



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: June 29, 2020
MOAHR Docket No.: 20-001843
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 June 25, 2020 from Detroit, Michigan. Petitioner appeared and was represented his Authorized Hearing Representative, [REDACTED]. The Department of Health and Human Services (Department) was represented by Kevin Lowe, Eligibility Specialist.

ISSUE

Did the Department properly close Petitioner's Medicare Savings Program (MSP) benefits, effective December 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 was an ongoing recipient of MSP benefits from the Department through the first nine months of 2019. Pursuant to timely notice of adverse action, Petitioner's MSP benefits case was closed, effective October 1, 2019.
2. In [REDACTED] 2019, Petitioner submitted an application for MSP benefits.
3. On October 21, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that his application for MSP benefits was approved, effective November 1, 2019, ongoing.

4. For some unknown reason, Petitioner's MSP benefits case was closed, effective December 1, 2019. No notice was issued informing Petitioner of the closure.
5. On [REDACTED], 2020, Petitioner submitted to the Department a request for hearing objecting to the Department's closure of Petitioner's MSP benefits case without any notice, effective December 1, 2019.

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 objected to the Department's closure of his approved MSP benefits case without any notice, effective December 1, 2019.

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 Petitioner'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 closed the case without notice. Regardless of whether the Department's action was correct regarding the underlying reason for the closure, which is likely not the case anyways, 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 Petitioner's MSP benefits case without notice, effective December 1, 2019.

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 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;
2. Ensure that Petitioner is promptly issued a supplement to reimburse him for the premiums he paid that should have been paid by the Department; and
3. Notify Petitioner in writing of its actions.

JM/



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

LaClair Winbush
17455 Grand River
Detroit, MI 48227

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

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