

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-017261
Issue No.: 2007
Case No.: [REDACTED]
Hearing Date: March 05, 2015
County: Oakland (2) (Madison Hts)

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on March 5, 2015, from Lansing, Michigan. Participants on behalf of Claimant included Claimant's Authorized Hearing Representative [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Assistance Payments Supervisor [REDACTED] and Eligibility Specialist [REDACTED].

ISSUE

Did the Department properly determine Claimant's Medical Assistance (MA) deductible?

FINDINGS OF FACT

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

1. Claimant was a recipient of MA.
2. Claimant's representative submitted medical bills in April 2014 (Exhibit A Page 7) which included \$ [REDACTED] in expenses incurred in December 2013.
3. The Department approved only \$ [REDACTED] which was insufficient to meet Claimant's deductible of \$ [REDACTED] for April 2014.
4. Claimant's representative submitted medical bills in July 2014 (Exhibit A Page 13) which totaled \$ [REDACTED]
5. Claimant's deductible for July 2014 was \$ [REDACTED] and therefore, Claimant did not meet her deductible for that month.

6. The Department received Claimant's hearing request on November 25, 2014, questioning the Department's processing of Claimant's deductibles for the months of April, July, and September 2014.
7. After the hearing request was submitted the Department resolved the Claimant's concerns regarding the September deductible and that issue is now moot.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Claimant worked for a time in July 2014. Her wages are reflected in the copies of check stubs included as Exhibit 1 Pages 21-22. In addition to her earned income, she also receives RSDI. The Claimant's representative did not indicate there was any disagreement regarding the amount of the deductible for the months in question. The issues centered, as the undersigned understands it, on the Department's disallowance of the December 2013 medical expenses toward Claimant's April 2014 deductible, and the Department's lack of notice that Claimant's deductible increased for the month of July 2014. The Claimant's representative indicated they would have submitted more expenses for July if they had known the deductible had increased.

The representative testified that they are able to look online and see what their clients' monthly deductibles are. When she looked online in July, Claimant's deductible was reported as \$ [REDACTED] for that month. She then submitted bills for \$ [REDACTED] not knowing the deductible had increased to \$ [REDACTED]. The representative's contention was that, had they known the deductible had increased, they would have submitted more expenses.

The invoice that was submitted was dated [REDACTED]. It shows services through [REDACTED]. Claimant's representative failed to produce any evidence that additional expenses were incurred during July and not billed. She was not disputing the amount of the deductible; she was arguing just that they did not know the deductible had increased.

The burden is on the Department to show that it properly determined Claimant's deductible. Placing the burden of proof on the Department is a question of policy and

fairness, but it is also supported by Michigan law. In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167; 405 NW2d 88 (1987), the Michigan Supreme Court, citing *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 (1979), said:

The term “burden of proof” encompasses two separate meanings. 9 Wigmore, *Evidence* (Chadbourn rev), § 2483 et seq., pp 276 ff.; McCormick, *Evidence* (3d ed), § 336, p 946. One of these meanings is the burden of persuasion or the risk of nonpersuasion.

The Supreme Court then added:

The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually cast first upon the party who has pleaded the existence of the fact, but as we shall see, the burden may shift to the adversary when the pleader has his initial duty. The burden of producing evidence is a critical mechanism in a jury trial, as it empowers the judge to decide the case without jury consideration when a party fails to sustain the burden.

The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced. See *McKinstry*, 428 Mich at 93-94, quoting McCormick, *Evidence* (3d ed), § 336, p 947.

In other words, the burden of producing evidence (i.e., going forward with evidence) involves a party’s duty to introduce enough evidence to allow the trier of fact to render a reasonable and informed decision. Thus, the Department must provide sufficient evidence to enable the Administrative Law Judge to ascertain whether the Department followed policy in a particular circumstance.

The Department presented sufficient evidence to show that it followed policy in determining Claimant’s MA deductible from month-to-month. That shifts the burden then to the Claimant to show that she did not receive the benefits she was eligible to receive. She has not presented any evidence that the Department failed to pay any expenses that should have been paid for July 2014.

To address the issue of April 2014, we look to BEM 545 (1/1/15) and (7/1/13). At page 10 it notes, “Each calendar month is a separate deductible period.” At page 11 it explains when expenses must be reported. “The group must report expenses by the last day of the third month following the month in which the group wants MA coverage.” Then, at page 12-13 it states: “A group may report additional expenses that were incurred prior to the MA eligibility begin date you calculated for that month. Do not alter the MA eligibility begin date if you have already authorized coverage on Bridges. However, any expenses the group reports that were incurred from the first of such a

month through the day before the MA eligibility begin date might be countable as old bills.”

Claimant has been an MA recipient since [REDACTED]. MA policy allows certain “old bills” to be paid, but there are significant limitations. BEM 545 (7/1/13) includes Exhibit IB starting at page 19.

Medical expenses listed under **Medical Services** in “EXHIBIT I can be used as **old bills** if they meet **all** of the following criteria:

- The expense was incurred in a month prior to the month being tested.
- During the month being tested:
 - The expense is/was still unpaid, **and**
 - Liability for the expense still exists (existed).
- A third party resource is **not** expected to pay the expense.
- The expense was **not** previously used to establish MA income eligibility.
- The expense was one of the following:
 - Incurred on a date the person had no MA coverage.
 - **Not** an MA covered service.
 - Provided by a non-MA enrolled provider.
- A member of the medical group incurred the expense. This includes expenses incurred by a deceased person if both:
 - The person was a medical group member's spouse or unmarried child under 18.
 - The medical group member is liable for the expense.

You must give groups that have excess income the opportunity to verify old bills before you start an active deductible case.

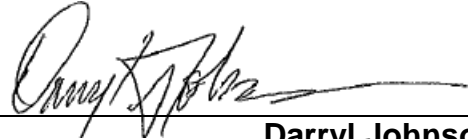
Use old bills in chronological order by date of service.

As stated, the bills must meet all of the listed criteria. If any one of the criteria is not met, the bill cannot be paid. The December expenses included in the April bill were incurred when Claimant had MA coverage. Therefore, they cannot be counted as “old bills” and the Department correctly did not pay them.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it found that Claimant did not meet her deductible for the months of April 2014 and July 2014.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.



Darryl Johnson
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/6/2015**

Date Mailed: **3/6/2015**

DJ/jaf

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion.

MAHS **MAY** grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc:

