



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 3, 2017
MAHS Docket No.: [REDACTED] 17-006449
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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; 42 CFR 438.400 to 438.424; 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 [REDACTED], from Detroit, Michigan. The Petitioner was represented by [REDACTED], Petitioner's Authorized Hearing Representative (AHR). The Petitioner did appear at the hearing. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly process the Petitioner's personal care expenses as eligible medical expenses to meet her Medical Assistance deductible?

FINDINGS OF FACT

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

1. The Petitioner, at the time of the hearing, was residing in an assisted living facility, America Home, and receives full services which include 3 meals daily, maid service daily, weekly housekeeping and laundry and transportation to appointments. Petitioner's monthly rate which she pays is [REDACTED]. Exhibits A and B.
2. The Petitioner also receives personal care services for incontinence and assistance plus services. The cost for these services varies. Exhibit B

3. The Petitioner's doctor provided a Medical Needs form indicating Petitioner has needs with activities of daily living which include: toileting bathing, grooming, dressing, transferring, taking medications, meal preparation, shopping laundry, and housework. The Petitioner is non-ambulatory and is in a wheelchair. Exhibit D, Exhibit E and Petitioner Exhibit 1.
4. The Petitioner is eligible for Medical Assistance Group 2 with a monthly deductible of [REDACTED].
5. The Petitioner's Authorized Hearing Representative requested a timely hearing on [REDACTED].

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.

In this case, the Petitioner sought to have personal care expenses she receives at her assisted living facility applied to her monthly MA deductible of [REDACTED]. The Petitioner is not in a long term care facility. The Petitioner incurs monthly medical team personal care services for incontinence and Assistance Plus for a total of [REDACTED]. The services are provided by the Assisted Living Facility's Medical Team Personal Care Services. Exhibit C. The bill submitted for these personal care services fluctuate each month and the costs for services are in addition to the monthly cost of the Assisted Living Facility fee of [REDACTED]. The Petitioner's doctor has completed a Medical Needs form confirming the Petitioner needs personal care services due to her physical disability and inability to assist herself. The Department has not requested verification of, or additional information regarding, the specifics of Petitioner's personal care expenses as it relates to the Medical Team Personal Care Services. It approved the bill as eligible to be applied to Petitioner's MA deductible for [REDACTED], but not thereafter. No explanation was provided for why subsequent bills have not been approved and applied to Petitioner's MA deductible after [REDACTED].

Personal Care Services are defined as:

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.

BEM 545, (January 2017), p. 23-24.

On [REDACTED], the Department sent a Health Care Determination Notice finding Petitioner eligible on [REDACTED], ongoing, for Medical Assistance with a [REDACTED] deductible.

The Department, in [REDACTED], approved the [REDACTED] Medical Plus services for a one-time expense, but not ongoing. The Department could not explain why the expense is not eligible for the deductible ongoing. The Department has not sought additional verification information regarding the Medical Team Personal Care Services bill.

In addition, the Department has not sought verification with respect to what portion of the monthly Assisted Living costs are applicable to the Petitioner's personal care expenses, such as meals, housekeeping, laundry, shopping transportation to appointments. In addition, the Petitioner pays for her Part D premium for Medicare in the approximate amount of ██████ monthly. As the Department has not applied either of these bills and has not sought further verification of the expenses to determine whether they are eligible medical expenses, the Department has not met its obligations under BEM 545 regarding verifications. BEM 545 requires that the service provider must verify all of the following: date the service was provided, charge for that day for the services provided, that the services rendered are services related to activities of daily living and that the household services rendered in the beneficiary's home are services essential to the ill person's health and comfort. BEB 545, p 25.

As explained at the hearing the client's MA deductible must be met before full coverage MA is provided. In this case, the Department must review the ongoing submissions for ██████ from the Medical Team Personal Care Services which is ongoing and make a determination with respect to eligibility for these services as an eligible medical expense. In addition, the Department must advise the Petitioner if any of the medical bills or expenses submitted for meeting her deductible expense are either allowed, denied or need further explanation.

The submission of the monthly bill associated with ██████ se in the amount of ██████ does not provide any breakdown of the costs attributable to housekeeping, meals, transportation to appointments and, laundry or other personal care services provided as part of the monthly fee. In order for the Department to determine if any of the monthly bill is eligible to be applied to Petitioner's deductible as a medical expense or personal care expense, the bill must be further refined to demonstrate the cost of those services which fit the personal care services outlined above. To the extent the monthly fee for assisted living of ██████ includes costs for these services they must be provided to the Department so the costs associated with the services are known and eligibility can be determined. The Petitioner's AHR testified that he has submitted these bills since ██████, ongoing, without any request for verification from the Department and has not been notified with respect to whether the bills have been applied to the deductible. The Department is responsible for obtaining verification of the need for personal care services and making an eligibility determination. BEM 545, p. 26. There was no evidence presented regarding whether the Department made such a determination, or if not, why the Department has not made such determination and the reason it was not deemed necessary.

The Department has continued to receive bills from Petitioner for Medical Team, personal care expenses and ██████ since ██████ and the bills have not been approved. The Petitioner's doctor's Medical Need form was provided to the Department in ██████. Based upon the evidence provided it is determined that the Department did not fulfill its responsibility to verify the bills which have been submitted to date to determine whether they qualify for ongoing personal care services and what portion of the costs are eligible for these services. See also BEM 545, p. 25

which allows the beneficiary with excess income to be eligible for ongoing MA coverage and may pay a portion of their personal care cost from her excess income. The Department has not taken any action to determine if this option for the Petitioner to pay her excess income for personal care services and what amount DHHS will approve for personal care.

BAM 130 provides that the Department must obtain verification when information regarding an eligibility factor is unclear or incomplete. Verification is usually required at application **and** for a reported change affecting eligibility or benefit level. In this case, the Petitioner's MA coverage changed from a waiver with full coverage after her spouse died, to a deductible. Thereafter, no verification regarding the Petitioner's eligibility for personal care services and medical expense eligibility of the personal care services submitted to the Department were verified by the Department. BEM 130 (April 2017), p. 1.

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 determine the Petitioner's eligibility for personal care services and whether the bills submitted for personal care services were eligible medical expenses as regard Petitioner's MA deductible.

DECISION AND ORDER

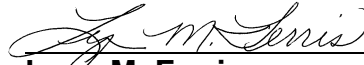
Accordingly, the Department's decision is

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. The Department shall process the medical bills and personal care services associated with the bills and determine both the Petitioner's eligibility for personal care services and determine what the portion of the bills for personal care services from both the Medical Assistance Personal Care Services and [REDACTED] are eligible to be applied to Petitioner's MA deductible of [REDACTED].
2. The Department shall provide the Petitioner's AHR written Notice of its determinations and correspondence and requests for verification, if any.

LF/hw



Lynn M. Ferris
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]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED]