

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
Date Mailed: June 2, 2021
MOAHR Docket No.: 21-001705
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 three-way telephone hearing was held on May 3, 2021, from Bloomfield Hills, Michigan. The Petitioner was represented by [REDACTED] her Authorized Hearing Representative with Change Healthcare. The Department of Health and Human Services (Department) was represented by Princess Ogundipe, Eligibility Specialist.

ISSUE

Did the Department properly process the Petitioner's application for Medicare Cost Share (MSP) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Petitioner's AHR applied on her behalf for Medicaid and Medicare Cost Share (MSP) share on [REDACTED] 2020. On [REDACTED] 2020 the Petitioner's AHR also requested retro MA MSP coverage for the months of June 2020, July 2020 and August 2020. The Department approved the application for MA benefits and there is no issue with respect to those benefits.
2. On March 29, 2021 the Department issued Health Care Coverage Determination Notice approving the Petitioner for ALMB Medicare Savings Program (MSP) effective January 1, 2021 and denied MSP for September 1, 2020 through December 31, 2020 due to the month tested being in a previous year. The Notice does not address the Department's determination for MSP for the retro months for June 2020, July 2020, and August 2020. Exhibit A, pp.9-12.

3. The Verification Checklist dated sent in this case was not sent by the Department to Petitioner's AHR. Exhibit A, p. 4. On October 20, 2020, the Department incorrectly denied the MA application and application for MSP due to Petitioner's alleged failure to verify assets. The Denial of the [REDACTED] 2020 application was in error. Exhibit A, p. 6
4. The Petitioner's AR/AHR requested a timely request for hearing on March 22, 2021 as the AHR had never received notice from the Department of the October 20, 2020 application denial.

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, the Department initially incorrectly denied the Petitioner's [REDACTED] 2020 application for MA and retroactive MSP due to its failure to provide the Petitioner's Authorized Representative copies of the Verification Checklist and application denial issued on October 20, 2020 for failure to verify asset information. Subsequently, the Department approved the Petitioner for ALMB MSP effective January 1, 2021 ongoing.

The Department denied the Petitioner's request for retro ALMB MSP for the period September 1, 2021 to December 31, 2020 due to MSP ALMB for the month being tested September 1, 2020 being in a previous year at the time the department finally processed the application in March of 2021. The actual request by Petitioner regarding ALMB was for the retro MA MSP for June 2020, July 2020 and August 2020 and ongoing.

The Department also approved the Petitioner for MA beginning June 1, 2020 through August 31, 2020 (retro MA) for Full Coverage MA and thereafter beginning September 1, 2020 to December 31, 2020 with an \$868.00 monthly deductible; January 1, 2021 to March 31, 2021 with a \$850.00 monthly deductible and April 1, 2021 ongoing with a \$868.00 monthly deductible. The Department's approval of MA for Petitioner is not in dispute, only the MSP benefits are disputed and the issue of retroactive MSP.

In order to be eligible for MSP ALMB the net income of the applicant cannot be over 120% of poverty, **but** not over 135% of poverty. A person who is eligible for one of these categories **cannot** choose to receive a different MSP category. The eligibility factors must be met in the calendar month being tested. ALMB pays for Medicare Part B premiums provided funding is available. BEM 165, (January 2018) pp. 1 - 2. In order to be eligible for MSP the applicant must be eligible for Medicare Part A. None of the income or other eligibility information underlying the Department's determination that Petitioner was eligible for ALMB for January 2021 ongoing was presented at the hearing.

The Petitioner applied for MA and MSP in [REDACTED] 2020 and was found eligible for MA with a deductible for that month. Each MSP program has different eligibility requirements and begin dates. The ALMB begin date is available for retro MA months and later months; however not for a time in a previous calendar year. Department policy provides:

Do not approve ALMB for any month that is in a previous calendar year, even if application was made in the previous calendar year. Example: Application was made December 27, 2015. Eligibility was determined on January 3, 2016. ALMB cannot be approved for any time before January 1, 2016.

In this case, it is determined that the Department failed to correctly process the [REDACTED] 2020 MA application and in October 2020 incorrectly denied the application in error, and now seeks to deny MSP ALMB for any period in 2020 due to its processing error and late correction of its denial made on March 29, 2021. The errors made in this case are due to the Department's failure to provide notice initially to the Petitioner's Authorized Representative of requests for verification. Had the Department correctly processed the application within the standard of promptness, in 2020, the MSP request would not have been processed as if it was in a previous calendar year. The entire delay in this case and late reinstatement and late re processing in March 2021 was due to department's processing error and not any inaction on the part of the Petitioner or its Authorized Representative. As such the Department must reprocess the MA application as it relates to its MSP ALMB determination as of the [REDACTED] 2020 application date and re determine the Petitioner's MA eligibility for MSP ALMB for June 2020, July 2020, and August 2020 and ongoing as processed in 2020.

The Department's failure to properly process the application initially and its subsequent late reprocessing cannot be used to prejudice the Petitioner's possible eligibility for MSP ALMB in 2020 due solely to Department error and its failure to correctly process the application in accordance with Department policy. The only reason the Petitioner's eligibility for MSP was not determined within the standard of promptness was due to Department error due to the Department's initial incorrect processing and late reprocessing, as such these errors cannot now be used to deny possible MSP coverage without acknowledging its own error causing Petitioner's eligibility to be determined in March of 2021 for a [REDACTED] 2020 application. The Standard of Promptness for MA requires that the Department process and certify program approval or denial of the

application within 45 days. BAM 115, (July 2020) pp.16-17. The Department representative conceded that the caseworker should have processed the CSCD date as of September 1, 2020 not April 1, 2021 which was incorrect and instead processed the application so that no MSP could begin until January 2021. Exhibit A, p. 1. The Department reinstated the application as of March 29, 2021 and did not certify the application until April 13, 2021. In addition, there was no underlying information used by the Department for the ALMB eligibility determination as of January 1, 2021.

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 failed to correctly process and re-register and re-process the Petitioner's MA application [REDACTED] 2020 and redetermine the Petitioner's eligibility for MSP ALMB or other MSP cost share program as appropriate.

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. The Department shall re register the Petitioner's MA application and attendant MSP application for the months of June 2020, July 2020, and August 2020 and ongoing and shall redetermine Petitioner's eligibility for MSP as of the [REDACTED] 2020 application date and within the standard of promptness for that application.
2. The Department shall provide a written notice to the Petitioner's AHR of its eligibility determination of Petitioner's MSP eligibility for June 2020, July 2020, August 2020 and ongoing.

LF/


Lynn M. Ferris
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-18-Hearings
BSC4-HearingDecisions
EQADHearings
C. George
MOAHR

Petitioner- Via USPS:



Authorized Hearing Rep.- Via USPS:

