

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2013-19133 SDE
Case No. [REDACTED]

[REDACTED]
Appellant
_____ /

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 [REDACTED]. Attorney [REDACTED] appeared on behalf of the Appellant. Appellant appeared as a witness and [REDACTED], RN, MDS Coordinator for [REDACTED] Nursing Home also appeared as a witness for the Appellant.

[REDACTED], Manager of the Appeals Section, represented the Department. [REDACTED], Senior Medicaid Analyst appeared as a witness for the Department.

ISSUE

Did the Department properly deny the Appellant's request for Patient Pay Amount (PPA) offset for home maintenance during her second stay at the [REDACTED] Nursing Home 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 a [REDACTED]-year-old, Medicaid beneficiary. (Exhibit A, pp. 5, 7, 17-18).
2. The Appellant had a PPA of \$ [REDACTED]. (Exhibit A, p.17).
3. Between the dates of [REDACTED] and [REDACTED], the Appellant was a resident of the [REDACTED] Nursing Home ([REDACTED]) in [REDACTED], MI. She was admitted due to a diabetic foot ulcer. (Exhibit 1 and testimony).
4. The Appellant was discharged home from [REDACTED] on [REDACTED]. (Exhibit 1 and testimony).

5. On ██████████, Appellant was again admitted to ██████████, this time due to a closed tibia fracture, and has remained there since. (Exhibit 1 and testimony).
6. On ██████████, a request for a Special Director Exception for Home Maintenance Disregard for the Appellant was received by the Department from ██████████ Alliance for Independent Living. (Exhibit A, pp. 2, 14, 16).
7. On ██████████ the Director's exception was denied for the stated reason that the Appellant had exceeded the short-term less than six-month rehabilitation period allowed by the exception. (Exhibit A, pp. 14-16)
8. At the time of denial the Appellant had been a resident at ██████████ for a total of 140 days or about 4 months and 20 days.
9. The Bridges Eligibility Manual (BEM) requires physician certification that the individual is medically likely to return home within 6-months. (BEM 100 was amended on ██████████ to reflect "6 L/H months." The previous version did not include the qualification of "L/H" for use as defining whole-month counting). (Exhibit A, p. 19).
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 ██████████. (Exhibit A, p.1.5 B).

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 in the State of Michigan, Department of Human Services, Bridges Eligibility Manual (BEM), 2-1-2012, allowed for an offset to the monthly patient pay amount. The policy allowed long-term care residents to divert a portion of income for maintenance of their home for up to six months. BEM 100, 2-1-2012 stated in part:

Special Director Exceptions for Home Maintenance Patient Pay Amount Offset

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, p. 12 of 15, 2-1-2012].

BEM 100 was amended on June 1, 2012 to reflect “6 L/H months.” BEM 100, 6-1-2012 stated in part:

Special Director Exception for Home Maintenance Disregard

Medicaid beneficiaries who are residents of a long term care facility for less than 6 L/H months may request an exception to divert income for maintenance of their home for a maximum of 6 months; see Glossary L/H month. Beneficiaries who have been or are expected to remain in

long term care for longer than six months do not meet the criteria to be eligible for this exception.

The home maintenance standard deduction is \$698 per month. The PPA will be reduced when all of the following are true:

- The beneficiary has provided a signed DCH-1183, Authorization to Release Protected Health Information to DCH.
- A physician has certified the beneficiary is medically likely to return home in less than 6 L/H months.
- The request is being made for an individual who is a current Medicaid beneficiary and responsible for a patient pay amount.
- The beneficiary is a current resident of a long term care facility.
- The beneficiary has a legal obligation to pay housing expenses and has provided verification of the expenses. The housing expenses must be in the beneficiary's name. A foreclosure, eviction or bankruptcy proceedings must not have begun.
- The home is not occupied by a community spouse or children eligible for a family allowance income deduction.
- The request is being made by the beneficiary or an individual authorized to act on behalf of the Medicaid beneficiary.
- The exception request has been approved by the Medicaid director.

The effective date of the exception is the first day of Medicaid eligibility as a nursing facility resident. The exception is for a lifetime maximum of six months but may be granted multiple times if the total months do not exceed six months. DCH central office staff process the exception requests and PPA reductions. [BEM 100, p. 10 of 14, 6-1-2012].

The Bridges Policy Glossary in effect on June 1, 2012 contained the following definition for L/H Months:

L/H MONTH

A calendar month containing:

At least one day that is part of a period in which a person was (or is expected to be) in an LTC facility and/or hospital for at least 30 consecutive days, **and**

No day that the person was a waiver patient.

Example: 1

Mr. Jones is admitted to an LTC facility on October 5th and is discharged December 1st.

October, November and December are L/H months. [BPG Glossary 4/1/2012, p. 25 of 47].

The essential facts in this case are not in dispute. Appellant was admitted to the LTC facility on ██████████ for a diabetic ulcer that would not heal. She remained there until her discharge on ██████████. Not quite a month later, on ██████████, she was again admitted to the same LTC facility due to a closed fractured tibia. On ██████████, Appellant made a request for a Special Director Exception for Home Maintenance Disregard for her second stay at ██████████. Appellant met all the criteria for the exception, with the possible exception that her length of stay in the LTC facility may have disqualified her for the exception. The Department denied the Appellant's request for the exception on ██████████ for the stated reason that the Appellant had exceeded the short-term less than six-month rehabilitation period allowed by the exception.

The Respondent has argued the Appellant's first day of Medicaid eligibility as a nursing facility resident was ██████████, the day she was first admitted to ██████████. Thereafter, following the above definition for L/H Months, they count ██████████, ██████████, and ██████████ as L/H Months to conclude that she would exceed the requirement of being a resident of a long term care facility for less than 6 L/H months to qualify for the exception. The fallacy in this argument is that the Department must go back to ██████████ as the effective date of the exception, at which time the controlling policy BEM 100 had no reference to a specially defined "LH month." Thus, the Julian calendar prevails as the measuring device – thus rendering the Appellant eligible as the Appellant was not in-residence over the 6-month policy threshold.

On review, the Appellant was not a resident of the facility for more than 6 months at the time she made her request for an exception. The Appellant was a resident of the nursing facility for a total of only 140 days or about 4 months and 20 days. Since the

L/H Month definition cannot be applied to the Appellant's first stay at ██████████ from ██████████ to ██████████, the first stay cannot be tacked on to the second stay to automatically disqualify the Appellant under the first paragraph of either version of the policy quoted above.

The Appellant applied for the Special Director Exception for Home Maintenance Disregard during her second stay at ██████████ on ██████████, and the exception was denied on ██████████. The Appellant's first day of Medicaid eligibility as a nursing facility resident for this second stay was ██████████ 12. As of the date she filed for the exception she had only been in the nursing facility for 3 L/H months. Appellant's doctor provided a statement dated ██████████, noting that the Appellant had been admitted to ██████████ on ██████████ and that the Appellant was medically likely to return home within six months.

The intent on this exception is expressed in the written policy, with an eye towards offsetting the expenses of patients who incur short term stays. The length of stay is, according to the written criteria published by the Department, measured by a statement from a physician certifying the length of stay if likely to be less than 6 months. While it could be argued that the doctor's statement might imply that the Appellant was likely to stay beyond six months, since it references the admit date of ██████████, the statement that she was medically likely to return home within six months must be interpreted to mean from the date of her admission. Accordingly, the Appellant met all the requirements for the exception and the Department erred in denying the exception for her second stay at ██████████.

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 incorrect in denying the request as the Appellant had not exceeded the 6-month short-term rehabilitation limit established under policy for her second stay at ██████████.

Accordingly, the Appellant was eligible for a Special Director Exception for her second stay at ██████████.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Appellant met all the criteria for a Special Director Exception for her second stay at [REDACTED].

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED.



William D. Bond
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

[REDACTED]
cc: [REDACTED]

Date Signed: 5/2/2013

Date Mailed: 5/2/2013

***** 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.