

**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. 2012-16344 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 on ██████████. The Appellant was represented by ██████████. She had no witnesses. ██████████, Appeals Review Manager, represented the Department. Her witness was ██████████, Senior Policy Analyst/MDCH.

ISSUE

Did the Department properly deny the Appellant's request for Patient Pay Amount (PPA) offset for home maintenance during his stay at ██████████ 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 is a 64-year-old, Medicaid beneficiary. (Department's Exhibit A – throughout)
2. The Appellant had a PPA of ██████████
3. The PPA was never collected by the NF. (Department's Exhibit A, p. 9)
4. Between the dates of ██████████ and through ██████████, the Appellant was a resident of the ██████████ (Department's Exhibit A, pp. 2, 8 and 9)

5. The Appellant was discharged home from the [REDACTED] [REDACTED]¹ (Appellant's Exhibit #1)
6. [REDACTED], the Appellant requested a Director's exception for home maintenance relief and PPA offset for the length of his stay at [REDACTED]. (Department's Exhibit A, pp. 1-10 and 16)
7. On [REDACTED] the exception request was denied as the Appellant had exceeded the [REDACTED] short-term rehabilitation eligibility. The Appellant was a resident at the NF for [REDACTED]. (Department's Exhibit A, p. 16)
8. The Appellant represented in his petition that the admission date was wrong and that it should have been shown as [REDACTED], and that a [REDACTED] day hospital stay prolonged anticipated discharge. They added that the discharge date was [REDACTED] (Appellant's Exhibit #1)
9. The Bridges Policy Manual requires physician certification that the individual is medically likely to return home within 6 months. (Department's Exhibit A, p. 13)
10. 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*]
11. The Appellant's request for hearing was received in the Michigan Administrative Hearing System office on [REDACTED]. (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.

¹ Or September 22, 2011. See Department's Exhibit A, page 10

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 the request for offset came during the seventh month of LTC residency – thus exceeding the 6-month limit. She said she based her decision on the admission and discharge dates provided by staff from [REDACTED]

[REDACTED]
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The Appellant's representative said that the admission date was wrong and that the Appellant was actually admitted later in March and that a brief hospitalization extended the Appellant's discharge plan.

On review, the Appellant was clearly exceeding the 6-month limit established under policy. Even allowing for a [REDACTED] discharge date the Appellant was a resident for [REDACTED] days – well beyond the 6-month limit established under policy. There was not a preponderance of evidence proving an incorrect admission date. See Department's Exhibit A – throughout.

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. Accordingly, the Appellant was not eligible for a Special Director Exception.

The Appellant failed to preponderate his burden of proof that the Department erred in denial of his request. He 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**.

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

cc: [REDACTED]

Date Mailed: __4-2-12_____

[REDACTED]
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***** 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.