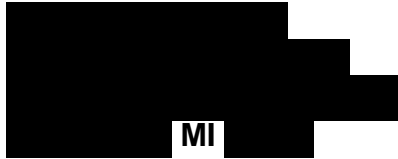




GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: August 23, 2023
MOAHR Docket No.: 23-003914
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on August 17, 2023. [REDACTED], Petitioner's daughter and durable power of attorney, appeared and testified on Petitioner's behalf. John Lambert, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Tracey Distell, Department Specialist, testified as a witness for the Department.

During the telephone hearing, the Department submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-34. No other proposed exhibits were submitted.

ISSUE

Did the Department properly deny Petitioner's request for a pre-eligibility medical expense (PEME) offset?

FINDINGS OF FACT

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

1. On January 31, 2023, Petitioner applied for Medicaid. (Exhibit A, page 21).
2. On March 13, 2023, the Department approved Petitioner for Medicaid, with a start date of February 1, 2023. (Exhibit A, pages 22-23).
3. The request for Medicaid coverage for January of 2023 was denied. (Exhibit A, pages 22-23).
4. On March 29, 2023, Petitioner, through the Long-Term Facility (LTC)

where she resides, requested a PEME offset through the Department for her Patient Pay Amount (PPA) incurred in January of 2023. (Exhibit A, pages 26-27).

5. On May 5, 2023, the Department sent Petitioner written notice that the request for a PEME offset had been denied. (Exhibit A, pages 28-29).
6. With respect to the reason for the denial, the notice stated:

Beneficiary does not qualify for offset of the PPA because the medical expense(s) submitted (from January 2023) was not incurred in the 3 months immediately preceding the initial LTC Medicaid application month (January 2023).

Exhibit A, page 28

7. On July 17, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding the Department's decision. (Exhibit A, pages 5-19).

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statutes, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

With respect to PEME through Medicaid, Bridges Eligibility Manual (BEM) 546 (4-1-23), in effect at the time of the decision in this case, provides:

PRE-ELIGIBILITY PATIENT PAY OFFSETS(PEME)

Long-term care (LTC) facilities may deduct the following from a person's patient-pay amount:

- The cost of certain medically necessary services not covered by MA such as chiropractic, podiatry, dental (other than emergency dental and oral surgery) and hearing aid dealers, and
- The MA co-payments for covered services.

The remainder of the patient-pay amount is then applied to the cost of care provided by the LTC facility. The Department

of Health and Human Services determines whether an offset is allowable.

Patient-pay amounts are **not** offset by local office staff. Contact the PEME unit at MDHHS-MSA-PEME@michigan.gov with requests to offset a patient pay to cover old medical bills, see PEME in glossary and in this policy.

MSA will determine whether an offset is allowable.

Pre-Eligibility Medical Expenses (PEMEs) are unpaid medical expenses incurred in the three months prior to the application for Medicaid.

The offset of the PPA is only allowed if the money is used to pay the provider(s) for the incurred medical expense and will be terminated if the recipient fails to pay the provider.

Offsets will be applied to the months following an approval. In general, the allowable expenses are the same as allowed for a group 2 deductible case.

In addition, the medical expense(s):

- Must be unpaid, and an obligation still exists to pay.
- *The expenses were incurred in the three months prior to the initial approved application for Long Term Care Medicaid.*
- Cannot be from a month where Medicaid eligibility existed.
- Cannot be covered by a third-party source (public or private).
- Cannot be from a month in which a divestment penalty has been imposed.
- Cannot have been used previously as a pre-eligibility medical expense to offset a patient-pay amount.
- Can include cost of room and board for Medicaid LTC facilities, remedial care, and other medical expenses

recognized by Michigan law but not covered under the Michigan state plan.

- Request for PEME must be made within one year after eligibility for LTC Medicaid has been established and prior to the first Long Term Care Medicaid redetermination following the approved LTC application.

Note: MSA will terminate offsets if there is a failure to pay the medical provider with the funds.

*BEM 546, pages 10-12
(italics added for emphasis)*

Here, as discussed above, the Department denied Petitioner's request for a PEME offset pursuant to the above policies and on the basis that the medical expenses in question were not incurred in the three months immediately preceding the initial LTC Medicaid application month.

In appealing that decision, Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information available at the time the decision was made.

Given the record and applicable policies in this case, Petitioner has failed to meet that burden of proof and the Department's decision must be affirmed.

The above policy expressly provides that, in order for a PEME offset to be approved, the expenses must have been "incurred in the three months prior to the initial approved application for Long Term Care Medicaid"; and that is not the case here, where the expenses were incurred and the initial approved application for Long Term Care Medicaid was made in January of 2023.

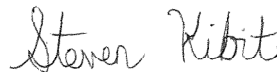
Moreover, while Petitioner's representative credibly testified that she was just following the guidance of professionals, the policy is clear, both the Department and the undersigned Administrative Law Judge are bound by it, and Petitioner's request did not satisfy the applicable criteria.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Department properly denied Petitioner's request for a PEME offset.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.



Steven Kibit
Administrative Law Judge

SK/sj

NOTICE OF APPEAL: Petitioner 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 30763
Lansing, Michigan 48909-8139

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties, to their last known addresses in the manner specified below, this 23rd day of August 2023.

S. James

S. James
**Michigan Office of Administrative
Hearings and Rules**

Via Electronic Mail:

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Petitioner

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