

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: 2009-15969
Issue No: 2026
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 15, 2009
Allegan 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, a telephone hearing was held on September 15, 2009. Claimant and his wife personally appeared and testified.

ISSUE

Did the department properly determine claimant's Medicaid (MA) case must be placed in deductible status with a [REDACTED] deductible amount at review in January 2009?

FINDINGS OF FACT

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

(1) At claimant's mandatory MA review in January 2009, the department discovered claimant's wife had returned to their household from foster care.

(2) Claimant's wife was getting [REDACTED] in [REDACTED] [REDACTED] at the time of review and claimant was getting [REDACTED] in [REDACTED] as well (Department Exhibit #1, pgs 11 and 12).

(3) When the department updated claimant's MA budget including all the couples' combined, countable gross income because they are mandatory fiscal group members, the department determined their countable net income was [REDACTED] (Department Exhibit #1, pgs 9 and 10).

(4) The department also considered the Protected Income Level for a two person group established by policy (Department Exhibit #1, pg 9).

(5) When the department subtracted the couples' Protected Income Level (i. e., [REDACTED] from their countable net income (i.e., [REDACTED]), a [REDACTED] deductible resulted [REDACTED] (Department Exhibit #1, pg 9).

(6) When the department mailed written notice to claimant advising him of his new monthly deductible amount he promptly requested a hearing.

(7) At hearing, the couple stated this deductible is too high and they will have great difficulty affording their other basic living expenses if they are required to incur [REDACTED] per month in medical expenses before claimant's 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).

Claimant and his wife who live together are required to be in the same fiscal group for MA eligibility purposes pursuant to the following departmental policy:

SSI-RELATED FISCAL GROUPS

SSI-Related MA

Determine the fiscal group for each person who is requesting MA. The fiscal group must be determined separately for each person. PEM, Item 211, p. 5.

SSI-Related Adult

SSI-Related MA

An **adult's** fiscal and asset groups are:

- . The adult for an L/H client, a waiver client (see PEM 106), and a Freedom to Work customer even if he lives with his spouse.

Exception: When PEM 402 instructs you to determine a couple's countable assets for an "**INITIAL ASSET ASSESSMENT**" or "**Initial Eligibility**," the L/H or waiver patient and his community spouse are considered an asset group.

- . The adult and his spouse for all other customers.

See PEM 400 to determine the asset group's countable assets and PEM 541 to determine budgetable income for each person in the fiscal group. PEM, Item 211, p. 5.

Furthermore, in order to qualify for Group 2 MA coverage a medically needy person like claimant 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 group's countable 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 “deductible” status.

Specifically, the department’s policies relating to deductible cases are as follows:

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.

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.

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.

The inclusion of the couples' monthly [REDACTED] into claimant's MA budget is required by policy. PEM Item 500. Unfortunately for claimant, the imposition of a deductible is inevitable in his case. Additionally, this Administrative Law Judge has reviewed the department's budgeting process, and she finds that all calculations were properly made. Consequently, the department's MA deductible must be upheld because it is in complete compliance with the department's policies, and with the governing laws and regulations on which those policies are based.

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 at review that claimant's MA case must be placed in deductible status with a [REDACTED] monthly deductible amount.

Accordingly, the department's actions are AFFIRMED.

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

Date Signed: September 16, 2009

Date Mailed: September 17, 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

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