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:

[redacted], Docket No. 2011-29549SDE
Case No. 20143785

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] appeared on behalf of the Appellant. [redacted] 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 [redacted], the Petitioner was not a Medicaid beneficiary. (Exhibit 1, pages 2, 18-20).

2. Petitioner receives monthly income from at least one government program in the amount of at least $[redacted]. (Exhibit 1, pages 14, 23; testimony of Appellant's representative).

3. In or after [redacted], the Michigan Department of Human Services (DHS) established Medicaid eligibility for the Appellant, retroactive to [redacted]. (Exhibit 1, pages 2, 18-20).

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 $1[redacted], effective [redacted]. (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. On [redacted] the Appellant was admitted to [redacted] due to catheterization related to coronary artery disease. At the time of admission Appellant was admitted for a short-term stay. (Exhibit 1, pages 2, 8, Exhibit 2).

8. The Appellant was discharged to her home on [redacted]. (Exhibit 2, page 3).

9. The DHS Bridges database was not updated to reflect the Appellant had been discharged to home. (Exhibit 1; testimony from [redacted] and [redacted]).

10. On [redacted], [redacted] asked for a Special Director Exception for the Home Maintenance Patient Pay Amount Offset on behalf of the Appellant.

11. The [redacted] request was sent to an undeliverable address, as were several similar requests. In [redacted], [redacted] called the Department, witness [redacted] returned the call, and [redacted] faxed the request to the Department at the facsimile number provided by witness [redacted]. (Exhibit 2, page 3; testimony from [redacted]).

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. (Exhibit 2, page 4; testimony from [redacted] and [redacted]).

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 in [redacted] and therefore had exceeded six months long term care stay. (Exhibit 1, page 3).

14. Appellant's request for hearing was received in the Michigan Administrative Hearing System office on [redacted]. (Exhibit 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.

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 agreement 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.*

In [redacted], the [redacted] Rehabilitation Center applied for a Special Director Exception for the Appellant, but sent it to an undeliverable address on that and subsequent dates. In [redacted] called the Department, witness [redacted] returned the call, and [redacted] faxed the request to the Department at the facsimile number provided by witness [redacted].

After the [redacted] receipt of request for exception 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 Department's witness testified that the reason for denial was because the Bridges database showed that the Appellant had exceeded the six month time limitation, and therefore she had failed to meet the policy criteria for an exception.

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 returned to her home less than two months after her admission. The Appellant's representative testified that she had papers showing Appellant was discharged to home in less than six months and had been trying to work with both [redacted] and Appellant's DHS eligibility case worker in order to have the Bridges database reflect the correct date of discharge, but was yet to be successful.

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. In addition, the Department's representative testified that [redacted] did not request the exception until several months after Appellant's admission and months after Appellant's reported discharge. 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 stated that she would again attempt to contact the Appellant's DHS Medicaid Eligibility Specialist in order to have the Bridges database corrected to accurately reflect the Appellant was discharged from her long-term care in 2010.

There is a preponderance of credible evidence that at the time Appellant requested an exception in [redacted] she had been in long-term care continuously for more than six months, therefore well exceeding the six months time limitation criteria for a Special Director Exception.

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. This Administrative Law Judge possesses no equitable jurisdiction. This Administrative Law Judge is limited to considering those documents which the Department of Community Health had available when it made its [redacted] 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 did not prove by a preponderance of the evidence that in [redacted] she met the criterion of six months or less for a Special Director Exception.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Appellant did not meet all the criteria for a Special Director Exception Offset to her Patient Pay Amount.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

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

cc: [redacted]

Date Mailed: 12/27/2011

***** 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.