

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: 2008-26304

Issue No: 2026

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 27, 2009

Kent 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 August 27, 2009. Claimant and her husband personally appeared and testified.

ISSUE

Did the department properly determine claimant's Medicaid (MA) case must be placed in deductible status at review in August 2008?

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 had no countable income at her mandatory August 2008 MA review; however, her husband's [REDACTED] increased to [REDACTED] per month since the time of their past case review (Department Exhibit #1, pg 4).

(2) The department deemed a [REDACTED] portion of claimant's husband's [REDACTED] income to claimant to determine her monthly deductible amount (Department Exhibit #1, pg 2, Line E6).

(3) The department also considered the [REDACTED] Protected Income Level established by policy at RFT 240, pg 1.

(4) When the department subtracted the required Protected Income Level [REDACTED] from the portion of the claimant's husband's income they had deemed to her ([REDACTED]), a [REDACTED] monthly deductible resulted [REDACTED] (Department Exhibit #1, pg 4).

(5) Claimant filed a timely hearing request; consequently, the negative action was deleted pending issuance of this Hearing Decision.

(6) Claimant's hearing was held on August 27, 2009.

(7) At hearing, the couple stated this deductible amount is too high and they will have great difficulty affording their other basic living expenses if claimant is required to incur [REDACTED] in medical expenses before her full-coverage MA can begin.

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).

In order to qualify for Group 2 MA coverage, a medically needy person must have income which is equal to or less than the Protected Income Level. This dollar figure is a set amount for all non-medical needs, such as food, shelter and incidental expenses. If the

individual's income exceeds the Protected Income Level, the excess amount must be used to pay medical expenses before Group 2 MA coverage can begin. This process is known as assigning a "deductible."

The department's witness at hearing testified they included claimant's son's income when determining her monthly deductible amount; however, she was completely wrong. This Administrative Law Judge reviewed the disputed budget and she found the only income used was claimant's husband's [REDACTED], which is the correct procedure under the following policy:

FIP-RELATED ADULT

Group 2 FIP-Related MA and Healthy Kids

An adult's fiscal group is:

- . the adult, **and**
- . the adult's spouse.
PEM, Item 211, p. 5.

If claimant's child's income had been included, the calculation would have been wrong. However, the department's budget accurately verifies claimant's monthly deductible was correctly computed at [REDACTED] during her August 2008 review (Department Exhibit #1, pgs 2-4). As such, this budget must be upheld. Unfortunately, the imposition of a deductible was in complete compliance with the department's policies, and with the governing laws and regulations on which those policies are based. Additionally, the department's deductible policy states:

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.

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.

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.

Expenses Reported After Coverage Authorized

Do not alter the MA eligibility begin date if you have already authorized coverage on CIMS. However, any expenses the group reports that were incurred from the first of such a month, through

the day before the MA eligibility begin date might be countable as old bills. 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.

Count allowable expenses incurred during the month you are determining eligibility for, whether paid or unpaid. You may also count certain **unpaid** expenses from prior months that have not been used to establish MA eligibility. See “**OLD BILLS, EXHIBIT 1B**”. PEM, Item 545, p. 13.

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.

It 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.

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 determined claimant's MA case must be placed in deductible status with a [REDACTED] monthly deductible at her reivev in August 2008.

Accordingly, the department's action is AFFIRMED.

/s/

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

Date Signed: September 1, 2009

Date Mailed: September 2, 2009

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]