

**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. 2012-52328 SDE
Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant appeared without representation. His attendant/witness was ██████████, social worker. ██████████, POA, appeared on behalf of the Appellant. ██████████, Appeals Review Officer, represented the Department. His witness was ██████████, Senior Medicaid Analyst.

ISSUE

Did the Department properly deny the Appellant's request for Patient Pay Amount (PPA) offset for home maintenance during his stay in long-term care via a 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 was an ██████-year-old, Medicaid beneficiary. (Department's Exhibit A – throughout)
2. The Appellant has a PPA of \$ ██████████.
3. The Appellant testified that it was never his intention to stay in Long Term Care. (See Testimony)
4. Between the dates of ██████████ and ██████████, the Appellant was a resident of the ██████████ Facility and then the ██████████ Facility. (Department's Exhibit A, sub [B])
5. On ██████████, a physician from the ██████████ Facility reported that the Appellant would remain in their care for a "couple of

months.” (Department’s Exhibit A, p. 11)

6. There was no evidence submitted by the Appellant or the nursing facility that the Appellant was ever sent home. The Department’s witness reported that according to DHS Medicaid records the Appellant (at the time of the hearing) remained in long term care.¹ (Department’s Exhibit A, pp, 12 – 14 and sub [B])
7. On ██████████, the Department of Human Services requested a special director exception for the Appellant – a resident of ██████████ of ██████████ as of ██████████. The DHS Policy Decision recited that the Appellant would only be in residence “for a couple of months” then to return home. He sought a lower PPA to meet his primary residence expenses. (Department’s Exhibit A, pp. 1-21)
8. On ██████████, the Director’s exception was denied for the stated reason that the Appellant had exceeded the six-month short-term rehabilitation eligibility recited in policy. (Department’s Exhibit A, sub [B])
9. At the time of denial, the Appellant had been an LTC resident for ██████ months and ██████ days – but has remained in long-term care as of the date of hearing, thus entering his ██████ month of LTC. (See Testimony of ██████████)
10. The Appellant testified that it was never his intention to remain in long term care. (See Testimony of Appellant)
11. The Department’s witness, ██████████, testified that Medicaid Eligibility had no record that the Appellant ever went home. He was thus considered to be in “a continuous period of care.” (See Testimony of ██████████ and Department’s Exhibit A, [sub B & C])
12. The Bridges Eligibility Manual (BEM) requires physician certification that the individual is medically likely to return home within ██████ months.² (Department’s Exhibit A, p. 15)
13. 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*]
14. The Appellant’s request for hearing was received in the Michigan Administrative Hearing System office on ██████████. (Appellant’s Exhibit #2)

¹ Witness ██████████ said that any break in LTC would have needed to be longer than ██████ days.

² BEM 100 was amended on ██████████ to reflect “██████ months.” The previous version, under which the decision to deny ██████████ was reached, did not include the qualification of “L/H” for use as defining whole-month counting. The exemplar found at page ██████ of the Department’s exhibit is undated and presumably after acquired. The testimony established that the Appellant was a LTC resident for over ██████ months.

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 [See FN 1]

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 █ months. She said that the request for PPA offset came during the █ month of LH residency – thus exceeding the 6-month limit. She testified that she based her decision on the admission and discharge dates provided by staff from DHS and █.

The Appellant's witness said that the Appellant's waiver agent said that he could not go home until repairs were made to his primary residence.

The Appellant testified that he never intended to be a LTC resident and that it was always his intention to go home.

On review, the Appellant clearly was a resident of the facility for more than █ months. The intent is expressed in the written policy, with an eye towards offsetting the expenses of patients who incur short-term stays. The length of stay, according to the written criteria published by the Department, is measured by a statement from a physician certifying the length of stay if likely to be less than 6 months.

At the time of request for exception the controlling policy BEM 100 had no reference to a specially defined "LH month." Thus, the █ calendar prevails as the measuring device – still rendering the Appellant ineligible as the Appellant was in-residence over the 6-month policy threshold. The policy has since been amended effective █.

On review, the Appellant has exceeded the 6-month limit established under policy, whether measured by the █ calendar or the LH definition incorporated in BEM 100. The Appellant, as of the date of hearing, remains in LTC █ having entered his █ month of LTC. Accordingly, the Appellant was not eligible 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. Accordingly, the Department of Community Health was correct in denying the request as the Appellant had exceeded the 6-month short-term rehabilitation limit established under policy.

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**.

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Dale Malewska
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 9/17/12

***** 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.