



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MQB/160165

PRELIMINARY RECITALS

Pursuant to a petition filed August 26, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to Medical Assistance, a hearing was held on September 25, 2014, at West Bend, Wisconsin.

The issue for determination is whether the Washington County Department of Social Services correctly terminated the Petitioner from the SLMB+ program.

NOTE the record was held open to give the agency an opportunity submit documentation regarding when Petitioner's SLMB+ benefit actually ended. The agency faxed a packet with a summary; a notice dated December 27, 2013 and earned income verification. The packet has been marked as Exhibit 6 and entered into the record. The agency also submitted a Social Security Administration data exchange screen. It has been marked as Exhibit 7 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Ken Benedum, Economic Support Specialist
Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. On December 27, 2013, the agency sent the Petitioner a notice indicating that as of December 1, 2013, he would be enrolled in the Medicaid Purchase Plan (MAPP). (Exhibit 6)
3. Petitioner's SLMB+ benefits were terminated on May 31, 2014, but the agency did not send the Petitioner a notice of negative action. (Exhibit 6, pg. 2)
4. On August 12, 2014, the Petitioner applied for Medicare Premium Assistance, i.e. SLMB+. (Exhibit 6, pg. 2)
5. On August 15, 2014, the agency sent the Petitioner a notice advising him that as of September 1, 2014, he would be enrolled in the MAPP program, but that he was over the income limit for the SLMB program. The agency budgeted \$10.00 in earned income and \$1.287.00 in Social Security Income. (Exhibit 4)
6. Petitioner actually receives \$1286.90 per month in Social Security Benefits and must pay a premium of \$104.90 for Medicare Part B premiums. (Exhibit 7)
7. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 25, 2014. (Exhibit 1)
8. On August 29, 2014, the agency sent the Petitioner a notice indicating that he was not eligible for the SLMB+ program because he is eligible for and receiving benefits through another Medicaid program. (Exhibit 5)
9. Petitioner earns \$10.00 per month from the Unity Club. (Exhibit 6, pg. 7)

DISCUSSION

Termination of Petitioner's SLMB+ Benefits in May 2014

At the hearing, the Petitioner stated that he was very upset about losing his SLMB+ benefits, in part, because no one told him that his SLMB+ benefits were going to be terminated, until he received a letter from the Social Security Administration on August 4, 2014. (See Exhibit 2) The agency does not dispute the fact that it did not send the Petitioner notice of this action.

Individuals have the right to adequate and timely notice of adverse action. *Income Maintenance Manual* §3.2.1 An "adverse action" means a termination, suspension or reduction of Medicaid eligibility or covered services. 42 C.F.R. §431.201

Before a negative action is taken by a county agency, the agency must mail an adequate notice of the action at least ten days before the effective date of the action. 42 C.F.R. § 431.211; *Income Maintenance Manual* §3.2.3. "In no case is notice timely, if provided after the action's effective date. *Income Maintenance Manual* §3.2.3 It is the responsibility of the county agency or the state of Wisconsin to provide a copy of this notice to demonstrate that such notice was, in fact, issued by the agency within the requisite timeframe.

In the case at hand, the agency ended the Petitioner's SLMB+ benefits on May 31, 2014, but did not send him written notice of their intended action. Because of this, the agency failed to give the Petitioner adequate and timely notice. Consequently, the agency must reinstate Petitioner's SLMB+ benefits from June 1, 2014 through August 31, 2014.

Denial of Petitioner's New Application for SLMB and SLMB+ Benefits

Medicare is the health insurance program administered by the *federal* Centers for Medicare & Medicaid Services (CMS) for people over 65 and for certain younger disabled people. Medicare is divided into three types of health coverage. Hospitalization Insurance (Part A) pays hospital bills and certain skilled nursing facility expenses. Medical Insurance (Part B) pays doctors' bills and certain other charges and Drug Insurance (Part D) pays for prescription drug charges. *Medicaid Eligibility Handbook (MEH)*, § 32.1.1

As Medicare is an insurance program, it charges premiums. *Wisconsin* Medicaid pays some or all of the Medicare premiums for those who qualify (Medicare beneficiaries). There are four types of Medicare beneficiaries and benefits differ from category to category:

1. Qualified Medicare Beneficiary (QMB),

This pays Medicare Part A and B premiums and Medicare deductibles;

2. Specified Low-Income Medicare Beneficiary (SLMB),

This pays for Medicare Part B premiums;

3. Specified Low-Income Medicare Beneficiary Plus (SLMB+) a/k/a Qualifying Individuals – 1 (QI-1),

This pays for Medicare Part B premiums;

4. Qualified Disabled and Working Individuals (QDWI).

This pays for Medicare Part A premiums.

MEH, §§ 32.1.1, 32.1.3, and 32.2-32.5

The category of eligibility depends, in part, on the recipients' income. *MEH* § 32.1.3.

1. For QMB benefits, the income limit is 100% of Federal Poverty Limit (FPL).
2. For SLMB benefits, income must be at least 100% FPL, but less than 120% FPL.
3. For SLMB+ benefits, income must be at least 120% of FPL but below 135% of FPL.
4. For QDWI the income limit is 200% FPL.

MEH, §§ 32.2-32.5

Income is calculated as follows:

\$ Earned income
 - \$65 and ½ earned income deduction
 + Unearned income (social security income, etc.)
 - Special exempt income as defined in *MEH* §15.7.2 (i.e. child support)
 - \$20 standard deduction

Net income used to determine QMB/SLMB/SLMB+/QDWI eligibility

When counting social security income, use gross social security income. Gross social security income is defined as follows:

1. For a self-payer gross income equals the social security check amount + Medicare premiums s/he has paid.

2. For someone for whom the State is paying the premiums, gross income equals the social security check amount.

Disregard the COLA (cost of living adjustment) increase for the current year until the month after the new federal poverty limits become effective.

MEH §§ 32.2-32.5

As applied to Petitioner, the calculation of income is as follows:

\$10.00 earned income
+\$1287.00 unearned income from Social Security
-\$0.0 special exempt income for child support
-\$20.00 Standard deduction
<hr/>
\$1277.00 Net income

For SLMB benefits, an individual must have income between 100% of the Federal Poverty Limit (FPL) and 120% of FPL. *MEH §32.3.2* For a household of one individual, 100% of FPL is \$972.50 per month and 120% of FPL \$1,167 per month. *MEH §39.5* Petitioner's net income of \$1277.00 is outside the income limit for SLMB benefits. As such, the agency was correct in its determination that the Petitioner was not eligible for the SLMB program.

For SLMB+ benefits, Petitioner falls within the income limits, as 135% of FPL for one person is \$1,312.88 per month. However, there are non-financial eligibility criteria that must be met. Specifically, a person applying for SLMB+ benefits must:

1. Meet Medicaid non-financial requirement.
2. Be receiving Medicare Part A
3. Have been determined ineligible for other Medicaid subprograms.

MEH §32.4.1

The Petitioner is eligible for the MAPP program, which is a Medicaid subprogram. This makes him ineligible for SLMB+ benefits. As such, the agency correctly denied his application for SLMB+ benefits.

It should be noted that for this same reason, the Petitioner would not be eligible for the QWDI program.

CONCLUSIONS OF LAW

1. The agency did not give proper notice of its intent to end Petitioner's SLMB+ benefits effective May 31, 2014.
2. The agency correctly denied the Petitioner's new application for SLMB and SLMB+ benefits.

THEREFORE, it is

ORDERED

1. That the agency reinstate the Petitioner's SLMB+ benefits for the period of June 1, 2014 through August 31, 2014. The agency shall take all administrative steps necessary to complete this task within 10 days of this decision.
2. In all other respects the appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative

Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 22nd day of October, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 22, 2014.

Washington County Department of Social Services
Division of Health Care Access and Accountability