

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P. O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax (517) 334-9505

IN THE MATTER OF:

██████████,
Appellant

Docket No. 2011-17218 SDE
Case No. ██████████

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 ██████████. ██████████ appeared on behalf of the Appellant. ██████████ represented the Department.

ISSUE

Did the Department properly deny Appellant a Special Director Exception Offset to the Home Maintenance Patient Pay 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. Prior to ██████████, the Petitioner was not a Medicaid beneficiary. (Exhibit 1, pages 14, 23).
2. Petitioner receives monthly income from at least one government program in the amount of approximately ██████████. (Exhibit 1, pages 14, 23; testimony of Appellant's representative).
3. In or around ██████████, the Michigan Department of Human Services (DHS) established Medicaid eligibility for the Appellant. (Exhibit 1, pages 14, 23).
4. At the time of establishing Medicaid eligibility for the Appellant, the Michigan Department of Human Services established a Patient Pay Amount for the Appellant in the amount of ██████████, effective ██████████. (Exhibit 4).
5. The Code of Federal Regulations requires a nursing facility to collect the total patient pay amount. 42 CFR 435.725.

6. The Petitioner is required to forward the entire patient pay amount to the nursing facility each month. *DHS PEM 546, 1-1-09.*
7. In or around [REDACTED] the Appellant was admitted to [REDACTED] due to sepsis and MRSA infection in her left knee prosthesis. The Appellant was hospitalized for several months and then transferred to a rehabilitation center on [REDACTED]. (Exhibit 1, pages 7, 21, 22, 23; Exhibits 3-4; CHAMPS Printout [REDACTED]).
8. The Appellant was discharged to her home on [REDACTED]. The nursing facility notified the DHS of Appellant's discharge to home. (Exhibits 3-4; CHAMPS Printout [REDACTED]).
9. Due to an administrative error the DHS Bridges database was not updated to reflect the Appellant had been discharged to home. (Exhibit 1).
10. The Appellant was readmitted to a nursing facility on [REDACTED]. (Exhibits 3; CHAMPS Printout [REDACTED]).
11. On [REDACTED], Appellant asked for a Special Director Exception for the Home Maintenance Patient Pay Amount Offset.
12. On [REDACTED], the Department denied the Special Director Exception for Home Maintenance Patient Pay Amount Offset and sent notice to the Appellant of the denial.
13. The Department stated the reason for denial of exception was that Appellant had no break in long-term care from [REDACTED] through the time of the exception request. (Exhibit 1, page 3).
14. Appellant's request for hearing was received in the Michigan Administrative Hearing System office on [REDACTED]. (Exhibit 2).
15. The Appellant was discharged to her home on [REDACTED], and readmitted to a nursing facility on [REDACTED].

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.

An individual not otherwise eligible for Medicaid may seek and become eligible for Medicaid based on their necessity for inpatient long-term care in a hospital or long-term care facility. See *BEM 164, Extended-Care, 2-2-2011, and BPG Glossary, 2-1-2011, page 24*. As a condition of receiving long term care Medicaid benefits, the Medicaid beneficiary must

forward to the hospital or long-term care facility a monthly patient pay amount based on an amount of the individual's income which Medicaid considers available for meeting the cost of hospital or LTC services. See *BPG Glossary, page 31 of 47, 2-1-2011*.

Medicaid eligibility is a responsibility of the Department of Human Services through a contract with the Department of Community Health. The Department of Human Services is also responsible for determining a beneficiary's patient pay amount at the time of long-term care Medicaid eligibility.

The Code of Federal Regulations requires a nursing facility to collect the total patient pay amount. *42 CFR 435.725*. The Petitioner is required to forward the entire patient pay amount to the nursing facility each month. *DHS Bridges Eligibility Manual 546, 2-1-2011*.

Michigan Medicaid policy does allow for an offset to the monthly patient pay amount. The policy allows long-term care residents to divert a portion of income for maintenance of their home for up to six months. The criteria for eligibility for offset of the patient pay amount is found in Bridges Eligibility Manual under the heading of Special Director Exceptions for Home Maintenance Patient Pay Amount Offset. *Bridges Eligibility Manual, BEM 100, 10-1-2010, pages 9-10*.

**Special Director Exceptions for Home Maintenance Patient Pay Amount Offset
MA Only**

LTC residents may divert income for maintenance of their home for up to 6 months. Divert up to the amount of the shelter expense in BEM 546 when all of the following are true:

- The Medicaid director has approved the exception.
- A physician has certified the individual is medically likely to return home within 6 months.
- The request is being made for an individual who is currently Medicaid eligible and residing in a nursing facility.
- The home is not occupied by a community spouse.
- The individual has a legal obligation to pay housing expenses and has provided verification of the expenses.
- The request is being made by the individual or an individual authorized to act on behalf of the individual.

The effective date of the exception is the first day of Medicaid eligibility as a nursing facility resident.

Michigan Medicaid policy states that when a long-term care resident seeks a Special Director Exception, DHS forwards the request to DCH. DCH makes that determination whether to issue a policy exception:

**Policy Exception Decisions
FIP, SDA, RAP, CDC, MA, AMP, and FAP only**

When a policy exception is requested by a local office, DHS will use the DHS-1785 to issue policy decisions. DCH will issue policy exceptions as a DCH memo.

Each DHS-1785 or DCH memo will be issued for a specific case and will be identified by case name and number. The DHS-1785 and DCH memo will be signed by the office director responsible for the decision. The original DHS-1785 or DCH memo will be sent to the appropriate local office and must be filed in the case record.
Bridges Eligibility Manual, BEM 100, 10-1-2010, pages 9-10.

On [REDACTED], the [REDACTED] applied for a Special Director Exception for the Appellant. Attached to the request was a doctor's letter stating she was admitted to the [REDACTED] on [REDACTED]. On [REDACTED], the Department gathered information about the Appellant's long-term care status through the Department of Human Services (Bridges database) and the Department of Community Health (CHAMPS database). The Department applied policy to the information it gathered about the Appellant's long-term care status and denied the Special Director Exception. The Appellant filed a request for hearing to contest the Department's denial. In her request for hearing the Appellant stated, "I do not feel that my hospitalization should count as part of my stay in a LTC facility."

Medicaid policy defines long-term care as:

... in and hospital and/or long term care facility.
BPG Glossary, 2-1-2011, page 24.

The Department of Human Services, the Department of Community Health, and this Administrative Law Judge are bound by the Michigan Medicaid policy and must apply the policy as it is written. Accordingly, the Department of Community Health was proper to consider the Appellant's hospital days as part of her long-term care.

At the hearing the Appellant's representative asserted that the Department of Community Health erred when it denied the Appellant's Special Director Exception because the Appellant had a break in long-term care when she returned to her home for several months in [REDACTED]. The Department's representative testified that as part of the exception determination she must utilize the Department's computer database to verify the Appellant's Medicaid status and the Appellant's home or long-term care status. The Department's representative explained that as part of her investigation she consulted the Bridges level of care summary report. The Department's representative further explained that the Bridges level of care report demonstrated that the Appellant had had no break in long-term care from [REDACTED] through [REDACTED].

The Department's representative testified that because the Appellant had a long-term care stay that far exceeded the six month time limit criterion for the Special Director Exception, the Appellant was not eligible for the Special Director Exception. The Department entered into the record credible document evidence that the DHS computer database showed the Appellant had been in long-term care continuously for more than six months at the time the Department made its determination in [REDACTED].

The Appellant's representative requested to have entered into the record two documents showing that the Appellant was discharged to her home on [REDACTED]. (Exhibits 3-4). The Department objected to the evidence coming into the record because the evidence was not available to the Department at the time of its exception consideration in [REDACTED]. A review of the documents show that they were created or received on [REDACTED], a month after the Department made its [REDACTED] decision. This Administrative Law Judge granted admission to the record of Exhibits 3-4.

The Appellant's representative explained that his mother is a widow and she needed an offset to the patient pay amount in order to pay for home maintenance and bills so that she could return to her home after successful knee replacement revision surgery. The Department representative emphasized that she is required to utilize the Bridges report for consideration of the Special Director's Exception. The Appellant's representative stated that he would attempt to contact the Appellant's DHS Medicaid Eligibility Specialist in order to have the Bridges database corrected to accurately reflect the Appellant had a break in her long-term care in [REDACTED].

Prior to issuing this decision this Administrative Law Judge took judicial notice of both the DHS Bridges database printout and the DCH CHAMPS database printout. Both printouts, as of [REDACTED], demonstrate that the Appellant's DHS eligibility specialist corrected the Bridges database to reflect that Appellant had a break in long-term care coverage from [REDACTED] through [REDACTED]. There is a preponderance of credible evidence that at the time Appellant requested an exception in [REDACTED] she had only been in long-term care continuously for two months, therefore being well within the six months time limitation criteria for a Special Director Exception.

This Administrative Law Judge processes no equitable jurisdiction. This Administrative Law Judge is limited to considering only those documents which the Department of Community Health had available to it when it made its [REDACTED] decision. In most instances documents that occur after the Department's decision are assigned less controlling weight. The Appellant's situation can be distinguished by the fact that the information the Department reviewed in [REDACTED] was erroneous due to administrative error. In the rare instances where the Department goes to hearing on an issue and learns that administrative error caused a denial, the Department, on its own initiative, reverses its decision.

The Appellant bears the burden of proving, by a preponderance of evidence, that she met all of the criteria for a Special Director Exception. The preponderance of evidence in this case establishes that the Appellant proved by a preponderance of the evidence that she met the six months or less criterion for a Special Director Exception. This Administrative Law Judge, while acknowledging that in [REDACTED] the Department was proper to deny the exception

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based on the Bridges and CHAMPS database information, is required to also acknowledge that the credible, preponderance of evidence, establishes that Appellant was eligible in [REDACTED] for an exception.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Appellant met all the criteria for a Special Director Exception Offset to her Home Maintenance Patient Pay Amount.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED.

Lisa K. Gigliotti
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 5/3/2011

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.