



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: March 13, 2020
MOAHR Docket No.: 20-000801
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 March 9, 2020 from Detroit, Michigan. Petitioner appeared and represented herself. Also appearing on behalf of Petitioner was witness [REDACTED]. The Department of Health and Human Services (Department) was represented by Melissa Stanley, Hearings Facilitator. During the hearing, a 26-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-26.

ISSUE

Did the Department properly close Petitioner's Medicaid (MA) benefits case, effective January 1, 2020?

Did the Department properly close Petitioner's MA benefits case, effective March 1, 2020?

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 recipient of full-coverage MA benefits from the Department. Her fiscal group included herself and her husband.
2. On November 4, 2019, the Department issued to Petitioner a Redetermination to gather relevant information regarding Petitioner's ongoing eligibility for MA benefits. Petitioner was instructed to complete the form and return it to the Department by December 4, 2019 in order to prevent the closure of her MA benefits case at the end of the certified benefit period, which was scheduled to expire on December 31, 2019. Exhibit A, pp. 19-26.

3. On December 13, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that her MA benefits case would be closing, effective January 1, 2020, as a result of Petitioner's failure to return the Redetermination. Exhibit A, pp. 9-11.
4. On December 16, 2019, Petitioner submitted to the Department the completed Redetermination. Exhibit A, pp. 19-26.
5. The Department did not process Petitioner's submitted Redetermination for quite some time.
6. On January 21, 2020, Petitioner submitted to the Department a request for hearing objecting to the Department's decision to close Petitioner's MA benefits case.
7. On January 31, 2020, the Department reinstated Petitioner's MA benefits case back to the date of closure. Thus, due to that action, the Department's previous closure was reversed, and Petitioner effectively received uninterrupted coverage to that point.
8. On January 31, 2020, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that her MA benefits case would be closing, effective March 1, 2020, as a result of the Department's determination that Petitioner's income exceeds the limit for program eligibility. Along with that statement, the document states that the income limit for a household of two is \$22,490.30 per year. The document also states that "[t]he income below was used in determining the Health Care Coverage for [REDACTED]." Immediately below that statement was a figure of \$11,952.00, which is obviously way below the income limit stated in the same document. Somehow, those facts support the Department's conclusion that Petitioner's "[c]ountable income exceeds income limit for your group size." Exhibit A, pp. 5-8.
9. The Department deemed Petitioner's hearing request to apply to both the closure, effective January 1, 2020, and the closure, effective March 1, 2020. Petitioner did not object. Thus, this decision will address both 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.

In this case, Petitioner contested the Department's actions that resulted in the closure of her MA benefits case, once effective January 1, 2020 and once effective March 1, 2020. The January 1, 2020 closure was occasioned by the Department's conclusion that Petitioner failed to timely return a completed Redetermination form. After that closure, the Department reopened the case. The March 1, 2020 closure was occasioned by the Department's conclusion that Petitioner's income exceeded the limit for program eligibility.

CLOSURE, EFFECTIVE JANUARY 1, 2020

Periodically, the Department must redetermine or renew a client's eligibility for Department-issued benefits by the end of each benefit period. BAM 210 (January 2020), pp. 1, 4. The redetermination process includes thorough review of all eligibility factors. BAM 210, p. 1. If a redetermination is not completed and a new benefit period certified, benefits stop at the end of the benefit period. BAM 210, p. 4. To initiate the redetermination process, the Department issues to clients a redetermination form; that form must be completed and returned to the Department in a timely manner. BAM 210, p. 1.

The Department properly initiated the redetermination process and informed Petitioner of the requirements for completing the process. Petitioner failed to follow those instructions, which clearly directed Petitioner to return the Redetermination form by December 4, 2019. Because of that failure, the redetermination process was not complete, and the Department properly issued the December 13, 2019 Health Care Coverage Determination Notice closing Petitioner's MA benefits case, effective January 1, 2020. Thus, that decision is affirmed.

While the Department initially made the correct decision in closing Petitioner's MA case, that is not the end of the inquiry.

The Department must:

Reconsider in a timely manner the eligibility of an individual who is terminated for failure to submit the renewal form or necessary information, if the individual subsequently submits the renewal form within 90 days after the date of termination, or a longer period elected by the State, without requiring a new application.

42 CFR 435.916(a)(3).

Petitioner submitted the completed Redetermination form on December 16, 2019. That should have resulted in the Department's reconsideration of Petitioner's eligibility. While there was no documentary evidence of that being done, the Department witness testified that Petitioner's MA benefits were, in fact, reinstated in January 2020 back to

the date of closure. Thus, the Department reversed its decision to close and recertified Petitioner's MA benefits for a new period. As the Department's closure and then subsequent reversal were pursuant to Department policy, the Department's actions stand.

CLOSURE, EFFECTIVE MARCH 1, 2020

Upon reinstating Petitioner's MA benefits case, the Department almost immediately issued the January 31, 2020 Health Care Coverage Determination Notice informing Petitioner that her MA benefits case would be closing, effective March 1, 2020, as a result of the Department's determination that Petitioner's income exceeded the limit for program eligibility. Along with that statement, the document stated that the income limit for a household of two is \$22,490.30 per year. The document also states that "[t]he income below was used in determining the Health Care Coverage for [REDACTED]." Immediately below that statement was a figure of \$11,952.00, which is obviously way below the income limit stated in the same document. Somehow, those facts support the Department's conclusion that Petitioner's "[c]ountable income exceeds income limit for your group size."

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 2020), p. 1.

Petitioner is under age 65, not disabled, and not enrolled in Medicare. Thus, she is potentially eligible for MA under the HMP if the household's income does not exceed 133% of the FPL applicable to the individual's group size. In this case, the parties agree and the facts dictate that Petitioner's household size is two.

133% of the 2020 annual FPL for a household with two members is \$22,929. <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's household annual MAGI cannot exceed \$22,929. This figure breaks down a monthly income threshold of \$1,910.¹ However, if an individual's group's income is within 5% of the FPL for the applicable group size, a disregard is applied, making the person eligible for MA. MREM, § 7.2. 5% of the FPL for a two-person group is \$862, bringing the total annual income threshold to \$23,791. This figure breaks down to a monthly income threshold of \$1,982.²

To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500 (July 2017), pp. 3-4. Income is verified via electronic federal data sources in compliance with MAGI methodology. MREM, § 1.

¹ \$22,929 divided by twelve.

² \$23,791 divided by twelve.

Effective November 1, 2017, when determining eligibility for new applicants for MAGI related MA, financial eligibility is determined based on current monthly income and family size. https://www.michigan.gov/documents/mdhhs/MAGI-Based_Income_Methodologies_SPA_17-0100_-_Submission_615009_7.pdf. However, in determining current monthly income, the Department must account for reasonably predictable decreases in income. *Id.*

According to the Health Care Coverage Determination Notice informing her of the Department's decision, the Department determined Petitioner's eligibility for MA benefits based on an annual income of \$11,952, which amounts to a monthly income total of \$996. That figure is substantially below the monthly income threshold of \$1,982. Thus, based solely on the facts included on the decision notice, Petitioner was eligible for HMP coverage.

The Department is required to provide all applicants and beneficiaries with timely and adequate written notice of any decision affecting their eligibility in a manner that is in plain language and accessible to persons with limited English proficiency and individuals with disabilities. 42 CFR 435.917(a). Any notice of denial, termination or suspension must be consistent with 42 CFR 431.210. 42 CFR 435.917(b)(2). That provision requires that the Department include in the notice a statement of what action the Department intends to take, the effective date of the action, and the specific reasons supporting the intended action. 42 CFR 431.210.

As a baseline matter, the Department's January 31, 2020 Health Care Coverage Determination Notice does not meet the basic elements of notice as it does not provide an even remotely reasonable basis upon which the Department made its decision. As such, it would be ridiculous to conclude that the notice described the specific reasons supporting the intended action in plain, accessible language. Instead, it set forth a specific set of facts that support approving Petitioner's eligibility then concludes that those facts are the basis for the denial. Because the document failed to specify the reasons supporting the action, the document was no notice at all and cannot form the basis for taking negative action to terminate Petitioner's MA benefits.

Notwithstanding the inadequacy of the notice, the Department still failed to meet its burden of substantiating the income figures it used in determining the Petitioner's household income was over the limit. First, the Department failed to include any information regarding how it determined Petitioner's income in the evidence packet. The only information concerning income is Petitioner's statement on the Redetermination that she makes \$800 per month in income. The Department budgeted \$996. Because the Department did not present evidence to substantiate its higher income figure, the only evidence on the record regarding income will be used, which is the \$800 figure. The income information presented by the Department concerning Petitioner's husband shows that in the thirty days prior to the negative action notice, he had gross wages of \$1,123. If those two numbers are added together, Petitioner's household income would be \$1,923, which is just below the monthly threshold for eligibility. Thus, in addition to failing to provide an even remotely competent notice, the

information presented at the hearing shows that Petitioner's income was actually below the threshold for eligibility anyways.

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 Petitioner's eligibility for MA benefits, effective February 1, 2020.

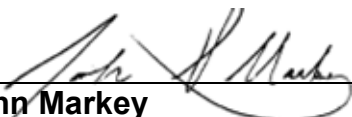
DECISION AND ORDER

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 Petitioner's MA benefits under the HMP back to the date of closure and provide those benefits unless and until the Department decides to take negative action pursuant to law and Department policy concerning the provision of timely notice;
2. If any eligibility-related factors are unclear, inconsistent, contradictory, or incomplete, follow Department policy in requested and obtaining verifications;
3. If Petitioner is eligible for additional benefits that were not provided, ensure that a supplement is promptly issued; and
4. 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

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Petitioner



cc: ME—D. Smith; EQADHShearings
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