



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 25, 2020
MOAHR Docket No.: 20-001313
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 3-way telephone hearing was held on March 18, 2020, from Detroit, Michigan. Petitioner did not participate in the hearing. [REDACTED], Petitioner's daughter-in-law, testified and participated as Petitioner's authorized hearing representative (AHR). The Michigan Department of Health and Human Services (MDHHS) was represented by Robert Villas, manager.

ISSUE

The issue is whether MDHHS properly denied Petitioner's verification of home care services towards Petitioner's Medicaid 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. As of December 2019, Petitioner was an ongoing recipient of Medicaid subject to a \$718 monthly deductible.
2. On December 5, 2019, MDHHS received a Deductible Report listing \$1,190 in personal care expenses for Petitioner which covered the first three days of December 2019. Petitioner's service provider was AHR. Personal care services provided to Petitioner included bathing, grooming, housework, laundry, and meals at a rate of \$35 per hour. Exhibit A, pp. 14-16.

3. On January 13, 2020, MDHHS received an updated Deductible Report listing \$874 in personal care expenses for Petitioner covering the first four days of December 2019. A reduction to \$23 per hour in AHR's service provider rate was listed. Exhibit A, pp. 29-31.
4. On January 13, 2020, MDHHS received a Deductible Report listing \$874 in personal care expenses for Petitioner covering the first four days of January 2020. Petitioner's provider was AHR. Personal care services provided to Petitioner included bathing, grooming, housework, laundry, and meals at a rate of \$23 per hour. Exhibit A, pp. 26-28.
5. On February 5, 2020, MDHHS received a Deductible Report listing \$782 in home help expenses for Petitioner covering the first four days of February 2020. Petitioner's provider was AHR. Covered services included bathing, grooming, housework, laundry, and meals at a rate of \$23 per hour. Exhibit A, pp. 32-34.
6. As of February 6, 2020, MDHHS denied Petitioner's Deductible Reports as medical expenses.
7. On [REDACTED], 2020, Petitioner requested a hearing to dispute MDHHS's refusal to process Deductible Reports from December 2019 through February 2020 towards Petitioner's monthly deductible.

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 requested a hearing to dispute MDHHS's refusal to process Deductible Reports listing personal care services from December 2019 through February 2020 towards Petitioner's Medicaid deductible. As of December 2019, Petitioner had a monthly Medicaid deductible of \$782. During the hearing, MDHHS acknowledged that past Deductible Reports from Petitioner listing similar expenses were processed and resulted in Petitioner meeting his deductible. During the hearing, MDHHS testimony indicated that its policy hadn't changed, but rather, policy was misinterpreted in past months when the Deductible Reports were deemed to be acceptable verification of Petitioner's personal care expenses. MDHHS contended that a proper reading of its policy properly results in rejection of the Deductible Reports as acceptable verification of personal care service expenses.

When the cost of personal care services in a client's home equals or exceeds the group's excess income for the month tested, income eligibility exists for the entire month. BEM 545 (July 2019) p. 1. Personal care services must be services related to activities of daily living (ADL), which may include eating/feeding, toileting, bathing, dressing, transferring, grooming, ambulation, and taking medication. *Id.*, p. 22. Household services are also allowable, and may include laundry, light housekeeping, meal preparation, and shopping. *Id.*, pp. 22-23.

The personal care services provider cannot be a responsible relative of the person requiring care if the client lives in his own home. *Id.*, p. 23. Responsible relative means a person's spouse, or the parent of an unmarried child under age 18. *Id.*

A physician (MD or DO) must verify the need for personal care services in their home and the estimated duration of need. *Id.* At the end of the estimated duration of need, a physician must verify continued need. *Id.* the provider of service must additionally verify the date of service, the charge of service, that the service is for an ADL, and that rendered services are essential to the health and safety of the person receiving services.

In the present case, Petitioner submitted Deductible Reports to MDHHS for December 2019 through February 2020. Each report listed costs of personal care services by AHR and a daily amount of expenses incurred by Petitioner. MDHHS did not argue that each report listed personal care expenses which exceeded Petitioner's deductible amount. Instead, MDHHS presented a litany of arguments as to why Petitioner's personal care expenses were denied. Each argument will be addressed separately.

MDHHS cited policy stating that personal care contracts are agreements involving assisting someone with ADLs. BEM 405 (January 2020) p. 7. The policy goes on to state that when relatives provide personal care, there is a rebuttable presumption that the assistance is done for love and affection rather than money. All Deductible Reports submitted by Petitioner included personal care services performed by his daughter-in-law. By relying on BEM 405, MDHHS presumed that Petitioner's daughter-in-law performed Petitioner's personal care services for love and affection, rather than for compensation.

MDHHS' reliance on BEM 405 is improper. BEM 405 specifically concerns divestment (i.e. a person's transfer of assets for the purposes of becoming Medicaid eligible). The policy is relevant to a determining whether a payment for personal care is a transfer for fair market value; it is not relevant to determining if personal care services are verified. Furthermore, personal care services and who may provide them is specifically addressed in BEM 545 which only states that personal care services may not be performed by a parent or spouse. As Petitioner's personal care provider was neither a spouse nor parent to Petitioner, MDHHS may not reject reported personal care expenses on the basis that the services were performed by a family member.

MDHHS also contended that Petitioner's personal care services were properly rejected because Petitioner's reported personal service hours exceeded those calculated by MDHHS as part of Petitioner's previous application requesting Home Help services. Home Help services is administered by MDHHS's Adult Services unit. Home Help eligibility entitles clients to receive personal care services which are paid for by MDHHS. On some date in the past, Petitioner applied for Home Help services. As part of Petitioner's application processing, MDHHS approved Petitioner for a total of 31:44 hours per month in monthly Home Help services. Exhibit A, p. 13. MDHHS also calculated that Petitioner's Home Help provider would be eligible to receive \$300.02 per month based on an hourly wage of \$9.45. MDHHS contended that, as a result of the Home Help application determination, Petitioner may not claim personal care expenses which exceed 31:44 hours per month or costs of \$300.02.

MDHHS' contention is incorrect for multiple reasons. First, there is no policy limiting claimed personal care hours or costs to those that were previously authorized for payment by the Adult Services unit. MDHHS is directed to "use the verifications obtained by the Adult Services for the Home Help eligibility determination". *Id.* This direction is given in a context of verifying a need for personal care services (which was not disputed) and the duration of personal care services need (which was also not disputed). This policy is intended to be a bureaucracy saver by allowing MDHHS to verify a need and duration of personal care services from the paperwork already obtained by Adult Services so that clients are spared from submitting duplicate paperwork. The policy was not intended to restrict personal care service expenses to the hours and pay determined by the Adult Services unit.

Each of Petitioner's Deductible Reports were accompanied by a document listing a date of services, list of ADLs performed, provider name, and cost of service. The documentation submitted by Petitioner fulfills all known verification requirements. MDHHS contended that Petitioner failed to provide adequate verification because Petitioner's submissions did not include the time spent by the provider performing each ADL. MDHHS' contention is summarily rejected because a time performing an ADL is not a verification requirement. Also notable is that the supplemental documentation submitted by Petitioner was a document created by MDHHS staff as a method for clients to report medical expenses. The document drafted by MDHHS asks clients to list a provider name, service performed, date, and cost, but not time spent performing each ADL. It is disingenuous for MDHHS to argue that a client failed to provide information on a document drafted by MDHHS which does not ask for such information.

During the hearing, MDHHS expressed a general skepticism over the authenticity of Petitioner's personal care service costs. For example, Petitioner claimed \$1,190 in costs over the first 3 days in December 2019 (Exhibit A, p. 17) and January 2020 (Exhibit A, p. 20). Setting aside the credibility of AHR's claimed wage of \$35 per hour and workdays of 10-12-hours, one has to wonder whether Petitioner is really incurring over \$1,000 for 3 days of assistance with ADLs. Though Petitioner's claimed personal care costs were staggeringly high, MDHHS did not provide a valid basis for rejecting the

costs as legitimate expenses. Without a proper basis for rejecting the costs, MDHHS must be ordered to accept the costs and process them towards Petitioner's deductible.

DECISION AND ORDER

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

- (1) Process Petitioner's Deductible Reports dated January 13, 2020, and February 5, 2020, covering the months of December 2019 through February 2020; and
- (2) Issue Medicaid eligibility accordingly.

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

CG/cg



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-Menominee-Hearings
D. Smith
EQAD
BSC1- Hearing Decisions
MOAHR

**Authorized Hearing Rep. –
Via First-Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]

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

[REDACTED]
[REDACTED]
[REDACTED]