

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

IN THE MATTER OF:

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Reg. No.: 15-004373
Issue No.: 2001
Case No.: ██████████
Hearing Date: May 04, 2015
County: Wayne-District 15 (Greydale)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 4, 2015, from Detroit, Michigan. Participants on behalf of Claimant included ██████████ ██████████, Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Health and Human Services (Department) included ██████████ ██████████, Assistance Payment Worker.

ISSUE

Did the Department properly determine that Claimant's Medical Assistance (MA) was subject to a monthly deductible?

Did the Department properly refuse to apply Claimant's expenses for monthly personal care services to her MA case?

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 an ongoing recipient of MA.
2. Claimant is disabled and resides in a semi-independent community home.
3. On February 3, 2015, the Department sent Claimant a Health Care Coverage Determination Notice notifying her that she was eligible for MA for March 1, 2015, ongoing. The Notice also indicated "your deductible amount has changed effective for the dates indicated above:" with a blank following. (Exhibit A).

4. On February 11, 2015, a letter was submitted by the administrator of the home in which Claimant resided indicating that the home was a semi-independent home; that Claimant received 24 hour care; that she paid \$1104 monthly, that her fee included shelter expenses, food, staffing, and all activities of daily living needs including baths, giving medicine and laundry services. The letter also indicated that Claimant had had no changes in her care since moving to the home in 2012 and was expected to remain at the home. (Exhibit B).
5. On March 9, 2015, Claimant requested a hearing concerning the amount of her MA.

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).

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.

Claimant requested a hearing concerning the amount of her MA. At the hearing, the AHR expressed concerns about the Department's failure to process Claimant's expenses related to the home in which she resided and the deductible applicable to her case. The February 3, 2015, Health Care Coverage Determination Notice does not identify a deductible amount but the Notice does not clearly indicate that there is no deductible in Claimant's case. The Department could not verify the coverage Claimant was receiving, and whether a deductible applied to Claimant's case. Because the evidence is unclear, to the extent that Claimant's MA was subject to a deductible, the Department has failed to satisfy its burden of showing that (i) a deductible applied to Claimant's case and (ii) the amount of any applicable deductible.

With respect to payment of the expenses (or application towards her deductible), the Department testified that the letter presented by Claimant in support of her medical expenses was inadequate because (i) it did not specify the period of time during which Claimant was expected to be in the home, (ii) it did not include a breakdown of expenses, and (iii) the home's licensure was not verified.

Allowable medical expenses include the amount the client receives for personal care services while living in her own home, an adult foster care (AFC) home, or a home for the aged (HA). BEM 545 (January 2015), pp. 16, 20. Personal care services in the home, AFC or HA must be services related to activities of daily living and include eating/feeding, toileting, bathing, dressing, transferring, grooming, ambulation, and taking medication. Household services provided in the client's home must be services essential to the ill person's health and comfort and include personal laundry, meal preparation/planning. BEM 545 (January 2015). The personal care services provider must verify all of the following: the date the service was provided and the charge for that day, that the services rendered are services related to activities of daily living, and that household services rendered in the client's home are services essential to the ill person's health and comfort. BEM 545, p. 22.

In this case, the February 11, 2015, letter submitted by the administrator of the home in which Claimant resided indicated that the home was a semi-independent home; that Claimant received 24 hour care; that she paid \$1104 monthly; that her fee included shelter expenses, food, staffing, and all activities of daily living needs including baths, giving medicine and laundry services. The letter also indicated that Claimant had had no changes in her care since moving to the home in 2012 and was expected to remain at the home. (Exhibit B). This letter was sufficient to verify services were provided, the daily charge (the total fee divided by 30), and that the services rendered are services related to activities of daily living or essential to Claimant's health and comfort.

Department policy also provides that, in order to be eligible for personal care services, a physician (MD or DO) must verify the need for personal care services in the client's home, AFC, or HA and the estimated duration of need. BEM 545, p. 22. In this case, there was no evidence presented that a doctor verified the need and estimated duration of need. However, there is no evidence that the Department requested such verification from the AHR. The Department must tell the client what verification is required, how to obtain it, and the due date. BAM 130 (October 2014). In the absence of any requested verifications, the Department did not act in accordance with Department policy when it denied processing Claimant's personal services expenses. Likewise, while the Department alleged that it was unable to verify that the home Claimant resided in was licensed, there was no evidence that the Department asked the AHR in writing prior to case closure to verify the home's status as either an AFC or HA. Even if the home Claimant resides in is not a licensed AFC or HA, Claimant is nonetheless entitled to personal care services to her home as an allowable medical expense.

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 did not act in accordance with Department policy when it failed to request verifications necessary to process Claimant's expenses and failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Claimant's deductible amount, if any.

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. Recalculate Claimant's deductible, if any, for March 1, 2015, ongoing;
2. Process the allowable personal care expenses, requesting any necessary verifications;
3. Pay Claimant's provider for any MA benefits Claimant was eligible to receive but did not from March 1, 2015, ongoing; and
4. Notify Claimant in writing of its decision.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/11/2015**

Date Mailed: **5/11/2015**

ACE / tlf

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:

