QA

[redacted]	*	**BEFORE STEPHEN W. THIBODEAU,**
APPELLANT	*	**AN ADMINISTRATIVE LAW JUDGE**
v.	*	**OF THE MARYLAND OFFICE**
[redacted]	*	**OF ADMINISTRATIVE HEARINGS**
[redacted]	*	**OAH No.: MDH-[redacted]-10-18-13905**
[redacted]	*	

* * * * * * * * * * * * *

DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSION OF LAW
ORDER

STATEMENT OF THE CASE

On February 2, 2018, the Appellant applied to the [redacted] (local department) for community Medical Assistance (MA). On April 2, 2018, the local department informed the Appellant that she was spend-down eligible for MA from April 2018 through September 2018. On April 18, 2018, the Appellant filed a request for hearing appealing the local department's MA spend-down determination.

On June 11, 2018, I held a hearing at the local department offices in [redacted], Maryland. Code of Maryland Regulations (COMAR) 10.01.04.02. The Appellant represented herself. [redacted] Hearing Appeals Representative, represented the local department.

The contested case provisions of the Administrative Procedure Act, the Rules of Procedure of the Office of Administrative Hearings, and the procedures for Fair Hearing Appeals

under the Maryland State Medical Assistance Program govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); COMAR 28.02.01; COMAR 10.01.04.

ISSUE

Did the local department properly determine that the Appellant was spend-down eligible for MA based on excess income?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted one exhibit into evidence on the local department's behalf:

LD Ex. # 1 Hearing Summary with the following attachments:

- Request for Hearing, dated April 18, 2018
- Notice of Hearing, dated May 21, 2018
- Appellant's Application for MA, dated February 2, 2018
- Notice Content, dated April 2, 2018
- MA Financial Eligibility Printout, dated April 2, 2018
- Narration Notes, dated December 26, 2017; March 13, 2018; March 29, 2018; April 1, 2018; and April 26, 2018
- Social Security Award Letter for the Appellant, dated February 13, 2018
- Bank Statement for the Appellant, dated February 21, 2018
- Maryland MA Monthly Income and Asset Guidelines Chart, revised April 2018
- Guide to Maryland MA Coverage Groups, pg. 12, revised June 2017
- State of Maryland MA Manual, pgs. 325 and 326, revised July 2012
- COMAR 10.09.24.02-1
- COMAR 10.09.24.03
- COMAR 10.09.24.11

I admitted one exhibit on behalf of the Appellant:

App. Ex. 1 2018 Medical and Hospital Claims for the Appellant's [redacted] Health Advantage Dual health plan, processed January 2018; 2017 Medical and Hospital Claims for the Appellant's [redacted] Health Advantage Dual health plan, processed October 2017

Testimony

Mr. [redacted] testified for the local department. The Appellant testified on her own behalf.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Appellant is a Qualified Medicare Beneficiary (QMB) and currently receives her Medicare coverage through a Medicare Advantage health plan,[1] specifically the [redacted] Health Advantage Dual health plan.

2. The [redacted] Health Advantage Dual health plan is a Health Maintenance Organization/Special Needs Plan. In order to qualify for the Health Advantage Dual health plan, the Appellant must be eligible for both Medicare and MA.

3. On February 2, 2018, the Appellant applied for MA for the consideration period of April 2018 through September 2018 for an assistance unit consisting of one person. The Appellant's countable monthly income for the six-month consideration period was $925.00, consisting of her Social Security Administration disability benefit.

4. The net income standard for an assistance unit of one person is $350.00 per month.

5. For the six month consideration period, the Appellant's monthly income exceeded the medically needy income standard by $575.00.

6. On April 2, 2018, the local department notified the Appellant that her income was too high to receive MA, but that she was eligible under the spend-down requirements if she incurred medical expenses totaling $3,330.00 during the spend-down period of April 2018 through September 2018.

[1] A Medicare Advantage plan is a health insurance plan, such as a health maintenance organization or preferred provider organization that provides Medicare benefits through the designated plan. *See* "What is a Medicare Advantage Plan?", https://www.medicare.gov/Pubs/pdf/11474.pdf, last viewed on June 27, 2018.

DISCUSSION

MA regulations provide that financial eligibility for a person who is not institutionalized is determined on the basis of the countable net income and resources of members of the assistance unit. COMAR 10.09.24.09A(1). Such a person is eligible when his or her countable net income and resource levels are equal to or less than the applicable standards. COMAR 10.09.24.09C(1). The appropriate medically needy income level, as shown in COMAR 10.09.24.07L, Schedule MA-1, for an assistance unit of one person is $350.00 per month. The Appellant's countable net income for the six-month period under consideration was $925.00 per month. The Appellant's income, therefore, was greater than the amount allowed.

When countable income is greater than the medically needy income level, financial eligibility may be established when medical expenses incurred by an applicant meet or exceed the excess income, the so-called spend-down provision. COMAR 10.09.24.09C(2), C(4). While the regulations do not specifically assign burden of proof, the Appellant is asserting the local department erred in placing her in the spend-down status. I find the Appellant bears the burden of proof by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2014). For the following reasons, I find the Appellant has not met her burden.

The Appellant did not contest the calculations used with respect to her income, or the determination made based on the income provided to the local department. In addition, she did not claim that she submitted any medical expenses to the local department during the spend-down period. The Appellant's main concern was related to her health insurance plan, which is a Medicare Advantage plan that requires her to qualify for both Medicare and MA. The Appellant stated that when she receives medical care as a QMB, her health plan pays any medical bills by splitting the bills between Medicare and MA benefits. In order for her to continue with her

chosen plan, therefore, she needs to qualify for MA and does not have medical bills that would qualify for spend-down eligibility. In addition, the Appellant testified that she had been told by the local department that she had not had any MA benefits since October 2017, and she did not understand how that could be, given that she was still receiving MA benefits through her health plan during that time.

The record before me is silent as to the status of the Appellant's MA benefits in October 2017, as this appeal involves spend-down eligibility for the consideration period of April 2018 through September 2018. Moreover, while the Appellant did submit evidence related to medical claims under her health plan (App. Ex. #1), the evidence submitted did not show a breakdown of what benefits were used to pay those claims. In other words, I cannot tell if any of the Appellant's claims were equally split between Medicare and MA benefits as the Appellant testified. Regardless, the Appellant submitted claim statements from her health plan from January 2018 and October 2017 which, again, is outside the consideration period that is the subject of this appeal.

I empathize with the Appellant's concerns and confusion regarding the coordination of her benefits, and in particular the concern she has related to her coverage under her current chosen Medicare Advantage plan. However, the local department's finding with respect to the Appellant's eligibility for MA benefits, and the subsequent requirement to provide medical bills to qualify through the spend-down provision, was correct. Based on the income guidelines the local department must follow, the Appellant receives excess income and is required to spend-down her income on her medical expenses prior to qualifying for MA benefits. Indeed, as the consideration period for the spend-down provision is April 2018 through September 2018, the Appellant is still free to submit medical bills to the local department now to meet the spend-down provision, as she

is currently in the consideration period as of the date of this decision. In addition, while the current effect on the Appellant's health plan is unknown with respect to the spend-down provision, she is still eligible to participate in another Medicare Advantage plan as a QMB, as the local department indicated at the hearing, even if she ultimately does not qualify for MA.

I find the local department did not err in its determination, and because the Appellant did not meet her burden to demonstrate the local department erred with respect to its calculations regarding her excess income, I must affirm the local department's decision.

CONCLUSION OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude that the local department correctly determined that the Appellant was ineligible for MA based on excess income and correctly determined that the Appellant was subject to the "spend-down" provision. COMAR 10.09.24.09C(2), (4).

ORDER

I **ORDER** that the decision of the [redacted] be **AFFIRMED**.

Signature Appears on Original [redacted]

July 2, 2018
Date Decision Mailed

Stephen W. Thibodeau
Administrative Law Judge

SWT/dlm
#174493

REVIEW RIGHTS

This is the final decision of the Maryland Department of Health. A party aggrieved by this final decision may file a written petition for judicial review with the Circuit Court for Baltimore City, if any party resides in Baltimore City or has a principal place of business there, or with the circuit court for the county where any party resides or has a principal place of business. Md. Code Ann., State Gov't § 10-222(c) (Supp. 2017). The original petition must be filed in the circuit court within thirty days of the date of this decision, with a copy to David Lapp, Office of the Attorney General, Suite 302, 300 W. Preston St., Baltimore, MD 21201. Md. Rules 7-201 through 7-210.

The petition for judicial review should identify the Maryland Department of Health, which administers the Medicaid program, as the agency that made the decision for which judicial review is sought. The address of the Maryland Department of Health should be included on the petition: 201 W. Preston St., Room 511C, Baltimore, MD 21201.

A separate petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. No fees may be charged to Medical Assistance Program recipients, applicants, or authorized representatives for transcription costs or for preparation or delivery of the record to the circuit court. The Office of Administrative Hearings is not a party to the judicial review process.

Copies Mailed To: