

**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:

Docket No. 2012-16390 SDE
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], the Appellant, appeared on her own behalf. [REDACTED], Appeals Review Manager, represented the Department. Her witness was [REDACTED], Senior Policy Analyst/MDCH.

ISSUE

Did the Department properly deny the Appellant's request for diversion of her Patient Pay Amount ("PPA") to home maintenance during her stay at [REDACTED] 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. The Appellant is a [REDACTED]-year old, Medicaid beneficiary. (Exhibit 1, pages 1-2, 5-6 and 8)
2. The Appellant had a PPA of [REDACTED] for the partial month of [REDACTED], and of [REDACTED] for the month of [REDACTED], no PPA for the month of [REDACTED], and a PPA of [REDACTED] for [REDACTED] and ongoing months. (Exhibit 1, pages 5-6 and 8)
3. Between the dates of [REDACTED], and [REDACTED], the Appellant was a resident of the [REDACTED]. (Exhibit 1, pages 14-15; Exhibit 2, page 2)
4. The Appellant was discharged home from the [REDACTED] on [REDACTED]. (Exhibit 1, page 15; Exhibit 2, page 2)

5. In [REDACTED], the Department received the Appellant's request for a Director's exception for home maintenance relief and PPA offset for her stay at the nursing facility. (Exhibit 1, pages 1-4 and 7, Testimony of Senior Policy Analyst)
6. At the time of the exception request, the Appellant was not a resident of a long term care facility.
7. The Appellant had been discharged to her home for over a month before the exception was requested.
8. The Code of Federal Regulations requires a nursing facility to collect the total patient pay amount and provides for the optional home maintenance allowance. [42 CFR 435.725 *et seq*]
9. The Petitioner is required to forward the entire patient pay amount to the nursing facility each month. [*Bridges Eligibility Manual (BEM) 546*]
10. The Appellant's request for hearing was received in the Michigan Administrative Hearing System office 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.

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 Senior Policy Analyst 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 the policy] the resident (Appellant) must be a resident of the LTC facility at the time of request. In this case the request came more than one month after her discharge home. The Appellant was discharged from the nursing facility [REDACTED] (Exhibit 1, pages 14-14) The Appellant's request for a Special Director Exception was received in [REDACTED]. (Exhibit 1, pages 1-4 and 7, Testimony of Senior Policy Analyst)

The Appellant testified that she was not informed that she had a PPA until [REDACTED]. She asserted that it was not possible to get the information together to send to the Department for the policy exception before her [REDACTED], discharge from the nursing facility. The Appellant further stated that the individuals she worked with at the local Department of Human Services office were not aware of a requirement that the Appellant be a resident of the nursing facility at the time the request for a policy exception was made until the denial letter was issued. (Appellant Testimony)

On review, the Appellant was clearly not residing at the LTC facility as required on the date of the request for exception. She had been discharged home. This ALJ understands that it takes time for the Department of Human Services to make Medicaid eligibility determinations, often resulting in retroactive eligibility periods. However, 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

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Department of Community Health was correct in denying the request for exception because the Appellant was not a LTC resident at the time of application.

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 Special Director Exception 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.

Colleen Lack
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 3/1/2012

***** 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.