

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-50483
Issue No: 2010, 2019, 2026

[REDACTED]

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris

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 hearing received on July 28, 2010. After due notice, a telephone hearing was held by Administrative Law Judge [REDACTED] on December 9, 2010. The claimant was not present, but was represented by James Steward. Administrative Law [REDACTED] has since left employment with the State Office of Administrative Hearings and Rules. Therefore, this decision is being written in her stead. This Administrative Law Judge has reviewed the written and spoken record.

ISSUE

Did the department properly determine the claimant's prescription co-payments were not deductible or offsetting to the Patient Pay Amount (PPA)?

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 long-term care (LTC) patient who meets the eligibility requirements for MA, but was under a divestment penalty from November 4, 2009 through March 28, 2010. (Department Exhibit 20)
2. On April 30, 2010, the department received a letter from claimant's attorney that requested the department pay the enclosed pharmacy co-payment bills for January, February and March, 2010. The attorney indicated that the bills should be paid through either the spend-down or deductible process or that his PPA should be reduced accordingly. (Department Exhibit 24 – 28)

3. On May 4, 2010, the department specialist authored a letter to claimant's attorney that stated the pharmacy co-payments could not be covered because the client did not have Medicare part D coverage, but had chosen to be covered by a private insurer. (Department Exhibit 16)
4. On July 28, 2010, the department received a request for hearing from the claimant's representative.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to department policy in BEM Item 546, the client's PPA must be determined when determining post-eligibility for MA benefits. The PPA is the client's share of costs for long-term care. It is the client's total countable income minus the client's total need. The total need is the sum of the following:

- Patient Allowance.
- Community Spouse Income Allowance.
- Family Allowance.
- Children's Allowance.
- Health Insurance Premiums.
- Guardianship/Conservator Expenses. BEM Item 546

The claimant's PPA is \$6149. The claimant's representative does not dispute the claimant's PPA. The claimant's representative also does not dispute that the claimant was serving a divestment sanction from November 4, 2009 through March 28, 2010. Divestment results in a penalty period in MA, not ineligibility. BEM 405. During the penalty period, MA will not pay the client's cost for:

- LTC services
- Home and community-based services
- Home help
- Home health

However, MA will pay for other MA-covered services. BEM 405.

The claimant's representative is disputing the department's determination that the client's prescription co-payments from December 2009 through March, 2010 are not allowable expenses to be counted toward a MA deductible or to accordingly lower the

PPA. However, the department properly applied department policy to this case and this determination.

The claimant's representative contends that department policy does allow the LTC facility to offset the client's PPA with the prescription copayments. He points to BEM 546, which states:

“Long-term care (LTC) facilities may deduct the following from a person's PPA:

- The cost of certain medically necessary services not covered by MA such as chiropractic, podiatry, dental (other than emergency dental and oral surgery) and hearing aid dealers, and
- The MA co-payments for covered services.”

However, this argument must fail for two reasons. First, the client is serving a divestment penalty during the period that contains the prescription co-payments. During the divestment penalty period, there is no payment toward the client's LTC expenses. BEM 405. Thus, there is no PPA amount to reduce by any copayments, as the entire amount must be privately paid by the patient. This is clearly the intent of BEM 546, as it now contains an additional section that specifically addresses this issue. While this new version of the policy was not effective until February 1, 2011, it demonstrates the department's intent in its previous versions of the policy. The new section is found on page 8 of BEM 546, in the section on “Patient Pay Offsets”. This section states that the allowable expenses to be offset cannot be from a month in which a divestment penalty has been imposed. This would also prohibit the claimant from using these expenses now toward his PPA.

Second, even if the claimant was allowed to offset the PPA during a divestment penalty, the language of BEM 546 would not allow the claimant's prescription copayments to be used as an offset. BEM 546 states that a PPA can be offset by certain medically necessary services not covered by MA and any MA co-payments for covered services. The claimant has elected to have private employer-sponsored prescription drug coverage. Thus, the claimant's co-payments are not for medically necessary services that would not be covered by MA. These copayments would be covered by MA if the claimant had elected to have Medicare Part D coverage. Further, the co-payments are not for MA-covered services (again because the client declined Medicare Part D coverage), thus they are not allowed as an offset.

The claimant's representative next argues that the department should consider the claimant for a MA deductible and include the prescription copayments toward the deductible amount. However, this argument is a clear attempt to circumvent the divestment penalty and must fail for similar reasons to the previous argument. BEM 405, page 1 states that during a divestment penalty period MA will pay for other MA-covered services. The claimant's prescription drug co-payments are not MA-covered services as the claimant did not choose Medicare Part D coverage, but instead chose to use the prescription drug coverage offered through his employer-sponsored

retirement plan. Once an individual is eligible for Medicare coverage, the individual is no longer eligible for Medicaid prescription drug coverage.

Lastly, the claimant's representative states that the client's prescription co-payments should be covered pursuant to the State's hardship exception. Department policy indicates that the divestment penalty can be waived if it creates undue hardship. BEM 405. Undue hardship exists when the client's physician (M.D. or D.O.) says necessary medical care is not being provided and the client needs treatment for an emergency condition. No physician's statements have been provided by the claimant's attorney to document undue hardship. Thus, there is no finding of undue hardship.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly determined that the claimant's prescription co-payments were not deductible or offsetting to the Patient Pay Amount (PPA).

Accordingly, the department's determination is UPHeld. SO ORDERED.

_____/s/_____
Suzanne L. Morris
Administrative Law Judge
On behalf of Jana Bachman
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 2/24/11

Date Mailed: 2/24/11

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 mailing 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.

[REDACTED]