

**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. 2012-18061 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 ██████████. ██████████, the Appellant's daughter and hearing representative appeared on behalf of the Appellant. 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 diversion of her Patient Pay Amount (PPA) to home maintenance 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, disabled, Medicaid beneficiary.
2. Between the dates of ██████████, and ██████████, the Appellant was a resident of the ██████████ long term nursing care facility.
3. The Appellant was discharged home from the ██████████.
4. On ██████████, the Appellant's POA requested a Director's exception for home maintenance relief and PPA offset for her stay at the nursing facility.
5. At the time of the exception request the Department records indicate the Appellant was not a Medicaid beneficiary.

6. At the time the request was made, the Appellant had been a resident of the nursing facility in excess of 6 months.
7. The Department denied the request for special director's exception [REDACTED], citing lack of Medicaid eligibility at that time.
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. [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 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 a Medicaid beneficiary at the time of the request. Department records did not reflect she was Medicaid eligible in [REDACTED]. Furthermore, she had been residing in one or another long term care facility since [REDACTED], thus her stay was long term, not the six months or less anticipated by policy.

The Appellant's representative said the Appellant was discharged to home from one facility and then was admitted to the [REDACTED]. Additionally, it was expected she would be released in 6 months or less, as documented in the physician letter. It took a few days to organize the discharge, which did occur [REDACTED]. She further testified Department error is the reason the records do not reflect Medicaid eligibility for [REDACTED]. They are in the process of trying to get that rectified.

On review, the Appellant was clearly not residing at the LTC facility for 6 months or less when the request was made. Nor do Department records reflect she was eligible for Medicaid in [REDACTED], when the request was made. This ALJ does not have authority to make equitable determinations. While it is unfortunate the Appellant had to be returned to a facility, she was not a resident for a short term stay, as evidenced by her admission and discharge dates, thus the determination was made properly.

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 for exception owing to lengthy residence of the Appellant at Manor of Novi.

The Appellant failed to meet 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.

[REDACTED]
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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.

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

cc: [REDACTED]

Mailed: 3/8/2012

***** 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.