



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], MI [REDACTED]

Date Mailed: January 27, 2021
MOAHR Docket No.: 20-007607
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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, an administrative hearing was held on January 14, 2021.

Petitioner was represented by Linda Blake, Authorized Representative with Independent Medical Networks.

The Michigan Department of Health and Human Services (Department) was represented by Kristina Warner.

Department Exhibit A.14 was admitted into the record.

ISSUE

Did the Department properly apply Petitioner's old medical bills to his spend-down Medicaid (MA) case?

FINDINGS OF FACT

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

1. At all relevant times prior to the action herein, Petitioner was a beneficiary of the MA program with a spend-down of \$766.00 per month.
2. On October 13, 2020, the Department received an itemization of medical charges pertaining to Petitioner's outpatient medical services received from the [REDACTED] [REDACTED] during August 2020 totaling over \$11,000.00, with a "Medicare Contractual Write-Off" of \$10,312.11 leaving account balances of

\$328.30, and \$131.56, totaling \$459.85. Exhibit A.5-7. The Department added additional old bills, not previously applied to Petitioner's August 2020 deductible, which triggered full MA as of August 25, 2020.

3. On October 16, 2020, the department issued a Health Care Determination Notice informing Petitioner that he met his spend-down on August 25, 2020. Exhibit A.10.
4. On December 2, 2020, Petitioner filed a hearing request arguing that his spend-down was met on August 6, 2020 on the grounds that he is entitled to count the third party MA write offs as a patient medical expense.

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.

Individuals asserting eligibility for welfare benefits have the burden of proof by a preponderance of evidence. Here, that burden falls on Petitioner.

Applicable spend-down policy with regard to the application of old medical bills meeting a welfare beneficiary's eligibility is found primarily at BEM 545-MA Group 2 Income Eligibility. Pertinent portions of that policy states in part:

DEPARTMENT POLICY

Medicaid (MA) Only

This item completes the Group 2 MA income eligibility process.

Income eligibility exists for the calendar month tested when:

- There is no excess income.
- Allowable medical expenses (defined in **EXHIBIT I**) equal or exceed the excess income.

When **one** of the following equals or exceeds the group's excess income for the month tested, income eligibility exists **for the entire month**:

- Old bills (defined in EXHIBIT IB).
- Personal care services in client's home, (defined in Exhibit ID), Adult Foster Care (AFC), or Home for the Aged (HA) (defined in EXHIBIT ID)....Pages 4-5.

The definition of 'old bills' as defined in Exhibit IB states:

I EXHIBIT IB - OLD BILLS

Medical expenses listed under **Medical Services** in EXHIBIT I can be used as **old bills** if they meet **all** of the following criteria:

- The expense was incurred in a month prior to the month being tested.
- During the month being tested:
 - The expense is/was still unpaid, **and**
 - Liability for the expense still exists (existed).
- A third-party resource is **not** expected to pay the expense.
- The expense was **not** previously used to establish MA income eligibility.
- The expense was one of the following:
 - Incurred on a date the person had no MA coverage.
 - **Not** an MA covered service.
 - Provided by a non-MA enrolled provider....Page 20.

In this case, the Department argues that Petitioner's spend-down for the month of August 2020 was not met until August 25, 2020. The Department arrived at this calculation by adding up bills Petitioner submitted showing account balances of \$131.55

plus \$328.30, and applying older bills not previously applied from April through July 2020, which resulted in total bills applied to the spend-down going over the \$766.00 deductible on August 25, 2020.

Petitioner does not dispute the calculation but rather argues that his patient responsibility should include all Medicare write offs identified in the [REDACTED] invoice, which totals over \$11,000.00. If Petitioner were correct, the spend-down would have been met as of August 6, 2020, as there was an expense invoiced on August 5, 2020, totaling \$1,582.00.

Both parties agree that the issue here turns on the definition of medical “expense” found in BEM 545. In short, Petitioner argues that expense should include write offs; the Department argues that Petitioner has no liability for ‘write offs’ paid for by a third party and thus, such cannot be considered a medical expense.

Under BEM 545 cited above, a beneficiary can only apply medical expenses that are allowable. Allowable medical expenses are defined in Exhibit IB. IB only allows medical bills that:

- The expense is/was still unpaid, **and**
- Liability for the expense still exists (existed).
- A third-party resource is **not** expected to pay the expense. [Including other criteria not at issue herein.]

By definition, Medicare and Medicaid are third-party resources. As such, Petitioner has no liability for such. Under BEM 545, Petitioner’s argument fails.

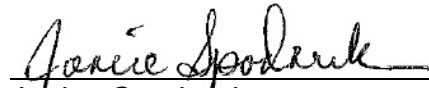
Petitioner also argues that because the third party does not pay a write off it remains Petitioner’s expense. Petitioner’s argument is circular and nonsensical. An expense is a cost or liability; here Petitioner has none due to the expenses being written off. Such is a third party contract between the federal Medicare and Medicaid agencies as their subcontractor, here, the [REDACTED] medical system.

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 Petitioner has not met his burden of proof, and the Department acted in accordance with Department policy when it when it determined that Petitioner met his August 2020 deductible on August 25, 2020.

DECISION AND ORDER

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

JS/ml



Janice Spodarek
Administrative Law Judge
for Elizabeth Hertel, 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

DHHS

Tamara Little
Jackson County DHHS – via electronic
mail

BSC4 – via electronic mail

C. George – via electronic mail

EQAD – via electronic mail

Authorized Hearing Rep.

██████████ – via first class mail

████████████████████
██████████, MI ██████████

Petitioner

██████████ – via first class mail

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██████████ MI ██████████