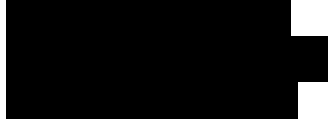




GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS  
DIRECTOR



Date Mailed: March 25, 2020  
MOAHR Docket No.: 20-001147  
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; 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 March 11, 2020, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Kalyn Jones, specialist.

### **ISSUE**

The issue is whether MDHHS properly processed Petitioner's medical expenses towards Petitioner's Medicaid monthly 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. For June 2019, MDHHS approved Petitioner for Medicaid, subject to a deductible.
2. For July 2019, MDHHS approved Petitioner for Medicaid, subject to a deductible.
3. From August 29, 2019 through August 31, 2019, MDHHS approved Petitioner for Medicaid, subject to a Medicaid deductible of \$742.
4. From September 5, 2019, through September 30, 2019, MDHHS approved Petitioner for Medicaid, subject to a monthly deductible of \$742.

5. On November 16, 2019, Petitioner submitted to MDHHS medical bills from June 2019 through September 2019. Petitioner's August 2019 bills were as follows: \$4,316.71 from August 16, 2019, \$7,043.98 from August 23, 2019, and \$3,616.99 from August 29, 2019. Petitioner additionally submitted bills from September 2019 for services dated September 5, 2019, and later.
6. On [REDACTED], 2020, Petitioner requested a hearing to dispute the processing of medical expenses towards her deductible. Petitioner submitted additional medical bills with her hearing request.
7. On February 10, 2020, Petitioner submitted additional medical bills to MDHHS.

### **CONCLUSIONS OF LAW**

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. MDHHS 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).

Petitioner submitted a hearing request to MDHHS on January 17, 2020, disputing MDHHS' method of processing medical bills towards her spenddown. Exhibit A, pp. 4-6. Resolution of Petitioner's dispute requires an examination of the spenddown policy.

Income eligibility for Medicaid exists for the calendar month tested when there is no excess income (i.e. a client is eligible for Medicaid) or allowable medical expenses equal or exceed the excess income (i.e. when a client meets the monthly deductible). BEM 545 (July 2019) p. 3. Clients with a deductible can receive Medicaid for a full month when one of the following costs equals or exceeds the group's excess income: old bills, personal care services in a client's home, Adult Foster Care, home for the aged, hospitalization, and/or long-term care (LTC). *Id.* When one of the above does not equal or exceed the group's excess income for the month tested, income eligibility begins either:

- The exact day of the month the allowable expenses exceed the excess income.
- The day after the day of the month the allowable expenses equal the excess income.

*Id.* and *Id.*, p., p. 3.

Income eligibility exists for all or part of the month tested when the medical group's allowable medical expenses equal or exceed the fiscal group's excess income. BEM 545 (July 2019) p. 3. For past benefit months, the following process is employed:

Step 1- Compare the medical group's allowable old bills to the excess income.

- a. If there are no old bills, go to Step 2.
- b. If there are old bills and they total less than the excess income, subtract the old bills to get the remaining excess income and go to Step 3.
- c. If the old bills equal or exceed the excess income, subtract the excess income from the allowable old bills to get the unused old bills. Income eligibility exists for the entire month tested, and:
  - i. If this is a past month, stop.
  - ii. If this is the processing month, process unused old bills for future months

Step 2- Determine the group's personal care services and process. If none, go to the next step.

Step 3- Determine the group's LTC expenses and process. If none, go to the next step.

Step 4- Determine group member's allowable inpatient hospital expenses for the month.

- If expenses incurred by one qualified fiscal group member for one admission equal or exceed the excess income, income eligibility exists for the entire month.
- If expenses incurred by one qualified fiscal group member for one admission are less than the excess income, go to Step 5.

Step 5- Determine the group's total allowable medical expenses

- If less than the remaining excess income, income eligibility does not exist for this month. If this is a past month, stop. If this is the processing month, the group has or continues to have a deductible.
- If equal to or more than the remaining excess income, income eligibility exists starting on:
  - The day after the day the expenses equaled the excess income; or
  - The exact day the expenses exceeded the excess income. However, MA may only be billed for the amount that exceeds the group's liability.

*Id.*, pp. 3-5.

Third party resource payments are payments from any liable third party for medical care. *Id.*, p. 19. They include payments Medicare, other health insurers or any liable third party made or will make. *Id.* Payments made by any third party cannot be included as part of the beneficiary's medical expense for medical services. *Id.* Thus, specialists must try to find out if any liable third-party resource payment has been, or will be made, to determine a beneficiary's costs. *Id.* MDHHS counts only the beneficiary's cost as a medical expense. *Id.*

In the present case, the hearing packet included three different batches of Petitioner's medical bills. One set appeared to be submitted by Petitioner to MDHHS on November 19, 2019. Exhibit A, pp. 38-44. One set was submitted by Petitioner to MDHHS with her hearing request on [REDACTED], 2020. Exhibit A, pp. A third set was submitted by Petitioner to MDHHS on February 10, 2019. Exhibit A, pp. 45-47. 8-32. The analysis will address each batch separately.

Petitioner submitted medical bills to MDHHS on November 19, 2019. A summary of these bills are as follows:

Date of medical service	Amount billed to Pet.	Exhibit A, p#
June 10, 2019	\$4,005.38	41
July 20, 2019	\$2,034.99	44
August 16, 2019	\$4,316.71	40
August 23, 2019	\$7,043.98	39
August 29, 2019	\$3,616.99	38
September 5, 2019	\$3,616.99	43
September 12, 2019	\$4,316.71	42

MDHHS noted that these bills were processed, as evidenced by Petitioner's Medicaid eligibility in June 2019, July 2019, and parts of August 2019 and September 2019. Exhibit A, pp. 36-37. For June 2019, and July 2019, indeed, MDHHS can do no more for Petitioner other than to issue Medicaid for the entire month. Thus, for Petitioner's Medical bills in June 2019 and July 2019, MDHHS' actions will be affirmed.

For Petitioner's medical expenses from September 2019, MDHHS approved Petitioner for Medicaid beginning September 5, 2019. There was no evidence that Petitioner had medical expenses from before September 5, 2019. Under the above guidelines, only Step 5 is applicable as Petitioner's expenses were not for old bills, personal care, AFC, LTC, or hospitalization. Under Step 5, MDHHS is to issue Medicaid starting the day that the expenses exceeded the deductible. As all of Petitioner's medical expenses were for dates no earlier than September 5, 2019, MDHHS could have done no more than issue Medicaid from the date of Petitioner's first medical expense in that month. Thus, for September 2019, MDHHS's actions will also be affirmed.

For Petitioner's bills from August 2019, again, only Step 5 of the above process is applicable. For August 2019, Petitioner had a \$742 deductible. After Petitioner submitted her medical bills to MDHHS, Petitioner was approved for Medicaid beginning August 29, 2019. Petitioner incurred her \$742<sup>nd</sup> dollar of medical expenses for the month on August 16, 2019. Under the above steps, Petitioner is entitled to Medicaid beginning the date her expenses exceeded her deductible. Thus, MDHHS should have processed Medicaid benefits to Petitioner for August 2019, beginning August 16, 2019.

Notably, MDHHS cannot alter a Medicaid begin date for a deductible month once it is properly processed. *Id.*, p. 14. Thus, if Petitioner submitted her medical expenses from August 16, 2019, and 8/23/9 to MDHHS after her Medicaid eligibility beginning August 29, 2019, she would not be entitled to a Medicaid begin date earlier than August 29, 2019.<sup>1</sup> The evidence established that Petitioner submitted all of her medical expenses to MDHHS on the same date in November 2019. Thus, MDHHS is left with no known reason for not issuing Medicaid to Petitioner as of August 16, 2019.

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<sup>1</sup> In such a case, Petitioner's bills for August 16, 2019 and August 23, 2019 could be treated as old bills to give Petitioner future Medicaid eligibility.

During the hearing, MDHHS expressed skepticism that Petitioner's bills from August 2019 reflected Petitioner's responsibility of her bill. MDHHS should not process medical bills towards a deductible unless they reflect the client's responsibility to pay. In the present case, MDHHS' skepticism was not corroborated with any evidence. MDHHS' skepticism, by itself, is insufficient to deny Petitioner the processing of the bills. As noted above, it is the specialist's responsibility to determine third party liability for medical expenses. Concerning Petitioner's medical expenses from August 2019, MDHHS will be ordered to evaluate the bills towards Petitioner's deductible.

Concerning Petitioner's medical bills submitted on February 10, 2020, they were notably submitted after Petitioner's hearing request. Hearings are intended to determine if past actions taken by MDHHS are proper. Petitioner cannot request a hearing to dispute the processing of bills which MDHHS had not yet received. MDHHS cannot be ordered to take actions for a matter that they could not take as of a hearing request date. Concerning the process of medical bills submitted to MDHHS on February 10, 2020 (Exhibit A, pp. 45-47) Petitioner's hearing request will be dismissed.

The same logic applies to Petitioner's bills submitted with her hearing request. Again, Petitioner cannot simultaneously request a hearing over MDHHS' failure to process medical expenses when she submitted them with her hearing request. Again, Petitioner's hearing will be dismissed; however, as a courtesy to Petitioner, the analysis will demonstrate how these bills should be processed.

Petitioner seemed to be under the impression that the amount of medical services billed to Medicare could be applied to her deductible. As stated above, only the amount billed to the patient is to be applied to the deductible. The medical bills submitted with her hearing request, along with the amount billed to Petitioner, were as follows:

<u>Date of service</u>	<u>Amount billed to Pet.</u>	<u>Exhibit A p. #</u>
September 5, 2019-September 6, 2019	\$99.29	14
September 5, 2019-September 6, 2019	\$22.52	15
September 5, 2019-September 6, 2019	\$28.66	15
September 12, 2019	\$25.82	22
September 12, 2019	\$123.35	13
September 12, 2019	\$22.52	14
September 12, 2019	\$28.66	14
October 18, 2019	\$30.26	21
November 20, 2019	\$60.87	20
November 20, 2019	\$25.87	21
November 20, 2019	\$0	8
November 21, 2019-November 22, 2019	\$99.65	12
November 21, 2019	\$20.78	20
November 26, 2019	\$20.78	19
November 26, 2019-December 3, 2019	\$48.11	11
December 5, 2019	\$20.78	19
December 5, 2019	\$22.52	11

December 12, 2019	\$22.52	10
December 14, 2019	\$12.67	9
December 19, 2019	\$24.98	18
Various	\$0	23-32
<b>TOTAL</b>	<b>\$760.61</b>	

For none of the months that Petitioner incurred a medical expense did Petitioner meet her deductible. Without medical bills exceeding a deductible in a deductible month, MDHHS cannot process the bills towards that month's deductible. Alternatively, Petitioner could use the medical expenses as old bills. In such a case, the total amount of bills (\$760.61) do exceed Petitioner's ongoing monthly deductible of \$662. However, Petitioner received Medicaid in September 2019 beginning September 5, 2019. It is unknown if the bills incurred by Petitioner on September 5, 2019, were used to meet her deductible (in which case, they would not be paid), or if Petitioner had other medical expenses from September 5, 2019, which were used to meet her deductible. It can be concluded that Petitioner's medical expenses after September 5, 2019, should be covered by Medicaid, and therefore, would not be countable as an expense incurred by Petitioner; these bills totaled \$200.35. Subtracting this amount from the total bills reduces the expenses incurred by Petitioner to \$560.21. This amount is less than Petitioner's deductible; therefore, without other expenses, would not result in any Medicaid coverage.

**DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds no administrative hearing jurisdiction concerning Petitioner's dispute over medical bills submitted to MDHHS on January 17, 2020, and February 10, 2020. Concerning Petitioner's dispute of medical bills submitted to MDHHS on January 17, 2020, and February 10, 2020, Petitioner's hearing request is **DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly processed medical expenses incurred by Petitioner in June 2019, July 2019, and September 2019. Concerning medical expenses incurred by Petitioner in June 2019, July 2019, and September 2019, the actions taken by MDHHS are **AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly processed Petitioner's medical expenses incurred in August 2019. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Reprocess Petitioner's medical bills from August 2019 (Exhibit A, pp. 38-40), subject to the finding that Petitioner submitted the bills together on November 16, 2019; and
- (2) Reprocess Petitioner's Medicaid for August 2019 and, if necessary, predate Petitioner's begin date of Medicaid eligibility from August 29, 2019.

The actions taken by MDHHS are **REVERSED**.

CG/cg



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**Christian Gardocki**  
Administrative Law Judge  
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**Via Email:**

MDHHS-Wayne-31-Hearings  
D. Smith  
EQAD  
BSC4- Hearing Decisions  
MOAHR

**Petitioner – Via First-Class Mail:**

