

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013490
Issue No: 2014
Case No: [REDACTED]
January 2, 2013
St. Clair County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

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 received by the Department of Human Services (department) on September 13, 2012. After due notice, a telephone hearing was held on January 2, 2013. Claimant was represented by attorney Patricia Dudek, P46408, and Claimant's mother, [REDACTED], and Claimant's guardian, [REDACTED], appeared and provided testimony on Claimant's behalf. The department was represented by [REDACTED], an assistance payments supervisor with the department's St. Clair County office.

ISSUE

Whether the department properly determined Claimant's Medical Assistance (MA) deductible for the benefit period effective September 1, 2012?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant was a recipient of MA benefits at all times pertinent to this hearing.
2. Claimant receives Retirement, Survivors and Disability Insurance (RSDI) benefits in the amount of \$ [REDACTED] a month. (Department Hearing Summary)
3. On August 1, 2012, the department notified Claimant in relevant part that, effective September 1, 2012, Claimant's Group 2 Aged, Blind, Disabled Medicaid MA benefits had been approved and would be subject to a deductible in the amount of \$ [REDACTED]. Specifically, Claimant was advised that

she would become eligible for MA benefits when her allowable expenses exceeded the deductible amount. (Department Exhibits A, B)

4. On September 1, 2012, Claimant submitted a Request for Hearing, protesting the department's determination of her MA deductible. (Department Exhibit C)
5. On January 2, 2013, Claimant's hearing was held by telephone conference, during which time this Administrative Law Judge granted Claimant's attorney's request to hold the record open through the close of business on January 7, 2013 in order to allow Claimant's attorney the opportunity to submit additional briefing.
6. On January 4, 2013, the department submitted the following additional documentation which has been included in the record of this case as follows:
 - September 3, 2009 DHS determination of Claimant's ineligibility for Medicaid as a Disabled Adult Child (Department Exhibit D)
 - January 3, 2013 DHS summary of CMS charges and calculation (Department Exhibit E)
 - January 4, 2013 Statement of Claimant's Medicaid Deductible Monthly Account Invoice for November 2012 (Department Exhibit F, pp. 1-4)
 - DHS Computer Screen Shot of Claimant's Payment Authorization History with DHS caseworker's handwritten explanation of deductible calculation (Department Exhibit G, pp. 1-2)
7. No additional briefing was submitted by Claimant's attorney by the close of business on January 7, 2013.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1) Clients have the right to contest a department decision affecting eligibility for benefit levels whenever it is believed that the decision is incorrect. BAM 600. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The Medical Assistance (MA) program was 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. Medicaid is also known as Medical Assistance (MA).

The Medicaid program is comprised of several sub-programs or categories. One category is FIP recipients. Another category is SSI recipients. There are several other categories for persons not receiving FIP or SSI. However, the eligibility factors for these categories are based on (related to) the eligibility factors in either the FIP or SSI program. Therefore, these categories are referred to as either FIP-related or SSI-related.

To receive Medicaid under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant women, receive Medicaid under FIP-related categories.

Clients may qualify under more than one Medicaid category. Federal law gives them the right to the most beneficial category. The most beneficial category is the one that results in eligibility or the least amount of excess income. BEM 105.

The State of Michigan has set guidelines for income, which determine if a Medicaid group is eligible. Income eligibility exists for the calendar month tested when there is no excess income, or allowable medical expenses equal or exceed the excess income (under the Deductible Guidelines). BEM 545.

Net income (countable income minus allowable income deductions) must be at or below a certain income limit for eligibility to exist. BEM 105. Income eligibility exists when net income does not exceed the Group 2 needs in BEM 544. BEM 166. The protected income level is a set allowance for non-medical need items such as shelter, food and incidental expenses. RFT 240 lists the Group 2 Medicaid protected income levels based on shelter area and fiscal group size. BEM 544. An eligible Medicaid group (Group 2 MA) has income the same as or less than the "protected income level" as set forth in the policy contained in the Reference Table (RFT). An individual or Medicaid group whose income is in excess of the monthly protected income level is ineligible to receive Medicaid.

However, a Medicaid group may become eligible for assistance under the deductible program. The deductible program is a process which allows a client with excess income to be eligible for Medicaid if sufficient allowable medical expenses are incurred. Each calendar month is a separate deductible period. The fiscal group's monthly excess income is called the deductible amount. Meeting a deductible means reporting and verifying allowable medical expenses that equal or exceed the deductible amount for the calendar month. The Medicaid group must report expenses by the last day of the third month following the month it wants medical coverage. BEM 545; 42 CFR 435.831.

In this case, at the time of the department's determination of Claimant's MA eligibility for the deductible program for the benefit period effective September 1, 2012, an MA recipient with a group size of one living in St. Clair County (designated as Shelter Area VI in RFT 200) has a protected income level of \$ [REDACTED]. Moreover, after a required unearned income general exclusion of \$ [REDACTED] is deducted from Claimant's total monthly unearned income of \$ [REDACTED], Claimant's net unearned income amount is \$1,123.00. This amount, minus a deduction of \$ [REDACTED] for Claimant's insurance premium, renders Claimant's countable net income to be \$ [REDACTED]. The department thereafter subtracted Claimant's designated protected income level of \$ [REDACTED] from Claimant's countable net income of \$ [REDACTED] which resulted in Claimant's monthly deductible in the amount of \$ [REDACTED].

At the January 2, 2013 hearing in this matter, Claimant's attorney advanced two arguments in opposition to the department's determination that Claimant's eligibility for MA benefits is subject to a deductible. First, Claimant's attorney argued that Claimant should be exempt from having a MA deductible spend down pursuant to the Pickle Amendment, 42 U.S.C. § 1396a.¹ The Pickle Amendment provides that an individual is to be deemed a Supplemental Security Insurance (SSI) recipient (which in many states means automatic Medicaid eligibility) if the individual:

- is simultaneously entitled to receive both social security (Old Age, Survivors, or Disability Insurance (OASDI)) and SSI in some month after April 1977;
- is currently eligible for and receiving OASDI;
- is currently ineligible for SSI; and
- receives income that would qualify the individual for SSI after deducting all OASDI cost-of-living adjustments received since the last month in which the individual was eligible for both OASDI and SSI.

In this case, however, it is undisputed that Claimant has never received or been deemed eligible to receive SSI. (Department Exhibit D) Accordingly, Claimant does not qualify as a "Pickle" person under the Pickle Amendment. More importantly, even if Claimant did meet the qualifying criteria for Pickle eligibility, nothing in this law suggests that Claimant would not be subject to a deductible if she is not otherwise income eligible for MA. Individuals on a deductible program are still eligible for MA.

Claimant's attorney further argued that Claimant's deductible in the amount of \$ [REDACTED] constitutes a hardship from which Claimant should be given a reasonable accommodation under the Americans With Disabilities Act, of 1990, 42 U.S.C. §§12101 *et seq.* (1990). However, Claimant's argument in this regard 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. Specifically, the Director's July 31, 2011 Delegation of Hearing Authority provides in relevant part:

¹While this Administrative Law Judge granted Claimant's attorney's request to submit additional briefing in support of this argument by the close of business on January 7, 2013, no such briefing was submitted by this deadline or, indeed, before the issuance of this decision.

Administrative hearing officers have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or overrule or make exceptions to Department policy

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

Accordingly, this Administrative Law Judge finds that, based on the competent, material, and substantial evidence presented during the hearing, the department properly determined Claimant's Medicaid deductible for the benefit period effective September 1, 2012.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly determined Claimant's Medicaid deductible for the benefit period effective September 1, 2012. The department's actions are therefore **UPHELD**.

It is **SO ORDERED**.

/s/ _____
Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: January 10, 2013

Date Mailed: January 11, 2013

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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 this 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 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 errors, or other obvious errors in the hearing decision that effect the substantial rights of 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 System
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, MI 48909-07322

SDS/cr

cc:

