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

IN THE MATTER OF:

Reg. No.:	15-004779
Issue No.:	2001, 3008
Case No.:	
Hearing Date:	May 07, 2015
County:	INGHAM

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on May 7, 2015, from Lansing, Michigan. Participants on behalf of Claimant included Participants on behalf of the Department of Health and Human Services (Department) included , Hearing Facilitator.

ISSUES

Did the Department properly determine Claimant's eligibility for Medical Assistance (MA) regarding applying medical expenses to meet her monthly Medicaid deductible?

Did the Department properly determine Claimant's eligibility for the Food Assistance Program (FAP) regarding considering medical expenses in the FAP budget?

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 is an ongoing recipient for FAP benefits.

2. Claimant has a monthly spend down, or deductible, for her Medicaid benefits.

3. On March 9, 2015, Claimant provided documentation of medical expenses to the Department.

4. The Department determined that the overdue medical bills could not be utilized in the FAP budget.

5. On March 9, 2015, a Health Care Coverage Determination Notice was issued to Claimant stating she is approved with a monthly deductible of $[redacted]

6. On March 16, 2015, Claimant filed a hearing request contesting the Department's actions.

CONCLUSIONS OF LAW

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

MA

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 Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Income eligibility exists for all or part of the month tested when the medical group's allowable medical expenses equal or exceed the fiscal group's excess income. BEM 545, (January 1, 2015), pp. 2-3.

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. Each calendar month is a separate deductible period. The fiscal group's monthly excess income is called a deductible amount. Meeting a deductible means reporting and verifying allowable medical expenses that equal or exceed the deductible amount for the calendar month tested. The group must report expenses by the last day of the third month following the month in which the group wants MA coverage. BEM 545, p. 10-11, underline added by ALJ.

However, old bills can also be utilized toward meeting a deductible. BEM 545, pp. 9-10, 12-13, and 26. Similarly, the section of the Health Care Coverage Determination Notice addressing Information About Deductible Amounts, in part states:

> Enclosed is a form (Deductible Report) for you to list medical expenses as you incur them. List medical expenses that have not been reported. List those expenses no matter how long ago the medical services were provided. When the medical expenses are equal to or more than your deductible

> amount, return the form to your specialist immediately to determine your eligibility.

(Exhibit A, p. 2) underline added by ALJ.

Claimant testified that the MA deductible system does not work. Claimant explained that she cannot provide documentation of medical expenses after each date of services. The provider must first submit a claim for the service to Medicare. Once Medicare has made its determination, the remainder of the claim is then submitted to Medicaid. Only after it comes back from Medicaid will the provider send Claimant documentation of the portion of the medical expense she is responsible for. Thus, Claimant will always be submitting documentation of medical expenses from the past due to the time the billing process takes.

This ALJ understands that the realities of medical billing with Medicare as the primary insurance will most often preclude Claimant from submitting documentation of her medical expenses as the services are provided. However, this ALJ has no authority to change or make exceptions to the Department's policy. Claimant has a monthly deductible that must be met before she is eligible for MA for the remainder of that month. BEM 545 requires the medical expenses to be reported by the last day of the third month following the month in which MA coverage is being sought. Thus, if the date of service is older than that, the Department cannot go back and apply the medical bill to the deductible for the month in which the service was provided.

In this case, Claimant submitted documentation of numerous medical expenses on March 9, 2015. Some of these medical expenses were for dates of service going back to 2012. Under the BEM 545 policy, the Department could not go back to such older dates of service and apply the medical expenses to the deductible for those months. As noted above, medical expenses must be reported by the last day of the third month following the month in which MA coverage is being sought.

However, it appears that the Department failed to apply the medical expenses to determine Claimant's current MA eligibility. The hearing summary only states that the bills were not timely submitted to meet past deductible months. As noted above, the BEM 545 policy does address utilizing old medical bills to determine current MA eligibility. The March 9, 2015, Health Care Coverage Determination Notice states that Claimant was approved for April 1, 2015 and ongoing with an $[redacted] monthly deductible. There was insufficient evidence to establish that the Department utilized even the current medical bills, let alone the older bills, in determining the Claimant's April 2015 MA eligibility. Similarly, there was no evidence that the Department considered the submitted medical expenses to determine MA eligibility for the three month period that is allowed for submitting verification of medical expenses. Therefore, the March 9, 2015, MA eligibility determination cannot be upheld and Claimant's MA eligibility should be re-determined.

FAP
The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

For the FAP budget, a Medicaid deductible is allowed if the following are true: the medical expenses used to meet the Medicaid deductible are allowable FAP expenses and the medical expenses are not overdue. BEM 554 (October 1, 2014) p. 11.

The Department is to estimate a person's medical expenses for the benefit period. The expense does not have to be paid to be allowed. The Department is to allow medical expenses when verification of the portion paid, or to be paid by insurance, Medicare, Medicaid, etc. is provided. Allow only the non-reimbursable portion of a medical expense. The medical bill cannot be overdue. BEM 554, p. 11.

A medical bill is not overdue if one of the following conditions exists: currently incurred (for example, in the same month, ongoing, etc.); currently billed (client is receiving the bill for the first time for a medical expense provided earlier and the bill is not overdue); or client made a payment arrangement before the medical bill became overdue. BEM 554, p. 11.

Claimant testified she is not as concerned about the FAP case, and her testimony focused on her concerns with the Medicaid system. However, FAP was included on the hearing request, and that portion of the appeal was not withdrawn. Therefore, the FAP determination will still be reviewed.

In this case, the Hearing Facilitator testified that the majority of the medical bills Claimant submitted were past due; therefore, they could not be utilized to increase the FAP amount. The above cited BEM 554 policy does preclude utilizing overdue medical bills for the FAP budget. It was explained that the Department looks at the information provided on the medical bill to try to determine if it is past due. Further, in this case the Department also contacted the medical providers by phone to confirm if medical bills were overdue and if there was a payment arrangement.

One provider, [redacted] [redacted], confirmed that Claimant's account is not past due; there is a payment arrangement, and the amount still owed is $[redacted] The second page of the hearing summary further indicates that the Department may be able to use that bill to increase April FAP benefit or divide what is owed by the number of months in Claimant's certification period to attempt to raise the FAP benefit for the duration of the certification period.

Based on the language in the hearing summary, it appears that the Department has not yet actually utilized the [redacted] [redacted] bill to re-determine FAP eligibility. Further, the copy of the FAP budget for April 2015 shows a medical deduction of $[redacted] was

allowed. It is not clear what the allowed $ medical deductible was based on. If the Department intended to include the amount of Claimant's monthly Medicaid deductible then the amount included in the FAP budget should have been $ Overall, the Department has not provided sufficient evidence to establish that medical expenses were properly included in Claimant's FAP budget.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Claimant's eligibility for MA and FAP regarding consideration of medical expenses.

DECISION AND ORDER

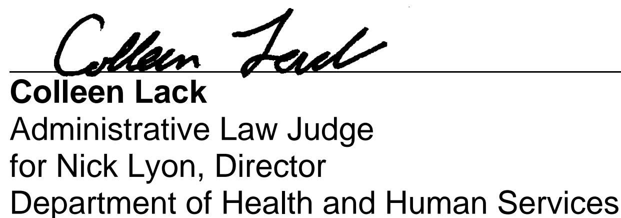
Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Re-determine Claimant's eligibility for MA and FAP based on the documentation of medical expenses submitted on March 9, 2015, in accordance with Department policy.

2. Issue written notice of the determination in accordance with Department policy.

3. Supplement for lost benefits (if any) that Claimant was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.



Colleen Lack
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/12/2015**

Date Mailed: **5/12/2015**

CL/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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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: