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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: May 28, 2020
MOAHR Docket No.: 20-001776
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 May 11, 2020, from Trenton, Michigan. Petitioner appeared and was unrepresented. 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 submission of home care service expenses 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. On an unspecified date, MDHHS approved Petitioner's mother (hereinafter, "Mother") for \$672.97 in monthly payments as a home help services provider to Petitioner.
2. As of November 2019, Petitioner was an ongoing recipient of Medicaid subject to a \$837 monthly deductible.
3. On [REDACTED] 2019, Petitioner submitted to MDHHS a Deductible Report listing \$1,100 in payments to Mother for home help services over the first two days of November 2019. Petitioner also submitted a supplemental expense report stating that he paid Mother \$50 per hour for services such as bathing, grooming, dressing, toileting, housework, and shopping.

4. On [REDACTED] 2019, Petitioner submitted to MDHHS a Deductible Report listing \$1,100 in payments to Mother for home help services over the first two days of December 2019. Petitioner also submitted a supplemental expense report stating that he paid his mother \$50 per hour for services such as bathing, grooming, dressing, toileting, housework, and shopping.
5. On [REDACTED] 2020, Petitioner submitted to MDHHS a Deductible Report listing \$1,100 in payments to Mother for home help services over the first two days of January 2020. Petitioner also submitted a supplemental expense report stating that he paid his mother \$50 per hour for services such as bathing, grooming, dressing, toileting, housework, and shopping.
6. On an unspecified date, MDHHS advised Petitioner that his medical expense submissions since November 2019 would not be processed towards his monthly deductible.
7. On January 13, 2020, Petitioner requested a hearing to dispute MDHHS's refusal to process Deductible Reports since November 2019 towards a 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 not processing medical expenses towards his Medicaid deductible since November 2019. Exhibit A, p. 8. As of November 2019, Petitioner had a monthly Medicaid deductible of \$837. The expenses that went unprocessed were from personal care services provided by Petitioner's mother.

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.

From [REDACTED] 2019 through [REDACTED] 2020, Petitioner submitted Deductible Reports to MDHHS claiming \$1,100 in expenses for personal care services provided by his

mother; additionally, Petitioner included supplemental documents listing various ADLs and housekeeping services performed. Exhibit A, pp. 9-16. Such expenses are potentially countable towards a Medicaid deductible.

Petitioner testified that he has submitted comparable or identical expenses in the past which MDHHS processed towards his deductible; MDHHS acknowledged Petitioner's testimony. MDHHS explained that its policy had not changed, but rather, policy was misinterpreted in past months. MDHHS is correct in that its past practice of processing expenses towards a Medicaid deductible does not dictate whether similar medical expenses are currently allowable; however, MDHHS must still provide a proper basis for rejecting medical expenses.

MDHHS framed Petitioner's payments to his mother as a "personal care contract". Personal care contracts are agreements involving assisting someone with ADLs. BEM 405 (January 2020) p. 7. Such contracts must be performed for a "fair market value". *Id.* Fair market values may be determined by consultations with local business that perform such services. *Id.* In the present case, Petitioner claimed to pay his mother \$50 per hour for assistance with ADLs and housekeeping. For purposes of this decision, it will be accepted that Petitioner's claimed payments to his mother are far beyond the fair market value for such services.

BEM 405 is not a proper basis to reject Petitioner's expenses. BEM 405 specifically concerns divestment (i.e. a person's transfer of assets for the purposes of becoming Medicaid eligible). The policy is only relevant if Petitioner's payments were made to become asset-eligible for Medicaid; such is not Petitioner's case.

MDHHS also cited policy requiring medical expenses to be incurred to be countable. BEM 545 (July 2019) p. 16. MDHHS expressed skepticism that Petitioner's claimed expenses were reasonable. MDHHS's skepticism is not unwarranted. Petitioner's monthly expense reports from November 2019 through January 2020 each claim to pay his mother \$1,100 for two days of personal care services. Petitioner's income was not discussed at length, but his monthly income is (or was in 2019) approximately \$1,217 per month. Thus, Petitioner claims to pay his mother approximately 90% of his income for two days of personal care work. Notably, Petitioner's claimed payments would be beyond the \$672.97 that MDHHS pays Mother for performing the services. Though MDHHS has reason to be skeptical that Petitioner incurred expenses, its policy does not allow expenses to be rejected solely because they are dubious.¹

If MDHHS contends that a medical expense was not incurred, it may require Petitioner to verify the expense. When personal care services are used to meet a deductible, MDHHS must verify the amount not covered by MDHHS payment to the provider. BEM 545 (July 2019) p. 15.

¹ This decision does not address whether expenses must be verified because MDHHS did not reject Petitioner's expenses on that basis.

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 by MDHHS. The Adult Services Unit approved \$672.97 in monthly payments to Mother for her care of Petitioner. MDHHS contended that Petitioner cannot meet a deductible with personal care expenses beyond the amount approved by the Adult Services Unit. MDHHS' contention is incorrect for multiple reasons.

First, there is no known 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 Unit for the Home Help eligibility determination". *Id.* MDHHS contended that this policy prevents clients from claiming personal care expenses beyond those approved by the Adult Services Unit. A direction to "use the verifications" 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 spare clients from having to verify a need and duration of personal care services to meet a deductible when they already submitted paperwork to the Adult Services Unit in getting approved for personal care service payments. In fact, incurred medical expenses are defined to include the actual charge for personal care services minus liable third-party resource payments. BEM 545, pp. 16-17.

Though Petitioner's claimed personal care expenses were staggeringly high, MDHHS did not establish a valid basis for rejecting them. Without a proper basis for rejecting the expenses, MDHHS must initiate the processing of the expenses towards Petitioner's Medicaid deductible.²

² MDHHS's processing of the expenses may include verifying the expenses.

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 since [REDACTED] 2019; 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

Petitioner – Via First-Class Mail:

