



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: November 28, 2023
MOAHR Docket No.: 23-007094
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION

On October 9, 2023, Petitioner, [REDACTED] requested a hearing to dispute a Medical Assistance (MA) determination. As a result, a hearing was scheduled to be held on November 21, 2023, pursuant to MCL 400.9; 42 CFR 431.200 to 431.250; and Mich Admin Code, R 792.11002. Petitioner appeared at the hearing and represented herself. Respondent, Department of Health and Human Services (Department), had Melissa Stanley, Hearing Facilitator, appear as its representative. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 47-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUE

Did the Department properly determine Petitioner's MA 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. Petitioner is aged or disabled.
2. Petitioner is not married.
3. Petitioner received gross income of [REDACTED] per month from social security RSDI.
4. Petitioner received gross child support income of [REDACTED] per month.

5. Petitioner's son received [REDACTED] per month from social security RSDI.
6. Petitioner had Medicare coverage, and she paid \$164.90 per month for a Medicare Part B premium.
7. Petitioner previously had full-coverage G2S-MA because she had ongoing medical expenses that satisfied her deductible every month.
8. On July 5, 2023, Petitioner submitted a renewal form to the Department to renew her eligibility for MA. Petitioner reported in her renewal that she pays \$1,250.00 per month for in-home care. Petitioner attached a handwritten statement from her in-home care provider, and it stated that Petitioner pays \$1,250.00 per month on the first of each month for home help medical support.
9. On September 23, 2023, the Department mailed a health care coverage determination notice to Petitioner to notify her that she was eligible for full coverage MA for July 2023, and she was eligible for limited coverage under Plan First beginning April 1, 2023.
10. Petitioner requested a hearing to dispute the Department's MA determination because the Department did not find her eligible for full coverage MA ongoing.
11. The Department subsequently reinstated Petitioner's full coverage MA pending a hearing.
12. The Department mailed a medical needs form to Petitioner to have her complete and return to the Department.
13. Petitioner had her nurse practitioner complete the medical needs form, and then Petitioner returned the completed form to the Department.
14. The Department determined that the completed medical needs form was not valid because it was not completed by a physician (M.D. or D.O).

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 administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Petitioner's primary dispute is that the Department will not consider the statement from her in-home care provider, and the Department will not consider the medical needs form completed by her nurse practitioner.

Medicaid coverage for a senior or disabled person with a monthly deductible is known as G2S-MA. Coverage begins when allowable medical expenses equal or exceed a client's deductible amount. Pursuant to policy, an individual with G2S-MA is eligible for the entire month when old bills, personal care services in the client's home, hospitalization, and long-term care expenses equal or exceed the group's excess income for the month tested. BEM 545 (July 1, 2022), p. 1. In the past, Petitioner has had coverage under G2S-MA each month for the entire month because Petitioner's allowable medical expenses have equaled or exceeded her deductible amount. The last month that Petitioner had coverage for the entire month was July 2023. Thereafter, the Department refused to recognize Petitioner's expense for personal care services.

Personal care services are an allowable medical expense. *Id.* at p. 21-22. Expenses for personal care services provided in the client's home are incurred monthly regardless of when services are paid for. *Id.* A medical need for personal care services must be certified by a physician. *Id.* However, the Department may use verifications obtained by Adult Services for Home Help eligibility determination, and a physician assistant, nurse practitioner, occupational therapist, or physical therapist may certify the client's medical need for Home Help eligibility. ASM 105 (June 1, 2020), p. 3. Thus, a client may have a medical need for personal care services certified by a nurse practitioner. The Department erroneously refused to consider Petitioner's medical needs form completed by her nurse practitioner.

Medical expenses must be verified to be used in an eligibility determination. *Id.* at p. 15. The personal care services provider must verify all of the following: (1) date the service was provided, (2) the charge for that day for the services provided, (3) that the services rendered are services related to activities of daily living, and (4) that household services rendered in the client's home are services essential to the client's health and comfort. *Id.* at p. 23. The Department was responsible for instructing Petitioner what verification was required, how to obtain it, and the due date. BAM 130 (October 1, 2023), p. 3. In this case, there was no evidence presented to establish that the Department properly instructed Petitioner on what verification was required and how to obtain it. Thus, the Department should have properly instructed Petitioner what verification was required, how to obtain it, and the due date before the Department refused to consider the statement from her in-home care provider.

The Department's MA eligibility determination is reversed because the Department did not act in accordance with its policies and the applicable law when it determined Petitioner's Medical Assistance eligibility. Specifically, the Department should have considered the medical needs form that Petitioner provided even though it was signed

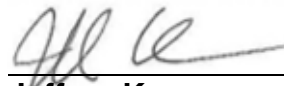
by a nurse practitioner, and the Department should have properly instructed Petitioner on what verification was needed when the Department found the statement from her in-home care provider to be insufficient.

DECISION AND ORDER

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 its policies and the applicable law when it determined Petitioner's Medical Assistance eligibility.

IT IS ORDERED the Department's decision is **REVERSED**. The Department shall redetermine Petitioner's MA eligibility, effective August 1, 2023. The Department shall consider the medical needs form that was signed by Petitioner's nurse practitioner, the Department shall properly instruct Petitioner on what verification is needed from her in-home care provider if the Department finds that the statement from Petitioner's provider is insufficient, and the Department shall determine Petitioner's eligibility for ongoing MA coverage pursuant to Exhibit II – MA Eligibility and Personal Care in BEM 545. The Department shall begin to implement this decision within 10 days of the date of mailing of this decision and order.

JK/ml



Jeffrey Kemm
Administrative Law Judge

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 Electronic Mail:

DHHS
Elisa Daly
Saginaw County DHHS
411 East Genesee
Saginaw, MI 48607
MDHHS-Saginaw-Hearings@michigan.gov

Interested Parties
BSC2
M Schaefer
EQAD
MOAHR

Via First Class Mail:

Petitioner

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