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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: November 18, 2020
MOAHR Docket No.: 20-005923
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 hearing was held on October 29, 2020, via telephone conference line. Petitioner participated and was unrepresented. ██████████ Petitioner’s spouse (hereinafter, “Spouse”), testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Barbara Hill, specialist.

ISSUES

The first issue is whether MDHHS properly denied Petitioner’s application for State Emergency Relief (SER) concerning an electric bill.

The second issue is whether MDHHS properly issued notice of Petitioner’s Medicaid deductible.

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 April 20, 2020, MDHHS sent Petitioner notice that Spouse was eligible for Medicaid subject to a monthly deductible of \$1,239 beginning April 2020.
2. On April 27, 2020, MDHHS sent Petitioner notice that she was eligible for Medicaid subject to a monthly deductible of \$1,239 beginning April 2020.
3. Beginning June 2020, MDHHS increased Petitioner’s Medicaid deductible to \$1,384 per month.

4. On [REDACTED], 2020, Petitioner applied for SER seeking payment for an electric bill.
5. On September 2, 2020, MDHHS denied Petitioner's SER-energy application due to Petitioner's failure to be interviewed. At the time, Petitioner's past due amount on electric service was \$3,368.95.
6. On [REDACTED] 2020, Petitioner requested a hearing to dispute the denial of SER. Additionally, Petitioner disputed that her Medicaid deductible was not \$1,239 per month.
7. On an unspecified date, a third party paid \$3,154.92 on Petitioner's electric account.
8. On September 23, 2020, MDHHS denied Petitioner's application due to Petitioner's emergency being resolved. At the time, Petitioner had no past due amount on her electric bill.
9. As of the hearing date, MDHHS did not send Petitioner notice of an increased Medicaid deductible since April 27, 2020.

CONCLUSIONS OF LAW

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049. SER policies are contained in the Emergency Relief Manual (ERM).

Petitioner requested a hearing to dispute a denial of SER. Petitioner applied for SER on [REDACTED], 2020, requesting assistance for an electric bill arrearage. MDHHS denied Petitioner's request for assistance for a past-due energy bill of \$3,368.95 on September 2, 2020, due to Petitioner failing the interview requirements Exhibit A, pp. 17-19. MDHHS testimony admitted that the denial was improper because, at the time, interview requirements were suspended for SER applicants.¹ After realizing its error, MDHHS reprocessed Petitioner's application. A State Emergency Relief Decision Notice dated September 23, 2020, stated that Petitioner's application was again denied, this time due to Petitioner's emergency being resolved. Exhibit A, p. 22.

Low-income households who meet all SER eligibility requirements may receive assistance to help them with household heat and electric costs. ERM 301 (April 2020) p. 1. When the group's heat or electric service for their current residence is in past due

¹ ESA 2020-17 states that phone interviews are not required for SER unless changes are reported or there are discrepancies in need of resolution.

status, in threat of shutoff or is already shut off and must be restored, payment may be authorized to the enrolled provider. *Id.*, p. 3. The amount of the payment is the minimum necessary to prevent shutoff or restore service, not to exceed the fiscal year cap. *Id.*, pp. 3-4. Payment must resolve the emergency by restoring or continuing the service for at least 30 calendar days. *Id.*, p. 4.

As of Petitioner's application date, Petitioner had an energy crisis. She faced a shut-off threat because of a past-due amount exceeding \$3,000. When MDHHS reprocessed Petitioner's application on [REDACTED] 2020, Petitioner's energy account had a pending payment exceeding \$3,000; the result was a credit on Petitioner's account. Exhibit A, pp. 20-21. Thus, the threat of shut-off to Petitioner's energy service ended. With no threat of shut-off, MDHHS policy supports the ultimate denial of Petitioner's SER application.

Consideration was given to whether Petitioner's circumstances justify a more favorable outcome. Affirming MDHHS's application denial is essentially rewarding MDHHS for taking long enough to correctly process Petitioner's application that Petitioner resolved her emergency. Though the decision is debatably unjust, the undersigned lacks authority to consider equitable remedies.² Petitioner is entitled to remedies offered by MDHHS policy; however, under Petitioner's circumstances, SER payment cannot be issued once an emergency is resolved. Thus, MDHHS properly denied Petitioner's SER application for energy services.

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. MDHHS administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner also requested a hearing to dispute Medicaid eligibility. Petitioner received notice on April 20, 2020, that her spouse was eligible for Medicaid subject to a monthly deductible of \$1,239. Exhibit A, pp. 8-11. One week later, MDHHS sent notice that Petitioner was eligible for the same deductible amount. Exhibit B, pp. 1-6. Petitioner's expectation was that she and her spouse have the same deductible of \$1,239. During the hearing, MDHHS testified that Petitioner's deductible has since increased to \$1,390 per month.³ Petitioner requested a hearing to dispute the increase in her monthly Medicaid deductible from \$1,239.

² In the absence of an express legislative conferral of authority, an administrative agency generally lacks the powers of a court of equity. *Delke v. Scheuren*, 185 Mich.App. 326, 332; 460 N.W.2d 324 (1990).

³ An Eligibility Summary obtained after the hearing listed an increased deductible of \$1,384 for June 2020 and a \$1,385 deductible beginning July 2020.

MDHHS is to use a Deductible Notice (DHS-114) or its equivalent to notify the group of a change in its deductible amount. BEM 545 (July 2019) p. 14. In an example in its policy, MDHHS again states that a DHS-114 is to be sent when a change in income results in a deductible change. *Id.*, p. 31.

MDHHS testimony acknowledged that Petitioner was never sent notice of an increased deductible. Without proper notice, the increased deductible is properly reversed. As a remedy, Petitioner is entitled to a reprocessing of her deductible from the first month when it was increased without notice being sent: June 2020.

It should be noted that evidence was not taken as to whether a \$1,239 or \$1,390 monthly deductible was correct. Thus, it is possible that Petitioner's deductible should be \$1,390 for June 2020. If Petitioner is dissatisfied with the reprocessing of her Medicaid eligibility, she can dispute the deductible by again requesting a hearing.

DECISION AND ORDER

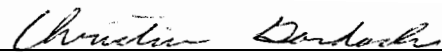
The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's SER application dated [REDACTED], 2020. Concerning SER, the actions taken by MDHHS are **AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly processed Petitioner's Medicaid eligibility. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reprocess Petitioner's Medicaid eligibility beginning June 2020 subject to the finding that MDHHS failed to issue proper notice of a change in deductible; and
- (2) Issue notice and any due benefits in accordance with policy.

Concerning Petitioner's Medicaid deductible, the actions taken by MDHHS are **REVERSED**.

CG/tm



Christian Gardocki
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

Via Email:

MDHHS-Macomb-20-Hearings
D. Smith
EQAD Hearings
T. Blair
E. Holzhausen
BSC4
MOAHR

Petitioner – Via First-Class Mail:

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