

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: 2009-37067

Issue No: 2026

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 13, 2010

Gratiot 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 April 13, 2010. Claimant personally appeared and testified.

ISSUE

Did the department properly place claimant's Medicaid (MA) case in deductible status with a [REDACTED] monthly deductible amount?

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 and her spouse reside together in [REDACTED].
- (2) The department processed a disability based MA/retro-MA application for claimant in 2009 when she was diagnosed with kidney failure.

(3) At that time the department verified claimant's spouse's monthly [REDACTED] y [REDACTED]) and [REDACTED]) amounts (Department Exhibit #1, pgs 4-8).

(4) After the department totaled these two sources of unearned monthly income [REDACTED]) and then deducted a mandatory [REDACTED] disregard from that amount, [REDACTED] of countable unearned income remained [REDACTED])(Department Exhibit #1, pgs 2 and 3).

(5) The department also considered the [REDACTED] Protected Income Level established by policy at RFT 240, pg 1 (Department Exhibit #1, pg 9).

(6) When the department subtracted claimant's household's Protected Income Level (i.e., [REDACTED]) from the household's countable net income (i.e., [REDACTED]), a [REDACTED] monthly deductible obligation resulted ([REDACTED])(Department Exhibit #1, pg 2).

(7) On July 1, 2009, the department mailed written notice to claimant advising her of her monthly MA deductible; whereupon, claimant promptly requested a hearing in writing to dispute the imposition of this deductible in its entirety.

(8) Claimant's hearing was held on April 13, 2010.

(9) Claimant stated at hearing she needs full-coverage MA without a deductible because she and her husband cannot afford to incur [REDACTED] in medical expenses per month, in light of all their other basic living expenses.

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.

UNEMPLOYMENT BENEFITS

All Programs

Unemployment benefits include:

- . Unemployment Compensation Benefits (UCB) available through the Michigan Unemployment Agency and comparable agencies in other states, and
- . Supplemental Unemployment Benefits (SUB pay) from an employer or other source.

Count the gross amount as unearned income. PEM, Item 500, p. 34.

In order to qualify for Group 2 MA coverage, a medially 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 household'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 expense is known as a monthly "deductible."

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.

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.

Apply changes for the corresponding period as follows if MA coverage has been authorized. PEM, Item 545, p. 11.

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.

Spouses are required to be in the same fiscal group when assessing MA income eligibility for either party. Therefore, the inclusion of claimant's spouse's monthly unearned income is

required by policy. PEM Item 500. Unfortunately for claimant, the imposition of a deductible restriction is inevitable in her case. Additionally, this Administrative Law Judge has reviewed the department's budgeting process, and she finds 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 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: May 11, 2010

Date Mailed: May 12, 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

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