STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2010- 16797 MBI
Case No. [redacted]

[redacted]

Appellant

_____/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.,* upon the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]

[redacted], Appellant's neighbor and power of attorney, appeared on behalf of the Appellant. Appellant was not present during the hearing.

[redacted], represented the Department. [redacted], [redacted], appeared as a witness for the Department.

ISSUE

Did the Department properly deny claims for Appellant's prescription co-pay amounts?

FINDINGS OF FACT

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

1. Appellant is a [redacted] year old woman residing in a long term care facility. (Exhibit 1 Pages 2, 4).

2. Appellant is currently enrolled in Michigan Medicaid. (Exhibit 1 Pages 2, 4).

3. The Appellant is enrolled in a [redacted] health insurance plan, eligible through her deceased husband. (Exhibit 1 Page 2).

4. Appellant was enrolled in Medicare Part A and Part B since [redacted] (Exhibit 1 Page 4).

5. The Medicare Modernization Act of 2003 provided a prescription drug benefit to Medicare beneficiaries. The benefit is commonly referred to as Medicare Part D.

6. After implementation of the Medicare Modernization Act of 2003 Michigan Medicaid beneficiaries who are dually eligible Medicare/Medicaid beneficiaries are required to obtain all Part D covered drugs through their Medicare Part D Plan. (Exhibit 1 Pages 3, 5).

7. Appellant was eligible for Medicare Part D after the Medicare Modernization Act of 2003 implementation date, but she did not enroll in Medicare Part D.

8. Appellant received Medicare Part D-covered prescription medication services. Medicaid denied payment of the prescription medication co-pays. The Appellant received provider bills for the prescription medication co-pays. (Exhibit 1 Pages 2, 3,).

9. The State Office of Administrative Hearings and Rules (SOAHR) received Appellant's verified request for hearing, submitted by her power of attorney, on [redacted]. (Exhibit 1 Page 2).

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

The Department policy regarding when Medicaid may reject medical services payment for a dually eligible Medicare/Medicaid beneficiary is as follows:

> **2.6. MEDICARE**
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> **2.6.A. MEDICARE ELIGIBILITY**
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> Many beneficiaries are eligible for both Medicare and Medicaid benefits. If a provider accepts the individual as a Medicare beneficiary, that provider must also accept the individual as a Medicaid beneficiary.
>
> If a Medicaid beneficiary is eligible for Medicare (65 years old or older) but has not applied for Medicare coverage, Medicaid does not make any reimbursement for services until Medicare coverage is obtained. The beneficiary must apply for Medicare coverage at a Social Security Office. Once they have obtained Medicare coverage, services may be billed to Medicaid as long as all program policies (such as time limit for claim submission) have been met.

Medicaid beneficiaries may apply for Medicare at any time and are not limited to open enrollment periods. Beneficiaries may be eligible for Medicare if they are:

- Sixty-five years of age or older.
- A disabled adult (entitled to SSI or RSDI due to a disability).
- A disabled minor child.

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2.6.F. MEDICAID LIABILITY

When a Medicaid beneficiary is eligible for, but not enrolled in, Medicare Part B **and/or Part D, MDCH rejects any claim for Medicare** Part B or **Part D** services. Providers should instruct the beneficiary to pursue Medicare through the SSA.

(Bold emphasis made by ALJ)

Medicaid Provider Manual, Coordination of Benefits Section, January 1, 2010, Pages 6 and 9

1.9 MEDICARE PART D BENEFIT

The Medicare Modernization Act of 2003 provides a prescription drug benefit to Medicare beneficiaries. The benefit is commonly referred to as Medicare Part D. **Dually eligible Medicare/Medicaid beneficiaries must obtain all Part D covered drugs through their Medicare Part D Plan (PDP or MA-PD).**

(Bold emphasis made by ALJ)

Medicaid Provider Manual, Pharmacy Section, January 1, 2010, Page 6

In investigating Appellant's case the Department's witness researched the Appellant's Medicare Part A, B and D enrollment status. (Exhibit 1 Page 4).

The Department's witness testified that Appellant was enrolled in Medicare Part A in [redacted]. The Department's witness explained that at the time a person is enrolled in Medicare Part A she is eligible to be enrolled in Part D. The Department's witness further explained that at the time a person is enrolled in Medicare Part A, if she is not enrolled in Medicare Part D the Department's policy prohibits use of Medicaid to pay for Medicare Part D-covered prescription claims. The Department's witness testified that the Appellant was enrolled in

Medicare Part A, but because she was eligible for but did not enroll in Medicare Part D and pay Part D premiums, the Department was required to follow the above policy and reject any claims for Part D services. (Exhibit 1 Pages 2, 4-10).

The Appellant's power of attorney/representative testified that she did a lot of research and was told that in order for the Appellant to enroll in Medicare Part D she would have to drop her [redacted] coverage. The Appellant's power of attorney/representative stated that the Appellant's [redacted] provided superior health coverage and it did not make practical or logical sense to drop the [redacted] coverage in order to have Medicare Part D, and thus have Medicaid cover the prescription co-pay amounts for Appellant's medications.

The Department policy is clear that if a person is eligible for Medicare D but does not enroll in Medicare D, the Medicaid program will reject any co-pay claims for Medicare Part D-covered services. A review of the Department policy supports the Department's action in this matter.

The Appellant did not prove by a preponderance of evidence that the Department improperly denied payment for the Appellant's prescription co-pay amounts. The jurisdiction of this Administrative Law Judge does not extend to equity and policy must be strictly applied with no exception.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly rejected the claim for Medicaid to cover the Appellant's prescription co-pay amounts.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 4/22/2010

***** NOTICE *****

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