



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: April 14, 2021
MOAHR Docket No.: 20-007786
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 via telephone conference line on April 8, 2021. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Corlette Brown, hearings facilitator.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's Medicare Savings Program (MSP) eligibility.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. As of May 2020, Petitioner was an ongoing recipient of Railroad Retirement Benefits (RRB), Medicare Parts A and B, and MSP.
2. On August 31, 2020, MDHHS mailed Petitioner notice that MSP would end effective June 2020 due to an unspecified failure by Petitioner to verify information.
3. As of August 31, 2020, Petitioner did not fail to verify information.
4. As of August 31, 2020, Petitioner met program requirements for MSP.
5. On [REDACTED] 2020, Petitioner requested a hearing to dispute the termination of MSP. Petitioner additionally disputed the denial of multiple applications for MSP submitted to MDHHS after August 31, 2020.

CONCLUSIONS OF LAW

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a termination of MSP eligibility.¹ Exhibit A, pp. 3-4. During the hearing, Petitioner and MDHHS initially stated that the termination began September 2020. Later in the hearing, MDHHS testified that a Health Care Coverage Determination Notice dated August 31, 2020, stated that Petitioner's MSP eligibility stopped June 2020 due to a failure to verify unspecified information.²

For all programs, MDHHS is to inform the client what verification is required, how to obtain it, and the due date. BAM 130 (April 2017), p. 3. MDHHS is to use the DHS-3503, Verification Checklist (VCL), to request verification. *Id.* For Medicaid, MDHHS is to allow the client 10 calendar days to provide the verification that is requested. *Id.*, p. 8. MDHHS may send a negative action notice when:

- The client indicates refusal to provide a verification, or
- The time period given has elapsed. *Id.*

MDHHS did not present evidence that a VCL was sent to Petitioner, what information was requested of Petitioner, and/or whether Petitioner failed to comply. Given the evidence, a termination of MSP based on a failure to verify was improper.

MDHHS's hearing packet indicated a second reason for MSP termination. MDHHS seemed to contend that Petitioner was ineligible for MSP because he did not receive Medicare and/or his receipt of RRB did not render him eligible for MSP. Though MDHHS did not issue written notice that termination was based on MSP ineligibility, the matter will be briefly addressed.

A person will usually be eligible for Medicare Part A under section 226 or 226A of the Social Security Act if he or she received RRB for at least 24 months. BAM 810 (January 2020) p. 1. Medicare Part B premiums are deducted from a person's RRB, RSDI, and/or civil service checks. *Id.*, p. 4.

¹ MSP is also known as Medicare Cost Sharing.

² Petitioner's hearing request was submitted more than 90 days after MDHHS issued written notice of termination. Clients have 90 days to request a hearing after issuance of written notice. BAM 600 (January 2020) p. 6. MDHHS did not raise the issue of timeliness and there was no documentary evidence that written notice was sent to Petitioner. Given the evidence, Petitioner's hearing request is deemed timely.

During the hearing, MDHHS testimony acknowledged that Petitioner was eligible for Medicare and MSP. Also, MDHHS testimony acknowledged that its policy unit confirmed that termination of Petitioner's MSP eligibility would be improper based on a conclusion that Petitioner was ineligible to receive MSP. MDHHS further testified that Petitioner's MSP eligibility was reinstated back to 2019.³ Given the limited evidence, a termination of Petitioner's MSP based on program ineligibility was improper. As a remedy, Petitioner is entitled to reinstatement of MSP back to June 2020.⁴

³ Though MDHHS testified to a reinstatement of benefits, documentary evidence of reinstatement was not presented. Thus, an order of reinstatement is proper. MDHHS also admitted that written notice of reinstatement was not sent to Petitioner.

⁴ The analysis need not consider Petitioner's dispute over denied applications for MSP because any potential remedy would overlap with the order addressing improper MSP termination.


DECISION AND ORDER

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

- (1) Reinstate Petitioner's MSP eligibility beginning June 2020; and
- (2) Issue supplements and notice in accordance with policy.

The actions taken by MDHHS are **REVERSED**.

CG/tm



Christian Gardocki
Administrative Law Judge
for Elizabeth Hertel, 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-Wayne-31-Hearings
C. George
EQADHearings
BSC4
MOAHR

**Petitioner –
Via First-Class Mail:**

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