



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 9, 2020
MOAHR Docket No.: 20-003570
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 July 8, 2020 from Detroit, Michigan. Petitioner appeared and represented himself. Also appearing on behalf of Petitioner was Petitioner's daughter, LaTasha Williams. The Department of Health and Human Services (Department) was represented by [REDACTED] Family Independence Specialist. During the hearing, a 20-page packet of documents was offered and admitted into evidence as Exhibit A.

ISSUE

Did the Department properly change Petitioner's Medicaid (MA) benefits from full coverage to a deductible plan, effective January 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 MA benefits that were not subject to any deductible. He had received those benefits for all of 2019. Exhibit A, p. 20.
2. On February 20, 2020, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that his MA benefits were approved, subject to a deductible, effective January 1, 2020. Exhibit A, pp. 6-9.

3. Prior to February 20, 2020, Petitioner had received no notice of any deductible. Rather, he was consistently informed by the Department that he had full-coverage MA.
4. On [REDACTED], 2020, Petitioner submitted to the Department a request for hearing objecting to the Department's efforts to retroactively strip Petitioner's full-coverage MA benefits without providing timely notice.

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.

Prior to the reduction of Petitioner's MA benefits, effective January 1, 2020, Petitioner was receiving full-coverage MA benefits from the Department, as evidenced by the Health Care Coverage Determination Notices issued informing Petitioner that he had full-coverage MA benefits. During the hearing, Ms. Johnson testified that the most recent one of those was issued on December 6, 2019. On February 20, 2020, the Department issued another notice that stripped Petitioner's full-coverage MA benefits back to January 1, 2020 and imposed a monthly deductible. Petitioner then filed a request for hearing.

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.

Petitioner had consistently been informed that he was eligible for full-coverage MA throughout 2019, including as recently as December 6, 2019. That was a certification of eligibility results and a positive action. Thus, whether that determination was incorrect or not, the Department was required to provide the benefits Petitioner was notified he was eligible for unless and until the Department provided **TIMELY WRITTEN NOTICE** of a negative action. Instead, the Department just removed the coverage, effective January 1, 2020, and then informed Petitioner almost two months later of the change.

As the change from a full-coverage MA program to one that imposes a deductible constituted a negative action, the Department was required to provide timely notice. However, no document was issued to inform Petitioner of the change until February of 2020, which was not timely. As there was no timely notice issued in a timely manner to impact Petitioner's MA benefits, the Department violated law and Department policy.

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 retroactively stripped Petitioner of his full-coverage MA benefits without timely notice, effective January 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 full-coverage MA coverage back to January 1, 2020 and provide the same unless and until the Department properly provides timely notice of a negative action;
2. If Petitioner is eligible for any additional coverage that was not provided, ensure that it is properly provided;

3. If any eligibility-related factors are unclear, inconsistent, contradictory, or incomplete, follow Department policy regarding verifications;
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

Tara Roland 82-17
8655 Greenfield
Detroit, MI
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Petitioner

[REDACTED]
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[REDACTED]

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