



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: [REDACTED] 9, 2023
MOAHR Docket No.: 23-005652
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 October 12, 2023, from Lansing, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Rachel Meade. Department Exhibit 1, pp. 1-18 was received and admitted.

ISSUE

Did the Department properly determine Petitioner's Medical Assistance Long Term Care (MA-LTC) patient pay amount?

FINDINGS OF FACT

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

1. Petitioner entered a nursing home in [REDACTED] 2020.
2. Petitioner was receiving Medicaid and submitted redetermination paperwork on July 27, 2023.
3. On July 28, 2023, a Health Care Coverage Determination Notice was sent to Petitioner informing her that there were changes to her patient pay amounts for the time periods from 10/1/2022-12/31/2022, 1/1/2023-6/30/2023, 8/1/2023-8/31/2023 and 9/1/2023-ongoing. Patient Pay Amount \$2,282 for 10/1/2022-12/31/2022,

\$2,226 for 1/1/2023-6/30/2023, \$1,488 for 8/1/2023-8/31/2023 and \$2,528 for 9/1/2023 through ongoing. (Ex. 1, pp. 6-9)

4. On August 18, 2023, a Health Care Coverage Determination Notice was sent to Petitioner informing her that her patient pay amount for the time period from 10/1/2022 through 12/31/2022 was changed to \$2,256. (Ex. 1, pp. 8-13)
5. On August 30, 2023, Petitioner requested hearing disputing the Department's determinations regarding her patient pay amount.

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.

DEPARTMENT POLICY

Medicaid (MA) Only

Use this item to determine post-eligibility patient-pay amounts. A post-eligibility patient-pay amount is the L/H patient's share of the cost of LTC or hospital services. First determine MA eligibility. Then determine the post-eligibility patient-pay amount when MA eligibility exists for L/H patients eligible under:

- A U19 Healthy Kids category.
- A Group 2 (G2U, G2C) category.
- An SSI-related Group 1 or 2 category except:
- QDWI.
- Only Medicare Savings Program (with no other MA coverage).

MA income eligibility and post-eligibility patient-pay amount determinations are not the same. Countable income and deductions from income often differ. Medical expenses, such as the cost of LTC, are never used to determine a post-eligibility patient pay amount. Do not recalculate a patient-pay amount for the month of death.

PATIENT-PAY AMOUNT

The post-eligibility patient-pay amount is total income minus total need.

Total income is the client's countable unearned income plus his remaining earned income; see Countable Income in this item. Total need is the sum of the following when allowed by later sections of this item:

- Patient allowance.
- Home maintenance disregard.
- Community spouse income allowance.
- Family allowance.
- Children's allowance.
- Health insurance premiums.
- Guardianship/conservator expenses.

BEM 546

In this case, when Petitioner submitted redetermination paperwork on July 27, 2023, it was discovered that Petitioner had home maintenance disregard in her patient pay amount that should have ended but remained in error. The Department recalculated Petitioner's patient pay amounts for October 2022 through August 2023. Petitioner's Patient Pay Amounts were revised as follows on July 28, 2023: \$2,282 for 10/1/2022-12/31/2022, \$2,226 for 1/1/2023-6/30/2023, \$1,488 for 8/1/2023-8/31/2023 and \$2,528 for 9/1/2023 through ongoing. Petitioner's Patient Pay Amount for 10/1/2022 through 12/31/2022 was revised again on August 18 to \$2,256. The Department cites #15 FAQ from the COVID-19 Medicaid (MA) Medicare Savings Program (MSP) Non-Closure FAQ which includes the instruction "When Home Maintenance Disregard (HMD) expires, the patient pay amount can be increased. This change is due to a recent CMS Decision." (ex. 1, p.5)

Petitioner argues that the error with regard to her patient pay amount was not her error and she should not be required to pay the increased patient pay amount retroactively. Petitioner points out that she paid the patient pay amounts for the months in question and was required to be under the asset limit for MA. Therefore, she does not have any additional money to pay the increased patient pay amounts going back 10 months.

The Department provided sufficient explanation why they recalculated Petitioner's Patient Pay Amount once the public health emergency directives were lifted. The directives from CMS cited by the Department are binding on the Department. Petitioner did not present anything to contradict this assertion made by the Department. The Department calculated Petitioner's Patient Pay Amounts in accordance with Department policy. BEM 546


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 Patient Pay Amounts.

DECISION AND ORDER

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

AM/ml



Aaron McClintic
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

Via Electronic Mail:

DHHS

Heather Dennis
Jackson County DHHS
301 E. Louis Glick Hwy.
Jackson, MI 49201

MDHHS-Jackson-Hearings@michigan.gov

Interested Parties

BSC4
M Schaefer
EQAD
MOAHR

Via First Class Mail:

Petitioner

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]