16, 2020, the Department received Petitioner’s request for hearing disputing the denial of benefits for herself and AHR.

4. On January 17, 2020, the Department issued another HCCDN to Petitioner informing her that Petitioner and AHR were not eligible for MA because they were over the income limit.
5. At the hearing, the Department testified and presented evidence that Petitioner and AHR were not eligible for MA MSP benefits because they were over the income and asset limits.
6. The Department never issued a HCCDN informing Petitioner or AHR that they were not eligible for MSP based upon assets.

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 and AHR disputed the Department's decision which indicated that they were not eligible based upon not being under age 21, pregnant, a caretaker of someone under age 19, had Medicare coverage therefore could not receive Healthy Michigan Plan (HMP), not blind, not disabled, and did not "meet age requirements." The MSP requires that eligible individuals must be entitled to Medicare Part A, must be a Michigan resident, have assets less than \$7,730.00 effective April 1, 2019, and have monthly net income between \$0 and \$1,923.00 for a group size of two effective April 1, 2019. RFT 242 (April 2019); BEM 400 (November 2019), p. 8; BEM 165 (January 2018). None of the reasons listed on the HCCDN for denial of Petitioner's and AHR's MSP benefits is relevant or applicable to their MSP eligibility.

Policy provides that the Department must issue a notice of case action to clients informing them of negative actions (including denial of applications) which specify the following items: the actions taken by the Department, the reasons for the actions, the specific manual item which cites a legal basis for the action, and an explanation of the right to request a hearing. BAM 220 (April 2019), pp. 2-3. The HCCDN issued to Petitioner did not satisfy the second and third requirements regarding Petitioner's and AHR's eligibility for MA MSP benefits despite the Department's testimony that they were not eligible. Therefore, the Department has not acted in accordance with Department policy.

It should be noted that for purposes of determining asset eligibility, real property (land and objects affixed to the land) are considered in determining eligibility. BEM 400, pp. 2, 32-34. In order for the Department to determine the value or fair market value of real property, the Department may use any of the following items:

- Deed, mortgage, purchase agreement or contract
- State Equalized Value (SEV) on current property tax records multiplied by two
- Statement of real estate agent or financial institution

BEM 400, pp. 32-33. In MSP cases, one homestead (where a person lives that they own) may be excluded from consideration of the group's assets. BEM 400, p. 35. If a client claims two homesteads, the Department should exclude the homestead of the client's choice. *Id.*

In addition to real property, the Department also considers personal property such as vehicles. BEM 400, p. 2. In MSP cases, the Department is required to exclude one motorized vehicle owned by the group. BEM 400, p. 41. If more than one vehicle is owned by the group, the Employment Asset Exclusion applies first and then from any remaining motorized vehicles, the vehicle with the highest equity value is excluded as an asset. BEM 400, p. 41.

In determining income eligibility for MSP, the MSP is divided into three subcategories. BEM 165, p. 1. Qualified Medicare Beneficiary (QMB) is the full coverage MSP. BEM 165, p. 1. Specified Low-Income Medicare Beneficiary (SLMB) is a limited coverage MSP. *Id.* The third MSP category is the Additional Low-Income Medicare Beneficiary (ALMB). *Id.* QMB pays for Medicare premiums, coinsurances, and deductibles. BEM 165, p. 2. SLMB pays Medicare Part B premiums. *Id.* ALMB pays for Medicare Part B premiums if funding is available. *Id.*

Income determines placement in the programs. BEM 165, p. 1. For QMB, net income cannot exceed 100% of the federal poverty level, the same as AD-Care, \$1,430.00 per month for a group size of two effective April 1, 2019. BEM 165, p. 1; RFT 242 (April 2019), p. 1. SLMB is available for individuals whose income is over 100% of the federal poverty level, but not more than 120% of the federal poverty level, or between \$1,430.01 and \$1,711.00 effective April 1, 2019 for a group size of two. *Id.* Finally, ALMB is available to those whose income exceeds 120% of the federal poverty level but does not exceed 135%, or between \$1,711.01 and \$1,923.00 for a group size of two effective April 1, 2019. BEM 165, p.1; RFT 242, p. 2.

To determine the countable income for purposes of MSP benefits, the Department relies on the same policies as utilized for AD-Care and G2S: BEM 500, 501, 502, 503, 504, 530, 540, and 541. BEM 165 (January 2018), p. 8.

In determining the Ad-Care and MSP eligibility, the Department must determine Petitioner's MA fiscal group size and net income. If the applicant is an adult, the group size is the adult applicant and his or her spouse. BEM 211 (July 2019), p. 8.

Countable income is calculated by adding the amount of income actually received/available within the past month. BEM 530 (July 2017), p. 2. Next, a \$20.00 general exclusion is applied. BEM 541 (January 2019), p. 3. Additional deductions may be applied for earnings, guardianship or conservatorship expenses, allowable work expenses for those that are blind or disabled, and court ordered child support. BEM 541. If after consideration of income and these deductions, the net income falls within one of the above categories, the client may receive MSP benefits within that category of coverage.

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 denied Petitioner's eligibility for MSP benefits effective November 1, 2019 without providing proper notice of the Department's actions, reasoning, and supporting policy or law.

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. Redetermine Petitioner's and AHR's eligibility for MSP benefits effective November 1, 2019;
2. If otherwise eligible, issue supplements to Petitioner for herself and AHR, or on their behalf, for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.

AMTM/jaf



Amanda M. T. Marler
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

Kathleen Verdoni
MDHHS-██████████ Hearings
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Petitioner

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Authorized Hearing Rep.

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