

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: 2009-31131

Issue No: 2026

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 11, 2010

Marquette 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 February 11, 2010. Claimant personally appeared and testified.

ISSUE

Did the department properly process claimant's Medicaid (MA) review in 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) Claimant is a disabled, 57-year-old widow ([REDACTED]) who received full-coverage MA until the department conducted a mandatory review of her financial and non-financial eligibility factors in June 2009 to determine whether she still met all of the factors required to qualify for ongoing assistance, as required by policy (Department Exhibit #1, pgs 10 and 11).

(2) On June 16, 2009, the department notified claimant in writing her full-coverage MA would be cancelled effective July 1, 2009 because her [REDACTED] income exceeded the program's income limits (Department Exhibit #1, pgs 1-5).

(3) Unfortunately, the department made a budgeting error in claimant's case in 2003 which was not discovered until this June 2009 review, thus resulting in erroneously-issued full-coverage MA until July 1, 2009 (Department Exhibit #2, pg 1).

(4) Upon closure of claimant's full-coverage case, specifically on July 1, 2009, the department changed the case to an MA deductible case (formerly known as a "spend-down" case) which then required her to contribute [REDACTED] per month toward medical expenses before full-coverage MA could begin.

(5) On June 29, 2009, the department received claimant's hearing request to protest this change, but her hearing was not scheduled until February 11, 2010.

(6) On that hearing date, claimant appeared and testified that her monthly deductible amount ([REDACTED]) was too high and she would never be able to meet it in light of all her other routine living expenses (i.e., housing, utilities, groceries, etc.).

(7) The department calculated claimant's monthly deductible amount by verifying her [REDACTED] income at that time, as required by policy ([REDACTED]).

(8) For MA eligibility purposes, the department is also required to consider a Protected Income Level, which is a set amount located at RFT 240, pg 1.

(9) In claimant's case, her Protected Income Level is [REDACTED].

(10) Also, the department is required to automatically deduct [REDACTED] from an [REDACTED] recipient's gross monthly income, leaving a countable net income amount of \$ [REDACTED] in claimant's case ([REDACTED])(Department Exhibit #1, pg 7).

(11) When the department subtracted claimant's mandatory Protected Income Level (██████) from her countable net income (██████), an \$██████ monthly deductible resulted (██████) (Department Exhibit #1, pg 7).

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 MA coverage, a medically needy, disabled 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 an individual's income exceeds the Protected Income Level, the excess amount must be used to pay medical expenses before full-coverage MA can begin. This process is known as a medical deductible expense. Specifically, the department's policies relating to MA 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.

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.

Unfortunately for claimant, the inclusion of her monthly [REDACTED] income into her MA budget is required by policy because she does not meet all the criteria necessary to qualify for full-coverage MA under the department's Early Widow Rules located in BEM Item 157, despite the department's erroneous placement of claimant into this category prior to 2009.

Additionally, this Administrative Law Judge has reviewed the department's budgeting process and she finds all calculations were properly made. Consequently, the department's imposition of an MA deductible restriction at review 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 monthly MA deductible amount ██████████) at review in June 2009.

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, 2010

Date Mailed: September 2, 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.

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