

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2008-15460

Issue No: 2014

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 7, 2008

Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on October 7, 2008. Claimant personally appeared and testified.

ISSUE

Did the department properly deny payment of claimant's Medicare Part B Premium and properly initiate a [REDACTED] monthly Medicaid (MA) deductible due to excess income in 2007?

FINDINGS OF FACT

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

(1) Claimant is a 53-year-old male with Social Security disability status established as of [REDACTED] (Department Exhibit #1).

(2) On January 30, 2008, the department notified claimant in writing of the following:

Medicare is the federal medical insurance administered by the Social Security Administration. Medicare Savings Program is administered by the Department of Human Services under the supervision of the Michigan Department of Community Health.

The Department of Human Services has determined that starting 02/01/2008 you qualify for a program that may pay your Medicare Part B premium. The Department of Community Health (DCH) determines if payment will be made. The Social Security Administration will notify you when the Medicare Savings Program will pay your Medicare Part B premium. PEM 165.

(3) On February 14, 2008, the department received claimant's hearing request disputing the above-referenced Medicare Part B begin date; he alleges payment should have started in 2007.

(4) On October 7, 2008, claimant's hearing was held in-person in [REDACTED]

(5) Claimant's gross monthly disability income ([REDACTED]) was verified by the Social Security Administration as being [REDACTED] December 2007 (Department Exhibit #1).

(6) The department's income limit for the Medicare Part B Premium payment eligibility in 2007 was [REDACTED] per month according to the governing policy at RFT 242, pg 1.

(7) Because claimant's countable income exceeded the program's income limit, he was initially denied Medicare Part B Premium payment due to excess income (Department Exhibit #2, pgs 1-3).

(8) However, as of claimant's October 7, 2008 hearing date he stipulated on the record his monthly Part B Premiums were being paid, and also, he had been retroactively reimbursed by the [REDACTED] in accordance with the notice dated January 30 2008 (See Finding of Fact #2 above).

(9) Additionally, the department put claimant's ongoing Medicaid (MA) case in deductible status with a [REDACTED] monthly deductible amount based on his monthly RSDI in accordance with the governing budgeting policy at PEM Items 500 and 545.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The applicable departmental policy states:

RETIREMENT, SURVIVORS, AND DISABILITY INSURANCE (RSDI) (AKA SOCIAL SECURITY BENEFITS)

All Programs

RSDI is available to retired and disabled persons, their dependents, and survivors of deceased workers.

Count the gross benefit amount as unearned income. PEM, Item 500, p. 29.

MA GROUP 2 INCOME ELIGIBILITY

Deductible

Deductible is a process which allows a client with excess income to become eligible for Group 2 MA if sufficient allowable medical expenses are incurred.

Active Deductible

Open an MA case **without ongoing Group 2 MA coverage** on CIMS as long as:

- . The fiscal group has excess income, **and**
- . At least one fiscal group member meets all other Group 2 MA eligibility factors.

Such cases are called active deductible cases. Periods of MA coverage are added on CIMS each time the group meets it deductible.

Deductible Period

Each calendar month is a separate spend-down period.

Deductible Amount

The fiscal group's monthly excess income is called a deductible amount. PEM 545, pp. 8-9.

Meeting a Deductible

Meeting a deductible means reporting and verifying allowable medical expenses (defined in "**EXHIBIT I**") that equal or exceed the deductible amount for the calendar month tested. PEM, Item 545, p. 9.

MSA-Pub. 617, Medicaid Deductible Information

Give the group a MSA-Pub. 617 or send one with the Deductible Notice when an active deductible starts and at each redetermination. PEM, Item 545, p. 12.

The group must report expenses by the last day of the third month following the month for which it wants MA coverage. PAM 130 explains verification and timeliness standards. PEM, Item 545. p. 9.

Redetermination

You must redetermine eligibility for active deductible cases at least every 12 months unless the group has not met its deductible within the past three months. PEM, Item 545, p. 9.

PROCESSING CHANGES

The group must report changes in circumstances within 10 days. Review the group's eligibility when a change that may affect eligibility is reported. PEM, Item 545, p. 10.

EXHIBIT I - MEDICAL EXPENSES

A **medical expense** must be incurred for a medical service listed below. Except for some transportation, the actual charge(s) minus liable third party resource payments counts as an allowable expense. However, not all sources of payment are considered liable third party resources. See “**THIRD PARTY RESOURCES, EXHIBIT 1A.**”

Note: A charge cannot be incurred until the service is provided. PEM, Item 545, p. 12.

Medical Services

Medical services include the following:

- . Cost of a Diabetes Patient Education program
- . Service animal (e.g., guide dog) or service animal maintenance
- . Personal care services in home, AFC, or HA (See “**EXHIBIT 1D**”)
- . Transportation *for any medical reason

PEM, Item 545, p. 13.

- . Medical service(s) provided by any of the following:
 - .. Anesthetist. PEM, Item 545, p. 13.
 - .. Clubhouse psychosocial rehabilitation programs
 - .. Chiropractor. PEM, Item 545, p. 13.
- .. Christian Science practitioner nurse or sanatorium. PEM, Item 545, p. 13.
- .. Certified nurse-midwife. PEM, Item 545, p. 13.
- .. Dentist. PEM, Item 545, p. 13.
- .. Family planning clinic. PEM, Item 545, p. 13.
- .. Hearing aid dealer. PEM, Item 545, p. 13.

- .. Hearing and speech center. PEM, Item 545, p. 13.
- .. Home health agency. PEM, Item 545, p. 13.
- .. Hospice. (See “EXHIBIT III”). PEM, Item 545, p. 13.
- .. Hospital. (See “EXHIBIT IC”). PEM, Item 545, p. 13.
- .. Laboratory. PEM, Item 545, p. 13.
- .. Long-term care facility. (See “EXHIBIT IC”). PEM, Item 545, p. 13.
- .. Maternal support services provider. PEM, Item 545, p. 13.
- .. Medical clinic. PEM, Item 545, p. 13.
- .. Medical supplier**. PEM, Item 545, p. 13.
- .. Mental health clinic. PEM, Item 545, p. 13.
- .. Nurse. PEM, Item 545, p. 13.
- .. Occupational therapist. PEM, Item 545, p. 13.
- .. Ophthalmologist. PEM, Item 545, p. 13.
- .. Optometrist. PEM, Item 545, p. 13.
- .. Oral surgeon. PEM, Item 545, p. 13.
- .. Orthodontist. PEM, Item 545, p. 13.
- .. Pharmacist***. PEM, Item 545, p. 13.
- .. Physical therapist. PEM, Item 545, p. 13.
- .. Physician (M.D. or D.O.). PEM, Item 545, p. 13.
- .. Podiatrist. PEM, Item 545, p. 13.
- .. Psychiatric hospital. PEM, Item 545, p. 13.
- .. Psychiatrist. PEM, Item 545, p. 13.

- .. Psychologist. PEM, Item 545, p. 13.
- .. Radiologist. PEM, Item 545, p. 13.
- .. Speech therapist. PEM, Item 545, p. 13.
- .. Substance abuse treatment services provider. PEM, Item 545, p. 13.
- .. Visiting nurse. PEM, Item 545, p. 14.
- * Includes ambulance at actual cost and other transportation for medical services at the rates in PAM 825. Includes clients driving themselves for episodic and pharmacy trips at the rate they are paid in PAM 825 for chronic ongoing trips. PEM, Item 545, p. 14.
- ** Includes purchase, repair and rental of supplies, such as:
 - . Prosthetic devices
 - . Orthopedic shoes
 - . Wheelchairs
 - . Walkers
 - . Crutches
 - . Equipment to administer oxygen
 - . Personal response system (e.g., Lifeline Emergency Services)

PEM, Item 545, p. 14.

- *** Includes:
 - . Legend drugs (i.e., only obtained by prescription)
 - . Aspirin, ibuprofen and acetaminophen drug products
 - .. prescribed by a doctor, and
 - .. dispensed by a pharmacy
 - . Non-legend drugs and supplies, such as:
 - .. Insulin
 - .. Needles
 - .. Syringes
 - .. Drugs for the treatment of renal (kidney) diseases
 - .. Family planning drugs and supplies
 - .. Ostomy supplies

- .. Oxygen
- .. Surgical supplies
- .. Nicotine patches and gum
- .. Incontinence supplies

PEM, Item 545, p. 14.

does not include medicine chest and first aid supplies, such as:

- . Band-Aids
- . Alcohol
- . Cotton swabs
- . Nonprescription cold remedies
- . Ointments
- . Thermometers

PEM, Item 545, p. 14.

The inclusion of claimant's monthly RSDI income into his MA budget and for purposes of determining his Medicare Part B Premium eligibility is required by policy. This Administrative Law Judge has reviewed both disputed budgets and she finds all calculations were properly made. Unfortunately for claimant, the department's actions were completely consistent with their policies and with the governing laws and regulations on which those policies are based. Put simply, absolutely no basis exists to support issuance of an Order for Medicare Part B Premium reimbursement retroactive to 2007, or to support termination of claimant's monthly MA deductible obligation.

It appears claimant's grievance centers on dissatisfaction with the department's current policy. Claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly denied payment of claimant's Medicaid Part B Premium and properly initiated a [REDACTED] monthly MA deductible due to excess income in 2007.

Accordingly, the department's actions are AFFIRMED.

/s/ _____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 8, 2010

Date Mailed: March 9, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

MBM/db

cc:

[REDACTED]