

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201413626
Issue No.: 2007
Case No.: [REDACTED]
Hearing Date: January 15, 2014
County: Lenawee

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 three-way telephone hearing was held on January 15, 2014 from Lansing, Michigan. Claimant participated via telephone and provided testimony. Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Eligibility Specialist).

ISSUE

Did the Department properly determine that Claimant was ineligible for a disregard for purposes of her post-eligibility patient-pay amount?

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 active for MA-Ad Care.
2. On [REDACTED], Claimant was admitted to [REDACTED], a long-term care facility.
3. On February 19, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which indicated that effective April 1, 2013 Claimant's MA-Ad Care patient-pay amount was [REDACTED].
4. On August 30, 2013, the Department received a letter dated June 5, 2013 from [REDACTED] of [REDACTED] indicating that Claimant

resided at [REDACTED] and that her anticipated stay would be “six months or less.”

5. On October 21, 2013, [REDACTED] sent correspondence to the Department requesting a reduction in Claimant’s patient-pay amount (PPA) and/or a “special director’s exception” for Claimant. According to the letter, Claimant received [REDACTED] from Social Security. Documents attached to the correspondence included: signed authorizations for the release of information and some household bills.
6. Claimant was discharged from [REDACTED] on [REDACTED].
7. On October 25, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which indicated that effective October 1, 2013 through October 31, 2013, Claimant’s patient-pay amount decreased to [REDACTED] due to not being in a nursing home facility for partial month and “regular Medicaid resumes 11/1/13 with no patient pay.”
8. The Department received Claimant’s request for a hearing to dispute the patient-pay amount on November 13, 2013.

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 the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The Department uses BEM 546 to determine post-eligibility patient-pay amounts. BEM 546, p 1, (10-1-2013). A post-eligibility patient-pay amount is the L/H patient’s¹ share of the cost of long-term care (LTC) or hospital services. BEM 546, p 1. Medical expenses, such as the cost of LTC, are never used to determine a post-eligibility patient-pay amount. BEM 546, p 1.

¹ A L/H patient is defined as, “[t]he Medicaid client who was in the hospital and/or long term care facility (LTC) in an hospital and/or long term care facility (L/H) month. Bridges Program Glossary (BPG) p 37 (1-1-2014).

Medicaid beneficiaries who will be residents of a long term care facility for less than six L/H months² may request a disregard to divert income for maintenance of their home for a maximum of six months. BEM 546, p 3. Beneficiaries who have been or are expected to remain in long term care for longer than six months do not meet the criteria for this disregard. BEM 546, p 3.

The PPA will be reduced when **all** of the following are true:

- A physician has certified the beneficiary is medically likely to return home in less than six months from the date of admission.
- 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 written or verbal request is being made by the beneficiary or an individual authorized to act on behalf of the Medicaid beneficiary. (Emphasis added. BEM 546 pp 3-4).

Here, Claimant testified that her providers at [REDACTED] informed her that she qualified for a "special director's exception" and that Claimant only needed to provide the Department with a copy of her lease, utility bills, and related documents. She was not told that she must be discharged within 6 months. Claimant requests the Department pay for (or "write off") the first 6 months of her nursing home bill. The Department, on the other hand, maintains that Claimant is not entitled to a patient-pay amount disregard because she remained in nursing home care for more than 6 months under BEM 546.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569

² An L/H month is "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. BPG p 37.

NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Here, the record shows that Claimant was admitted to the LTC facility for 10 months ([REDACTED] through [REDACTED]). The LTC facility may have misinformed Claimant when it indicated that she was entitled to a “special director’s exception.” This Administrative Law Judge was unable to locate any “special director’s exception” in the department’s policies. To the extent Claimant seeks a disregard to divert income for maintenance of her home for a maximum of six months under BEM 546, Claimant does not meet the eligibility requirements. BEM 546, p 3 (cited above) clearly provides that beneficiaries who have been or are expected to remain in long term care for longer than six months do not meet the criteria for this disregard.

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 determined that Claimant was not entitled to a disregard with regard to her MA patient-pay amount.

DECISION AND ORDER

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

IT IS SO ORDERED.

/s/ _____
C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 17, 2014

Date Mailed: January 17, 2014

NOTICE OF APPEAL: The claimant 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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 (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted 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 Department, AHR or the claimant 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 the hearing decision is mailed.

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 48909-07322

CAP/aca

cc:

