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GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED], MI [REDACTED]

Date Mailed: May 23, 2022  
MOAHR Docket No.: 22-000785  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Linda Jordan**

### **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 April 27, 2022 via video conference. Petitioner appeared and represented herself. Petitioner participated in the hearing with the assistance of an American Sign Language (ASL) interpreter. Valarie Foley, Hearings Facilitator, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

### **ISSUE**

Did MDHHS properly terminate Petitioner's Medicare Savings Program (MSP) coverage?

### **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 is an ongoing recipient of Medicaid (MA) benefits.
2. On February 11, 2022, MDHHS sent Petitioner a Health Care Coverage Determination Notice indicating that she was eligible for MSP from May 1, 2021 to June 30, 2021 (Exhibit A, p. 5). The notice also indicated that Petitioner's MSP benefits would be terminated, effective July 1, 2021 ongoing because she was not eligible for the program (Exhibit A, p. 5).
3. On [REDACTED] 2022, Petitioner requested a hearing to dispute MDHHS' determination (Exhibit A, p. 3).

## **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 Medicaid (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. MA is also known as Medical Assistance. BEM 105 (January 2021), p. 1.

Medicare is a federal program administered by the Social Security Administration (SSA). BAM 810 (January 2020), p. 1. MSP is a state program administered by MDHHS in which the state pays an eligible client's Medicare premiums, coinsurances, and deductibles. BEM 165 (October 2020), pp 1-2; BAM 810 (January 2020), p. 1. All eligibility factors for the program must be met in the calendar month being tested. BEM 165, p. 2. There are three MSP categories: (1) QMB (Qualified Medicare Beneficiary), which pays for a client's Medicare premiums (both Part A, if any, and Part B), Medicare coinsurances and Medicare deductibles; (2) Specified Low-Income Medicare Beneficiaries (SLMB), which pays for a client's Medicare Part B premiums; and (3) Additional Low Income Medicare Beneficiaries (ALMB), which pays for a client's Medicare Part B premiums when funding is available. BEM 165, pp. 1-2. Clients must be entitled to Medicare Part A to be eligible for the program. BEM 165, pp. 5-6.

In this case, MDHHS alleged that Petitioner was approved for MSP for two months in 2021 in error due to a Mass Update Exception Report (Exhibit A, p. 1). At the hearing, MDHHS stated that Petitioner should not have been approved for MSP in the first place and that her income made her ineligible for the program. Petitioner expressed confusion about the issue in this case, stating her belief that her minor children's MA coverage had been terminated. MDHHS confirmed that this was not the case and that their coverage had not changed. The hearing proceeded to address the MSP determination, which was the only recent change to Petitioner's MA case.

When an adult is applying for MSP, the fiscal and asset group is the adult applicant and their spouse. BEM 211 (July 2019), p. 8. In this case, Petitioner had a fiscal and asset group-size of two, which includes Petitioner and her spouse. Income is the major determiner of MSP eligibility and category. BEM 165, p. 1. Effective April 1, 2021, a fiscal group-size of two is income eligible for QMB if their monthly net income is no more than 100% of the Federal Poverty Level (FPL), or \$1,472.00; SLMB if their monthly net monthly income is between 100% and 120% of FPL, or \$1,472.01 and \$1,762.00; and ALMB if their monthly net income is between 120% and 135% of FPL, or \$1,762.01 and

\$1,980.00. RFT 242 (November 2021), pp. 1-2; BEM 165, pp. 2, 8. Income eligibility for MSP is based on the FPL and a \$20.00 disregard for Retirement, Survivors and Disability Insurance (RSDI) income. RFT 242, p.1.

MDHHS introduced evidence that Petitioner and her spouse both received monthly RSDI benefits (Exhibit A, pp. 19-25). The record shows that Petitioner received \$ [REDACTED] in monthly RSDI income and Respondent's spouse received \$ [REDACTED] in RSDI income (Exhibit A, pp. 19-25). Petitioner did not dispute these amounts. Adding together these amounts equals \$ [REDACTED] (dropping the cents). Petitioner was also entitled to a \$ [REDACTED] disregarding of RSDI income. No other evidence of MA income deductions for SSI-related adults was introduced. See BEM 541 (January 2021). Thus, the record shows that Petitioner was ineligible for MSP benefits due to being over the income limit for the program.

Although MA and MSP terminations have been suspended during the Public Health Emergency,<sup>1</sup> there is an exception for individuals who were not "validly enrolled" in program benefits. The federal rules provide that an individual is validly enrolled if the beneficiary was enrolled in MA based on a determination of eligibility and was not erroneously granted eligibility at the point of application or last redetermination because of (i) agency error; or (ii) fraud. 85 FR 71142 (November 2020). In this case, MDHHS testified that Petitioner was enrolled in MSP for a brief period due to an agency error. MDHHS explained that it improperly calculated Petitioner's income and that she was not eligible for MSP due to excess income. Thus, MDHHS has provided sufficient evidence that Petitioner was not validly enrolled in MSP, and therefore, the termination of this coverage does not run afoul of federal laws and regulations.

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 acted in accordance with Department policy when it terminated Petitioner's MSP benefits due to excess income.

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<sup>1</sup> Effective March 20, 2020, the state was prohibited from closing MA and MSP cases during the COVID-19 Public Health Emergency unless the client requested the closure, the client died, or the client moved out of state. ESA Memo 2020-12 (March 20, 2020), p. 1.

