



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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Date Mailed: May 12, 2022  
MOAHR Docket No.: 22-000998  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Colleen Lack**

### **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 April 14, 2022, from Lansing, Michigan. ██████████ and ██████████ ██████████ Guardians, represented the Petitioner. The Department of Health and Human Services (Department) was represented by Tahauna Graham, Assistance Payment Specialist (AP Specialist).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-21.

### **ISSUE**

Did the Department properly determine Petitioner's eligibility for Medical Assistance (MA)?

### **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 ██████████, 2021, Petitioner was admitted to a long-term care facility for a short-term physical therapy stay. (Exhibit A, pp. 1, 3, 9, and 19; Guardian Testimony)
2. Petitioner was approved for the Home Maintenance Disregard as of September 23, 2021 with a reduced patient pay amount of \$394.00, which was allowed for September 2021, October 2021, November 2021, December 2021, January 2022, and February 2022. (Exhibit A, pp. 1, 12-14, and 18-21)

3. On February 17, 2022, a Health Care Coverage Determination Notice was issued to Petitioner's Guardian stating that Petitioner was eligible for MA effective March 1, 2022 with a monthly patient pay amount of \$1,262.00. (Exhibit A, pp. 15-17)
4. On March 8, 2022, Petitioner's Guardians filed a hearing request contesting the MA eligibility determination. (Exhibit A, pp. 3-6)

### **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.

#### **HOME MAINTENANCE DISREGARD**

Medicaid beneficiaries who will be residents of a long-term care facility for less than six L/H months may request a disregard to divert income for maintenance of their home for a maximum of six months.

Beneficiaries who have been or are expected to remain in long term care for longer than six months do not meet the criteria for this disregard.

The PPA will be reduced when all of the following are true:

- A physician has certified the beneficiary is medically likely to return home in less than six months from the date of admission.
- The request is being made for an individual who is a current Medicaid beneficiary and responsible for a patient pay amount.
- The beneficiary is a current resident of a long-term care facility.

- The beneficiary has a legal obligation to pay housing expenses and has provided verification of the expenses. The housing expenses must be in the beneficiary's name. A foreclosure, eviction or bankruptcy proceedings must not have begun.
- The home is not occupied by a community spouse or children eligible for a family allowance income deduction.
- The written or verbal request is being made by the beneficiary or an individual authorized to act on behalf of the Medicaid beneficiary.

The effective date of the disregard is the first day of Medicaid eligibility as a nursing facility resident. The disregard is for a maximum of six months but may be granted multiple times if the total months do not exceed six months.

BEM 546, January 1, 2022, pp. 3-4.

In this case, Petitioner was admitted to a long-term care facility for a short-term physical therapy stay on ██████████ 2021. (Exhibit A, pp. 1, 3, 9, and 19; Guardian Testimony) Petitioner's Guardians noted that Petitioner was not in long term care. Rather Petitioner was only there for physical therapy. (Guardian Testimony) However, if the facility where Petitioner was residing to receive the physical therapy services was not a long-term care facility, the Home Maintenance Disregard would not have been applied at all. As stated in the BEM 546 policy, the Home Maintenance Disregard is specifically for Medicaid beneficiaries who will be residents of a long-term care facility for less than six long term care/hospital (L/H) months.

Petitioner was approved for the Home Maintenance Disregard as of September 23, 2021 with a reduced patient pay amount of \$394.00, which was allowed for September 2021, October 2021, November 2021, December 2021, January 2022, and February 2022. (Exhibit A, pp. 1, 12-14, and 18-21) As stated in the BEM 546 policy, the Home Maintenance Disregard can only be applied for a maximum of six months. Therefore, on February 17, 2022, a Health Care Coverage Determination Notice was issued to Petitioner's Guardian stating that Petitioner was eligible for MA effective March 1, 2022 with a monthly patient pay amount of \$1,262.00. (Exhibit A, pp. 15-17)

Petitioner's Guardians noted that Petitioner was in and out of the hospital during the period of September 2021 through February 2022, which delayed his physical therapy. However, it was acknowledged that the reduced patient pay amount was paid to the facility each of those months. (Guardian Testimony) Accordingly, Petitioner received the Home Maintenance Disregard for the maximum allowed by policy, six months. While this Administrative Law Judge sympathizes with Petitioner's circumstances, an

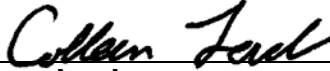
Administrative Law Judge has no authority to change, or make any exceptions to, the Department's policy.

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 acted in accordance with Department policy when it determined Petitioner's eligibility for Medical Assistance (MA).

**DECISION AND ORDER**

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

CL/dm

  
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**Colleen Lack**  
Administrative Law Judge

**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

**Sent via Email:**

MDHHS-Wayne-82-Hearings  
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EQADHearings  
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**Sent via First-Class Mail:**

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