



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: February 1, 2017
MAHS Docket No.: 16-018084
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 January 5, 2017, from Lansing, Michigan. The Petitioner appeared on her own behalf, along with her Authorized Hearing Representative, [REDACTED] [REDACTED]. The Department of Health and Human Services (Department) was represented by Family Independence Manager [REDACTED] [REDACTED] and Eligibility Specialist [REDACTED] [REDACTED].

ISSUE

Did the Department properly determine Petitioner's Medical Assistance (MA) and Food Assistance Program (FAP) benefits?

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 on-going FAP and MA recipient.
2. On September 15, 2016, Administrative Law Judge Aaron McClintic presided over a hearing request in which Petitioner was protesting closure of her MA.
3. In his Decision and Order mailed October 14, 2016, ALJ McClintic ordered the Department to reprocess medical bills Petitioner had submitted on June 20, 2016, and July 8, 2016. He also ordered the Department to provide an explanation and

calculation showing whether she met her monthly deductible of \$ [REDACTED] (Exhibit 1 Pages 34-38.)

4. On October 20, 2016, the Department mailed a Quick Note (Page 39), a Verification Checklist (Pages 40-41), Medicaid Deductible Information (Pages 42-43), a Deductible Report (Pages 44-45) and copies of several medical receipts she had submitted, many of which had handwritten notes explaining why they were not allowed toward her monthly deductibles (Pages 46-76).
5. Petitioner has unearned income of \$ [REDACTED] per month (Page 98).
6. Petitioner's son, [REDACTED], is providing services to Petitioner in her home, and charging her approximately \$ [REDACTED] per month (Pages 71-75).
7. Petitioner has been approved for Adult Services effective August 12, 2016 (Pages 18-20) of \$ [REDACTED] per month.
8. Because Petitioner has a spend-down, her adult services benefit is pro-rated, based upon the day of the month when she meets her spend down.
9. The Department provided a Medical Expenses Summary (Pages 82-84) identifying expenses that have been submitted, and the amount that is Petitioner's responsibility to pay.
10. Petitioner receives \$ [REDACTED] per month in FAP (Pages 94-95).
11. On November 23, 2016, the Department received a hearing request from Petitioner, protesting the MA and FAP benefits.

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.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, 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 Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

BEM 545 (1/1/17), p. 21-22 explains the policy regarding the allowance for personal care services.

EXHIBIT ID - PERSONAL CARE SERVICES

Allowable medical expenses (EXHIBIT I) include amounts the medical group **incurs** for personal care services in their home or AFC, or Home for the Aged. Clients may receive personal care services while living in their own home, an adult foster care (AFC) home or a home for the aged (HA).

Personal care expenses in their home, AFC or HA are incurred monthly regardless of when services are paid for.

In addition, the client may be liable for the employer's portion of FICA taxes. This FICA liability is an allowable medical expense. If the client claims this expense, use the current percentage for the employer's portion of the FICA tax on the incurred cost rather than the actual FICA payment. The services specialist has information about the current percentage for the employer's portion of the FICA tax.

Allowable Services

Personal care services in their home, AFC or HA must be services related to activities of daily living. Activities of daily living include:

- Eating/Feeding.
- Toileting.
- Bathing.
- Dressing.
- Transferring
- Grooming.
- Ambulation.
- Taking medication.

Household services provided in the beneficiary's home must be services essential to the ill person's health and comfort. Such services include:

- Personal laundry.
- Meal preparation/planning.
- Shopping/errands.
- Light housecleaning.

Excluded Services

The following services are **not** allowable as personal care:

- Heavy housecleaning.
- Household repairs.
- Yard work.

The following services are **not** allowable as personal care for clients residing in an AFC or HA:

- Room.
- Board.
- Supervision.
- Household services.
- Remedial services; see BEM 544.

Personal Care Services in Beneficiary's Home, AFC, or HA

The personal care services provider **cannot** be a responsible relative of the person requiring care if the client lives in his own home. Responsible relative means:

- A person's spouse.
- The parent of an unmarried child under age 18.

A physician (MD or DO) must verify the need for personal care services in their home, AFC, or HA and the estimated duration of need. At the end of the estimated duration of need, a physician must verify continued need.

If available, use the verifications obtained by Adult Services for the Home Help eligibility determination or the Adult Community Placement (ACP).

In this case, Petitioner's son is billing her approximately \$ [REDACTED] per month for services he says he is providing for her. Petitioner said that he is only being paid \$ [REDACTED] per month, some of which is coming from other family members. The Department has approved her for help in the home (Page 19) of up to \$ [REDACTED] per month, and that is a pro-rated amount after Petitioner has met her monthly spend-down. One example of an approved service is meal preparation. She was approved for 50 minutes per day for meal preparation, or 25 hours and 5 minutes per month, at \$ [REDACTED] per hour. Her son has billed her \$ [REDACTED] per hour, for two hours a day which he calculates to be \$ [REDACTED] weekly. (Page 72.)

The Department mailed to Petitioner a letter on November 21, 2016, (Petitioner's Exhibit A Pages 1-2) explaining the Department's analysis of her situation regarding her MA. Pages 3-6 of Exhibit A are documents that need to be billed to Medicaid.

As stated in BEM 545, an MA recipient must meet the deductible at least once in every three month period. "Redetermine eligibility for active deductible cases at least every 12 months unless the group has not met its deductible within the past three months. If a group has not met its deductible in at least one of the three calendar months before that month and none of the members are QMB, SLM or ALM eligible, Bridges will automatically notify the group of closure." BEM 545 at 11.


The Department has established that it calculated Petitioner's spend-down. The policy does not allow the payment of in-home services until the spend-down has been met. It is up to Petitioner to establish that she has met the spend-down for each month before her son can be paid for providing care. The evidence also establishes that the Department correctly calculated her FAP benefits.

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 determined Petitioner's eligibility for MA and FAP.

DECISION AND ORDER

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

DJ/mc



Darryl Johnson
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]

Authorized Hearing Rep.

[Redacted]

Petitioner

[Redacted]