



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

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Date Mailed: March 25, 2016
MAHS Docket No.: 15-023777
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION

Following Petitioner'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 March 7, 2016, from Detroit, Michigan. Petitioner was represented by ██████████, her daughter and agent ("Agent") under Durable Power of Attorney dated September 11, 2011. The Department of Health and Human Services (Department) was represented by ██████████ ██████████, Family Independence Manager, and ██████████, Long Term Care (LTC) Specialist.

ISSUE

Did the Department properly apply the home maintenance disregard in calculating Petitioner's Patient Pay Amount (PPA)?

FINDINGS OF FACT

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

1. Petitioner was a recipient of Medicaid (MA) benefits under the Adult Waiver Program.
2. On July 27, 2015, Petitioner became a resident at a nursing facility (Exhibit A, p. 7).
3. On August 24, 2015, Petitioner was transferred to a second nursing facility, where she continued to reside (Exhibit A, pp. 8-9).

4. The Department calculated Petitioner's monthly PPA for July 1, 2015 through December 31, 2015 to exclude a \$733 home maintenance disregard (Exhibit A, pp. 10-15).
5. On August 28, 2015, the Department sent Agent a Health Care Coverage Determination Notice notifying her that Petitioner was eligible for LTC benefits with a \$498 monthly PPA for October 1, 2015 ongoing (Exhibit A, pp. 1-3).
6. On November 30, 2015, the Department sent Agent a Health Care Coverage Determination Notice notifying her that effective January 1, 2016, Petitioner's monthly PPA was increasing to \$1253 (Exhibit A, pp. 4-6).
7. On December 11, 2015, the Department received Agent's written request for hearing disputing the calculation of the PPA.

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.

A PPA is the client's monthly share of the cost of long term care (LTC) or hospital services. BEM 546 (October 2015), p. 1; Bridges Policy Glossary (BPG) (October 2015), p. 47. PPA is equal to total income minus total need. BEM 546, p. 1. Total need is the sum of the following when allowed: patient allowance, home maintenance disregard, community spouse income allowance, family allowance, children's allowance, health insurance premiums and guardianship/conservator expenses. BEM 546, p. 1.

At dispute in this case is the application of the home maintenance disregard to the calculation of Petitioner's PPA. A home maintenance disregard is available to MA beneficiaries who will be residents of a LTC facility for less than six months to divert income for maintenance of the beneficiaries' home for a maximum of six months. BEM 546, p. 3. The beneficiary must meet the criteria established in policy in order to be eligible for a home maintenance disregard towards the calculation of the PPA. BEM 546, pp. 3-4.

In this case, the parties do not dispute Petitioner's eligibility of the home maintenance disregard. At issue is the six-month period that Petitioner was eligible to receive the disregard. Agent argues that the six-month home maintenance disregard should begin when Petitioner became responsible for payment of the PPA, which was October 1, 2015 in this case, and would therefore continue through March 31, 2016. The Department contends that the six-month period for application of the home maintenance disregard began the month Petitioner in the LTC facility, which was July 2015, and expired December 31, 2015.

Department policy provides that the effective date of the home maintenance disregard is the first day of MA eligibility as a nursing facility resident. BEM 546, p. 4. When adding MA coverage for a month having a hospital, LTC or post-eligibility PPA, the begin date of the PPA is the first day of the month **or** the hospital admission date/LTC admission date, which is later. BEM 547 (July 2015), p. 4. The Department puts the PPA on when adding MA coverage regardless of how long an application has pended. BEM 547 (July 2015), p. 4.

In this case, Petitioner was admitted to the LTC facility on July 27, 2015. Therefore, the begin date of the PPA was July 27, 2015. Because the Department had to calculate the PPA for July 2015, it properly began applying the home maintenance disregard in the PPA calculated for that month (Exhibit A, p. 10) even though Petitioner was not obligated to pay the PPA until October 2015.

The Department explained that the delay in Petitioner's obligation to pay the PPA was due to the fact that it had to provide timely notice of the PPA. Department policy provides that the Department must use the standard negative action procedures to begin the PPA. BAM 120 (June 2015), p. 3. The Department may not increase or add a PPA for a past period for which the person already has MA coverage. BEM 547, p. 5.

In this case, Petitioner was a waiver program enrollee at the time she was admitted to the LTC facility. Therefore, the Department was required to provide timely notice of her obligation to pay the PPA. The Health Care Coverage Determination Notice sent to Agent on August 28, 2015 notifying her that Petitioner was eligible for LTC benefits with a PPA of \$498 effective October 1, 2015 (Exhibit A, pp. 1-3) provided timely notice of the PPA. See BAM 220 (July 2015), pp. 11-12. Although the Notice indicates in the "comments from your specialist" section that the PPA began August 1, 2015, the Department testified that this was an error and that Petitioner's obligation to pay the PPA began October 1, 2015. Agent confirmed that Petitioner began paying the PPA to the nursing facility in October 2015.

Agent argued at the hearing that the Department did not properly explain that the home maintenance disregard period started in July 2015 and she was not aware of the expiration of the 6-month disregard until she received Health Care Coverage Determination Notice notifying her that effective January 1, 2016, Petitioner's monthly PPA was increasing to \$1253 (Exhibit A, pp. 4-6). However, it appears that Agent

assumed that the home maintenance disregard commenced when Petitioner's obligation to pay the PPA became effective rather than when Petitioner entered the nursing facility; there is no evidence that the Department misled her.

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 applied the home maintenance disregard towards the calculation of Petitioner's PPA.

DECISION AND ORDER

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



ACE/tlf

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

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

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

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