

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- 31347 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 ██████████, ██████████, ██████████, represented the Appellant who was present and testified. ██████████, Appeals Review Manager, represented the Department. Her witness was ██████████, Medicaid Policy Analyst.

ISSUE

Did the Department properly deny the Appellant's request for diversion of her PPA during her stay at ██████████ via Special Director Exception?

FINDINGS OF FACT

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

1. At the time of hearing the Appellant is a ██████-year old spend down Medicaid beneficiary. (Appellant's Exhibit #1)
2. The Appellant has a spend down deductible of ██████████ per month. (Appellant's Exhibit #1)
3. Between the dates of ██████████, and until discharge on ██████████, the Appellant was a LTC resident of ██████████ with a patient pay amount for December of ██████████ and for J ██████████. (Department's Exhibit A, pp 9, 20)
4. The Appellant was discharged home from ██████████ on ██████████. (Department's Exhibit A, p. 9)

5. On ██████████, the Department received the Appellant's request for Special Directors Exception (SDE). (Department's Exhibit A, pp. 11, 20)
6. At the time of the request the Appellant was not a resident of a long term care facility. (Department's Exhibit A, pp. 1, 9)
7. The Appellant exited the NF with her Medicaid application pending. See Testimony.
8. The Appellant's Medicaid application was approved with retroactivity. However, she was not a resident of the NF at the time of application for SDE and did not face foreclosure during her temporary stay in the nursing facility. (Department's Exhibit A, pp. 1, 2, 21 and See Testimony)
9. The Code of Federal Regulations requires a nursing facility to collect the total patient pay amount and provides for a Home Maintenance Patient Pay Amount Offset. [42 CFR 435.725 *et seq*]
10. The Appellant may divert income for maintenance of her home for up to 6 months when they meet all of the criteria established under BEM 100.
11. Appellant's request for hearing was received in the Michigan Administrative Hearing System office on ██████████. (Appellant's Exhibit #1)

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.

As a condition of receiving long term care Medicaid benefits, a 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.

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]

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:

Special Director Exceptions for Home Maintenance Patient Pay Amount Offset

Long term care (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. BEM 100

The Department witness testified that the policy exception exists to enable a resident of LTC the option to maintain their residence if their anticipated stay in the institution is less than six months. She said that [as required under current policy] the Appellant must be a resident of the LTC facility at the time of request.

In this case the request for SDE was received by her unit on [REDACTED] – well after the Appellant's [REDACTED], departure from the nursing facility.

The Appellant's representative testified that as [REDACTED] she recently learned that the application for exception could be prepared while the Appellant's Medicaid application was pending and that, as [REDACTED], she is now instructing the various nursing facilities she serves of that option.

On review, the Appellant was not residing at the LTC facility as required on the date of the request for exception. She had been discharged home. The Appellant, furthermore, did not face foreclosure or eviction during her brief stay at the NF.

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

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policy as it is written. Accordingly, the Department of Community Health was correct in denying the request for exception owing to no LTC resident status.

The Appellant failed to preponderate her burden of proof that the Department erred in denial of her request. She did not meet all of the criteria for a SDE under BEM 100.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Appellant failed to meet all the criteria for a Special Director Exception.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Dale Malewska
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 8/30/2011

***** 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.