



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: August 26, 2016
MAHS Docket No.: 16-009442
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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, an in-person hearing was held on August 18, 2016, from Detroit, Michigan. Petitioner did not appear. [REDACTED] testified and appeared as Petitioner's attorney. [REDACTED] Petitioner's spouse testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], specialist, and [REDACTED], Supervisor.

ISSUE

The issue is whether MDHHS properly determined Petitioner's patient pay amount (PPA) for Medicaid.

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 an ongoing Medicaid recipient.
2. Petitioner was an ongoing resident of a nursing home.
3. On [REDACTED], MDHHS determined Petitioner's PPA without factoring a [REDACTED] insurance premium.
4. On [REDACTED], Petitioner's attorney submitted proof to MDHHS Petitioner was responsible for payment of a [REDACTED] insurance premium.

5. On [REDACTED], Petitioner requested a hearing to dispute the PPA calculated by MDHHS.

CONCLUSIONS OF LAW

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. MDHHS (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

A procedural issue was raised by MDHHS near the beginning of the hearing. MDHHS requested an adjournment so that MDHHS could obtain representation from the Office of Attorney General. MDHHS requested the adjournment in direct response to Petitioner's use of legal representation. MDHHS' request was denied because Petitioner's hearing request listed an attorney as an authorized hearing representative. Thus, MDHHS had ample notice Petitioner was represented by an attorney, thereby giving MDHHS little excuse for not obtaining their own legal representation before the hearing.

Petitioner's attorney requested a hearing to dispute a PPA calculated by MDHHS. A specific month of dispute was not cited in the hearing request. Petitioner's attorney testified the request intended to dispute Petitioner's PPA from February 2016.

MDHHS responded by contending that Petitioner was barred from pursuing the dispute due to a previous administrative decision. MDHHS presented an administrative decision (Exhibit 1, pp. 1-4) dated January 25, 2016. The administrative decision affirmed a MDHHS determination of Petitioner's PPA from February 2015.

A hearing decision concerning Petitioner's PPA from February 2015 is not binding on a dispute of Petitioner's PPA from February 2016. Consideration was given to finding that Petitioner was barred from disputing the PPA amount from February 2016 if Petitioner's evidence mirrored the evidence from the previous administrative decision. This consideration was ultimately rejected as Petitioner presented evidence not considered in the previous administrative decision.

It is found Petitioner is not barred from disputing a PPA from February 2016 based on a previous administrative decision. A different procedural obstacle poses a problem for Petitioner.

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (October 2015), p. 6. The request must be received in the local office within the 90 days. *Id.*

MDHHS presented a Health Care coverage Determination Notice (Exhibit 1, pp. 15-18) dated [REDACTED]. The notice stated Petitioner's PPA was [REDACTED] effective February 2016. The written notice appeared to be sent following a redetermination of Petitioner's Medicaid eligibility (see Exhibit 1, p. 19).

Petitioner's attorney requested a hearing on [REDACTED]. Petitioner's attorney's request was submitted more than 5 months after the last verified written notice was sent by MDHHS. The lapse in time prevents Petitioner from disputing Petitioner's PPA from February 2016. The lapse does not necessarily totally preclude an administrative hearing resolution.

Petitioner's attorney presented a letter (Exhibit A, p. 1) dated [REDACTED]. It was not disputed the letter was submitted to MDHHS, along with other documents (see Exhibit A, pp. 3-7), in an attempt to compel MDHHS to adjust Petitioner's PPA. It was not disputed that MDHHS responded to Petitioner's submission by changing nothing in Petitioner's ongoing PPA determination. Thus, it can be inferred that Petitioner's attorney's hearing request also disputed MDHHS' failure to process Petitioner's submission. Petitioner's attorney conceded the only dispute concerning Petitioner's PPA was the failure by MDHHS to factor a [REDACTED] insurance premium.

Changes in circumstances may be reported by the client, via computer tape matches, through quality assurance (QA) reviews, or by other means. BAM 220 (April 2016), p. 1. [MDHHS is to] act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change. *Id.*, p. 7.

Based on MDHHS policy, Petitioner could have expected a change in Petitioner's PPA to be effective June 2016. Though MDHHS did not send written notice, the absence of notice is not deemed problematic because MDHHS is not required to send written notice for an unchanged PPA (see BAM 220). MDHHS testimony credibly indicated written notice was not issued because presented documents failed to justify inclusion of a [REDACTED] insurance premium. The analysis will proceed to determine if MDHHS properly excluded the insurance premium from Petitioner's PPA.

A post-eligibility patient-pay amount is the L/H patient's share of the cost of LTC or hospital services. BEM 546 (January 2016) p. 1. The post-eligibility patient-pay amount is total income minus total need. *Id.* Total need is the sum of [various expenses, which include] health insurance premiums. *Id.*

[MDHHS is to] include as a need item the cost of any health insurance premiums (including vision and dental insurance) the L/H patient pays for another member of their fiscal group, regardless of who the coverage is for. *Id.*, p. 8. [For] example[, a] L/H

patient pays health insurance premiums for two (self and spouse)... [should be credited for] health insurance premiums for two. *Id.*

MDHHS policy clearly allows an insurance premium for a husband and spouse to be credited as a need in a PPA calculation if it is verified that the L/H patient pays the premium. MDHHS contended evidence supported Petitioner's spouse, not Petitioner, paid for the [REDACTED] insurance premium.

MDHHS presented insurance company correspondence (Exhibit 1, pp. 5-6) dated February 29, 2015. The correspondence was a bill for a [REDACTED] insurance premium. The correspondence was mailed to Petitioner's spouse.

Petitioner's spouse is considered a "community spouse" (i.e. the spouse of a resident of a long-term care facility). MDHHS contended the mailing of an insurance company letter to a community spouse was highly persuasive that Petitioner did not pay the premium. The MDHHS argument was not particularly persuasive.

Generally, when one member of a couple lives in a long-term-care facility, and the other does not, bills are likely to be sent to the member living outside of a long-term-care facility. This generality considers that persons not capable of independent living are also not competent enough to be responsible for finances.

Another reason the bill may have been mailed to Petitioner's spouse is more likely to be received by Petitioner's spouse at a private residence rather than Petitioner who resides at a group facility. Thus, it is not particularly insightful that Petitioner's insurance correspondence was sent to her spouse.

Petitioner's attorney presented a statement from a checking account listing Petitioner and her spouse and account holders (Exhibit A, pp. 4-5). The bank statement covered the period from [REDACTED]. The only income deposited into the account during the statement timeframe was Petitioner's SSA benefits.

Petitioner's attorney presented a copy of a cashed check (Exhibit A, p. 6) from Petitioner's joint checking account. The check was dated [REDACTED], and paid to Petitioner's insurance company in the amount of [REDACTED].

Presented evidence sufficiently verified that Petitioner's income pays for a monthly insurance premium of [REDACTED]. Thus, the premium was established as a need which should have been factored in Petitioner's PPA calculation.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly calculated Petitioner's PPA. It is ordered that, within 10 days of the date of mailing of this decision, MDHHS begin to recalculate Petitioner's PPA, effective June 2016, subject to the finding that Petitioner pays a [REDACTED]

insurance premium for herself and her spouse. The actions taken by MDHHS are **REVERSED**.

CG/hw



Christian Gardocki

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

DHHS

[REDACTED]

[REDACTED]

Counsel for Petitioner

[REDACTED]

Petitioner

[REDACTED]