

**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. 2012-21892 SDE

██████████

██████████

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 ██████████. ██████████ appeared on behalf of the Appellant. ██████████, Manager of the Appeals and Review Section for the Department of Community Health represented the Department. ██████████, Senior Medicaid Policy Analyst testified on behalf of the Department.

ISSUE

Did the Department properly deny the Appellant's request for diversion of her PPA to home maintenance during her stay at Eaton County Medical Care Facility 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.
2. The Appellant has a spend down deductible of ██████ per month.
3. Between the dates of ██████████ the Appellant was a resident of ██████████.
4. The Appellant applied for a special director's exception ██████████. She was a resident of the facility at the time. She had not yet been determined eligible for Medicaid.

5. The Appellant was expected to be discharged home from the facility ██████████, less than █ months after her admission.
6. The Appellant has expenses associated with maintaining her home residence and provided proof of such with her request for exception.
7. The Appellant's application for special director's exception was considered again ██████████. The DCH computer system did not reflect she had been approved for Medicaid.
8. The Appellant was denied the request for special director's exception ██████████, because she was not Medicaid eligible according to Department records.
9. The Appellant was approved for Medicaid dating to ██████████, after she had been notified of the special director's exception denial.
10. At the time of hearing Department records indicate the Appellant was a Medicaid beneficiary with a spend down of ██████████ per month.
11. The Appellant's request for hearing was received in the Michigan Administrative Hearing System office on ██████████.

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 the policy] the resident (Appellant) must be Medicaid eligible at the time of the request. She checked Department records 2 times before denying this request. As [REDACTED], she had not yet been determined Medicaid eligible, so she denied the request. She did not dispute that thereafter the Appellant was approved for Medicaid effective [REDACTED]

The Appellant's representative said that DHS was late in approving Medicaid and establishing her PPA but that she was approved with an effective date of [REDACTED]

On review, although the Appellant was not yet determined to be eligible for Medicaid during the relevant period at the time the Department processed this request, this is not uncommon. The DHS has a 45 day standard of promptness during which they are expected to make eligibility determinations. This is not always met. Additionally,

retroactive Medicaid is regularly established and not apparent in Department records until months, even years later at times. The Department thereafter makes the appropriate changes in its records to allow the benefit that is established to be effective in every respect. The special director's exception policy is included. While the Department is correct when it states the Appellant did not have Medicaid eligibility at the time the decision was made, she clearly did get it established for the relevant period thereafter, thus it is not proper to preclude approval of this policy on the basis of lacking Medicaid eligibility for the time period at issue.

Accordingly, it is improper for the Department of Community Health to fail to correct the determination after it was determined that Medicaid was effective back to [REDACTED]

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department must correct the denial issued [REDACTED], based upon lack of Medicaid eligibility.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED.

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [REDACTED]

02-28-12

***** 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.