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Date Mailed: August 17, 2022
MOAHR Docket No.: 22-003011
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon a request for hearing filed on Petitioner's behalf.

After due notice, a telephone hearing was held on August 16, 2022. [REDACTED], son-in-law, appeared and testified on Petitioner's behalf. [REDACTED], daughter and guardian, appeared as a witness.

Theresa Root, Appeals Review Officer, appeared on behalf of the Respondent, Michigan Department of Health and Human Services (MDHHS or Department). Tracey Distel, Pre-Eligibility Medical Expense (PEME) Specialist, appeared as a witness for the Department.

ISSUE

Did the Department properly deny Petitioner's request for a PEME offset for bills from Omnicare for the months of December 2021 through February 2022?

FINDINGS OF FACT

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

1. Petitioner is a Medicaid beneficiary who currently resides in a nursing facility. (Exhibit A, p 2; Testimony)
2. On May 23, 2022, Petitioner's guardian applied for a PEME to offset the Patient Pay Amount (PPA) from the nursing home. The medical expenses supplied for the PEME offset were from the nursing facility and from Omnicare. (Exhibit A, pp 2, 12-21; Testimony)
3. On June 22, 2022, the Department sent Petitioner written notice that the request for a PEME offset was approved for the expenses from the nursing facility but denied for the expenses from Omnicare because

records from Omnicare showed multiple payments totaling \$ [REDACTED] to Omnicare. (Exhibit A, pp 8-9; Testimony)

4. Per policy, PEME offsets are only allowed for unpaid medical expenses. (Exhibit A, pp 22-24; Testimony)
5. On July 18, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received Petitioner's request for hearing. (Exhibit A, pp 7-11)

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 statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Here, Petitioner applied for a PEME offset and, with respect to that patient pay offset, Bridges Eligibility Manual 546 provides, in relevant part:

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 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.
- Must be reported prior to the first Long Term Care Medicaid redetermination following the initial Long-Term Care eligibility.

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

*Bridges Eligibility Manual 546,
July 1, 2022, pages 11-13
Emphasis added*

Pursuant to the above policy, the Department denied Petitioner's request for a PEME offset in this case because the Omnicare expenses had already been paid.

Petitioner's son-in-law testified that the family did pay some of the Omnicare bills because they had to get Petitioner's assets below \$ [REDACTED] for her to be eligible for Medicaid. Petitioner's son-in-law indicated that if they had known that Medicaid would pay medical expenses in the three months prior to eligibility, they never would have made the payments to Omnicare. Petitioner's son-in-law testified that Petitioner owes over \$ [REDACTED] to the nursing home, so any money that they could get back from Omnicare would simply go to the nursing home anyway. Petitioner's son-in-law noted that Petitioner had approximately \$ [REDACTED] in expenses from Omnicare for the period of December 2021 through February 2022 but with the payments they made, and the way the payments were applied by Omnicare, there is no way to know what expenses, if any, are still outstanding for that period.

The Department's witness indicated that if the family could get Omnicare to return the payments, then a PEME offset might be allowable.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred. Based on the evidence presented, the Department's decision was proper. Policy clearly states that a PEME can only be approved for unpaid expenses incurred during the three months prior to the registration of a beneficiary's Medicaid application. Here, given the payments the family made to Omnicare, there is no way to tell if there are any outstanding expenses from the period in question. Unfortunately, the undersigned Administrative Law Judge has no authority to contravene clear policy nor any equitable powers to grant Petitioner the relief she seeks. Therefore, the Department's decision must be upheld.

The Department's witness did indicate that she would attempt to contact Omnicare to determine if there are any unpaid expenses left for the period in question.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, finds that the Department properly denied Petitioner's request for a PEME for the period of December 2021 through February 2022.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.



RM/dh

Robert J. Meade
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 30763
Lansing, Michigan 48909-8139

Via Electronic Mail:

DHHS Department Rep.
M. Carrier
MDHHS Appeals Section
P.O. Box 30807
Lansing, MI 48909
MDHHS-Appeals@michigan.gov

Agency Representative
Theresa Root
MDHHS Appeals Section
P.O. Box 30807
Lansing, MI 48909
MDHHS-Appeals@michigan.gov

Via First Class Mail:

Authorized Hearing Rep.

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Petitioner

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