



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: November 1, 2016
MAHS Docket No.: 16-008074
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, and upon Petitioner's request for a hearing.

After due notice, an in-person hearing was held on October 12, 2016. [REDACTED], Petitioner's daughter, appeared and testified on Petitioner's behalf. [REDACTED], Petitioner's son, also testified as a witness for Petitioner. [REDACTED], Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). [REDACTED], Departmental Specialist, testified as a witness for the Respondent.

ISSUE

Did the Department properly deny Petitioner's request for a Pre-Eligibility Medical Expense (PEME) offset?

FINDINGS OF FACT

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

1. On January 1, 2009, Petitioner was approved for Medicaid. (Exhibit A, page 8; Testimony of Department's witness).
2. Subsequently, Medicaid redeterminations were completed in July of 2010 and 2011. (Exhibit A, page 9; Testimony of Department's witness).
3. On October 19, 2013, the Department sent Petitioner's daughter a Notice of Case Action indicating that Petitioner's Medicaid case would be closed on November 1, 2013. (Exhibit A, pages 11-12).

4. The reason given for the case closure was:

We must periodically review your eligibility for assistance. You failed to return the redetermination form mailed or given to you for this purpose and/or to provide required proofs. Therefore, we cannot determine your continued eligibility for assistance.

Exhibit A, page 12

5. On October 31, 2013, Petitioner was admitted as a resident at [REDACTED] a nursing facility. (Testimony of Petitioner's son).
6. Petitioner was initially admitted for rehabilitation pursuant to her Medicare coverage. (Testimony of Petitioner's son).
7. On November 1, 2013, the Department sent Petitioner's daughter another Notice of Case Action indicating that Petitioner's Medicaid case was closed as of November 1, 2013. (Exhibit A, pages 13-14).
8. In that notice, the Department stated that Petitioner's case was being closed because the value of her countable assets were higher than allowed for the program. (Exhibit A, page 14).
9. After 90 days at [REDACTED], Petitioner was converted into a long-term patient. (Testimony of Petitioner's son).
10. While neither Medicare nor Medicaid was paying for Petitioner's stay at the facility after the first 90 days, [REDACTED] did not bill Petitioner and repeatedly advised Petitioner's children that everything was fine. (Testimony of Petitioner's son; Testimony of Petitioner's daughter).
11. In April of 2014, Petitioner's children learned that Petitioner did not have Medicaid coverage. (Testimony of Petitioner's son; Testimony of Petitioner's daughter).
12. They also learned that Petitioner owed approximately [REDACTED] to [REDACTED] (Testimony of Petitioner's son; Testimony of Petitioner's daughter).
13. They then paid what they could out of Petitioner's assets and brought the debt down to [REDACTED]. (Testimony of Petitioner's son; Testimony of Petitioner's daughter).
14. In May of 2014, Petitioner submitted a new application for Medicaid. (Exhibit A, page 15).

15. That application was approved and she has been on Medicaid since that time. (Exhibit A, page 15; Testimony of Department's witness).
16. A Medicaid Redetermination was also completed in 2015. (Testimony of Department's witness).
17. On January 19, 2016, the Department received a request for a PEME exception to offset the balance of [REDACTED]. (Exhibit A, page 5).
18. Subsequently, the Department denied the request for a PEME exception. (Testimony of Department's witness).
19. On June 24, 2016, the Michigan Administrative Hearing System received the full and complete request for hearing filed in this matter. (Exhibit A, page 3).

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Here, Petitioner applied for a PEME offset and, with respect to that patient pay offset, Bridges Eligibility Manual (BEM) 164 (1-1-2016), pages 3-4, provides:

Patient Pay Offsets

If an LTC applicant requests an offset of their patient pay to cover old medical bills, see Pre-Eligibility Medical Expense (PEME) in glossary and in this item. Assist the applicant by forwarding their unpaid bills to:

Medical Services Administration
Michigan Department of Health and Human Services
P.O. Box 30479
Lansing, MI 48909-9634
Attn: PEME

MDHHS will determine whether an offset is allowable.

Offsets will be applied to the months following an approval. In general, the allowable expenses are the same as allowed for a group 2 deductible case. In addition, the medical expense(s) must be:

- Expenses incurred in the three months prior to application for Medicaid.
- Unpaid, and an obligation still exists to pay.
- Cannot be from a month where Medicaid eligibility existed.
- Cannot be covered by a third party source (public or private).
- Cannot be from a month in which a divestment penalty has been imposed.
- Cannot have been used previously as a pre-eligibility medical expense to offset a patient pay amount.
- Can include cost of room and board for Medicaid LTC facilities, remedial care, and other medical expenses recognized by Michigan law but not covered under the Michigan state plan.
- Must be reported prior to the first Medicaid redetermination following the initial eligibility.
- MDHHS will terminate offsets if there is a failure to pay the medical provider with the funds.

Pursuant to the above policy, the Department denied Petitioner's request for a PEME offset in this case on the basis that the expense was not reported prior to the first Medicaid redetermination following Petitioner's initial eligibility.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred.

Here, Petitioner's representatives did not attempt to demonstrate that the Department erred or that no redeterminations had been completed prior to the PEME request. Instead, they testified that they were repeatedly given wrong information by Medilodge and were never timely billed as the unpaid balance accrued, which would have alerted them to the problem. However, the undersigned Administrative Law Judge is bound by the applicable policy and cannot decide this case as a matter of equity. Moreover, any dispute between Petitioner and the facility as to what was discussed between them and what is owed is beyond the scope of this proceeding as the undersigned Administrative can only review the Department's action at issue in this case.

Accordingly, regardless of any dispute between Petitioner and the nursing facility regarding what should be owed, the Department's action in this case must be affirmed, as it is undisputed that Appellant was deemed initially eligible for Medicaid in 2009 and reapproved in 2014, and that redeterminations had already been completed following both those approvals prior to Petitioner requesting a PEME offset. As clearly provided in the above policy, offsets will be only be applied to expenses that are reported prior to the first Medicaid redetermination following initial eligibility and Petitioner's expenses clearly do not meet that criteria.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that, the Department properly denied Petitioner's request for a PEME offset.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **AFFIRMED**.

SK/tm



Steven Kibit

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 30763
Lansing, Michigan 48909-8139

DHHS Department Rep.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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Authorized Hearing Rep.

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