

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES**

**IN THE MATTER OF:**



Reg. No.: 20134653  
Issue No.: 2019; 2026  
Case No.: [REDACTED]  
Hearing Date: March 12, 2013  
County: Lapeer

**ADMINISTRATIVE LAW JUDGE:** Janice G. Spodarek

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. After due notice, an in-person hearing was held on March 12, 2013. Claimant is in a Long Term Care (LTC) facility and was not in appearance at the administrative hearing. Claimant was represented by her [REDACTED]. The Department of Human Services (DHS) was represented by [REDACTED], ES.

**ISSUES**

1. Did the DHS properly calculate Claimant's MA-P deductible?
2. Did the DHS fail in its duty pursuant to DHS policy and procedure to forward Claimant's hearing request regarding a patient pay offset to the Department of Community Health (DCH)?

**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 DHS hearing summary in this case states as follows:

Retro Medicaid Application was received on 8/7/12 for [REDACTED] [REDACTED] requesting coverage for 3/1/12 thru 5/31/12. Original application for assistance was received on 6/15/12 and approved for MA-AD care with a \$ [REDACTED] Patient Pay amount on 6/26/12. [Claimant] was in a LTC facility from 6/1/12 thru 6/30/12. On 7/7/12 [Claimant] was admitted into the [REDACTED] from her [REDACTED] and was [REDACTED] to the [REDACTED]

facility on 7/13/12 where she remains today. Due to the [REDACTED] [REDACTED] on 7/7/12 the [REDACTED] patient pay amount was changed to 0 for the month of 7/12. Due to timely notice the patient pay amount will remain at 0 until 10/31/13. On 11/1/12 the patient pay amount will change to \$ [REDACTED] per month. Retro-MA was approved for 3/1/12 thru 5/31/12 as a G2S with a deductible of \$ [REDACTED]. During the pre-hearing conference, [REDACTED] requested an in-person hearing. [REDACTED] is asking for the amount of the patient pay to be reduced due to the illness of [Claimant] causing a financial hardship on him. [Claimant] suffers from dementia and had stopped paying for their [REDACTED] [REDACTED] unbeknownst to [REDACTED]. Enclosures: Notice of Case Action 9/26/12, Bridges Patient Pay Amount, Bridges Amount to Community Spouse. Claimant notified of DHS action on 9/20/12; hearing request on received on 9/24/12. Exhibit 1.

2. At the administrative hearing, the undersigned ALJ expressed concern regarding the complexity of the issues. The DHS representative at the administrative hearing did not have personal knowledge of the case. The undersigned ALJ ask that a supervisor be present at the administrative hearing for testimony and/or cross-examination. ES worker left and came back and indicated that a supervisor was busy and not available to attend the administrative hearing. The worker further indicated that she felt the issues were simple as it was just a "G2S case."
3. Claimant's spouse does not dispute the calculation or the amount of the deductible.
4. Claimant's [REDACTED] request that the deductible be reduced.
5. Claimant's [REDACTED] also request that the patient pay offset be reduced.
6. The DHS was unfamiliar with any role that DCH would pay in either issue.
7. A review of the policy indicates that BAM 546 discusses patient pay offsets where if requested by recipient the DHS is required to forward unpaid bills to DCH pursuant to the policy and procedures in BAM 546

### **CONCLUSIONS OF LAW**

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in

the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Issue 1 – Did the DHS properly calculate Claimant’s MA-P deductible?

Deductible or spend-down policy and procedure states in part:

**Deductible**

Deductible is a process which allows a client with excess income to become eligible for Group 2 MA if sufficient allowable medical expenses are incurred.

**Active Deductible**

Open an MA case **without ongoing Group 2 MA coverage** on CIMS as long as:

- . The fiscal group has excess income, **and**
- . At least one fiscal group member meets all other Group 2 MA eligibility factors.

Such cases are called active deductible cases. Periods of MA coverage are added on CIMS each time the group meets it deductible.

**Deductible Period**

Each calendar month is a separate spend-down period.

**Deductible Amount**

The fiscal group’s monthly excess income is called a deductible amount. BEM 545, pp. 8-9.

The group must report expenses by the last day of the third month following the month for which it wants MA coverage. BAM 130 explains verification and timeliness standards. BEM, Item 545. p. 9.

**Redetermination**

You must re-determine eligibility for active deductible cases at least every 12 months unless the group has not met its deductible within the past three months. BEM, Item 545, p. 9.

General income policy and procedure is found in BAM 500.

As the part of the evidentiary packet herein, the DHS submitted a spend-down budget. Claimant's [REDACTED] stipulated at the administrative hearing that he is not disputing the calculation of the deductible.

The purview of an ALJ is to review the DHS's actions and to make a determination if those actions are correct under policy and procedure. Generally, Administrative Law Judges do not have equitable powers:

The claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Under the above cited policy and law, this ALJ does not find that the DHS failed to act in accordance with this policy and procedure as to Issue one and thus, the DHS's calculation of Claimant's deductible was correct.

Issue 2 - Did the DHS fail in its duty pursuant to DHS policy and procedure to forward Claimant's hearing request regarding a patient pay offset to the Department of Community Health (DCH)?

The second issue centers on an issue of patient pay offsets. This policy is foreign to the undersigned ALJ as it is generally a review by the DCH. In fact, BAM 546, pages 8 and 9 specifically discuss situations where LTC facilities may deduct certain items from a persons patient pay amount. Under such situations, the patient pay amount is offset. This is not done by the local office. The local office under BAM 546 is required to assist the applicant and forward unpaid bills to DCH, whose address is identified in BAM Item 546. Such was not done in this case.

This policy further states it is the purview of DCH who will determine if an offset is available. The undersigned ALJ does not know but believes that there is some discretion on behalf of DCH to make adjustments. In any case, the DHS failed to follow the policy in BAM 546 with regards to availing or assisting an individual who requests an offset.

This policy specifically states:

BAM Item 546 post-eligibility patient-pay amount.

### Patient Pay offsets

Long-term care (LTC) may deduct the following from a person's patient-pay amount:

- The cost of certain medically necessary services not covered by MA such as chiropractic, podiatry, dental (other than emergency dental and oral surgery) and hearing aid dealers, and
- The MA co-payments for covered services.

The remainder of the patient-pay amount is then applied to the cost of care provided by the LTC facility. The DCH determines whether an offset is allowable.

Patient-pay amounts are not offset by local office staff.

**Note:** If an LTC applicant requests an offset of the patient pay to cover old medical bills see PEME in glossary and in this item. Assist the applicant by forwarding the unpaid bills to:

Medical Services Administration  
Michigan Department of Community Health  
P.O. Box 30479  
Lansing, MI 48909-9634  
Attn: PEME

DCH will determine whether an offset is allowable.

Offsets will be applied to the months following an approval. In general, the allowable expenses are the same as allowed for a group 2 deductible case. In addition, the medical expenses(s):

- Must be unpaid, and an obligation still exists to pay.
- Cannot be from a month where Medicaid eligibility existed.
- Cannot be covered by a third-party source (public or private).
- Cannot be from a month in which a divestment penalty has been imposed.
- Cannot have been used previously as a pre-eligibility medical expense to offset a patient-pay amount.

- Can include cost of room and board for Medicaid LTC facilities, remedial care, and other medical expenses recognized by Michigan law but not covered under the Michigan state plan.
- Must be reported prior to the first Medicaid redetermination following the initial eligibility.

**Note:** DCH will terminate offsets if there is a failure to pay the medical provider with the funds. BAM Item 546, pages 8 and 9.

As noted in the findings of fact, the DHS representative at the administrative hearing did not have personal knowledge of this case. The ALJ in this case, requested that a Supervisor testify at the administrative hearing due to the complex appearance of the issues in this case. The undersigned ALJ was informed that all Supervisors were busy and not available and that the facts: "simple a G2S case."

At the facts evolved at the administrative hearing, the undersigned ALJ makes a finding that the issues herein are not a DHS issue under Issue 2, but whether a DCH issue as laid out in BAM Item 546. As the undersigned ALJ is unfamiliar with this procedure and/or how DCH processes these cases, the undersigned ALJ orders the DCH to follow its policy and procedure under BAM 546 on behalf of Claimant. On this issue, the DHS is partially reversed.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were:

1. The DHS's calculations of Claimant's deductible/spend-down were correct and accordingly, the DHS's actions on this issue are hereby partially affirmed.
2. The DHS's actions on Issue 2 were incorrect and on this issue, the DHS's actions are hereby partially reversed.

The DHS is ordered to follow policy and procedure in BAM Item 546 under the patient-pay offsets policy and assist Claimant with submitting the bills on behalf of Claimants to DCH as required under its policy and procedures. The DHS shall have 10 days from the receipt of this Decision and Order to act on Claimant's behalf.

Should Claimant dispute the outcome of the reprocessing of this request by DCH to assist Claimant and his request for the patient-pay offset on behalf of his spouse who is in LTC, Claimant shall retain the right to a hearing to have this issue reviewed back to the original date disputed.

IT IS SO ORDERED.

/s/  
Janice G. Spodarek  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: 4/26/13

Date Mailed: 5/1/13

**NOTICE:** Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
  - misapplication of manual policy or law in the hearing decision,
  - typographical errors, mathematical error , or other obvious errors in the hearing decision that effect the substantial rights of the claimant;
  - the failure of the ALJ to address other relevant issues in the hearing decision

Request must be submitted through the local DHS office or directly to MAHS by mail at  
Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-07322

JGS/tb

cc:

