

RE: LYNDA S TOWNSEND, Petitioner

Docket No.: OSAH-DFCS-NH-1450263-105-Langston

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- DEPARTMENT OF COMMUNITY HEALTH (DECISION ONLY)
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ATLANTA GA 30303

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

| | | |
|----------------------------------|---|---|
| LYNDA S TOWNSEND, | : | |
| Petitioner, | : | Docket No.: OSAH-DFCS-NH-1450263-105-Langston |
| | : | |
| v. | : | Agency Reference No.: 607531513 |
| | : | |
| DHS, FAMILY & CHILDREN SERVICES, | : | |
| Respondent. | : | |

NOTICE OF INITIAL DECISION

This is the Initial Decision of the Administrative Law Judge (Judge) in the case. This decision is reviewable by the Referring Agency. If a party disagrees with this decision, the party may file a motion for reconsideration, a motion for rehearing, or a motion to vacate or modify a default order with the OSAH Judge. A party may also seek agency review of this decision.

FILING A MOTION WITH THE JUDGE AT OSAH

The Motion must be filed in writing within ten (10) days of the entry, i.e., the issuance date, of this decision. **The filing of such a motion may or may not toll the time for filing a request for agency review.** See OSAH Rules 616-1-2-.28 and .30 in conjunction with O.C.G.A. § 49-4-153. Motions must include the case docket number, be served simultaneously upon all parties of record, either by personal delivery or first class mail, with proper postage affixed, and be filed with the OSAH clerk at:

Clerk
Office of State Administrative Hearings
Attn.: Virginia Ramsey, vramsey@osah.ga.gov
230 Peachtree Street, NW, Suite 850
Atlanta, Georgia 30303-1534

REQUEST FOR AGENCY REVIEW

A request for Agency Review must be filed within thirty (30) days after service of this Initial Decision. O.C.G.A. § 49-4-153(b)(1). A copy of the application for agency review must be simultaneously served upon all parties of record and filed with the OSAH clerk. The application for Agency Review should be filed with:

Department of Community Health
Legal Services Unit, Attn: Appeals Reviewer
2 Peachtree Street, 40th Floor
Atlanta, Georgia 30303

This Initial Decision will become the Final Decision of the agency if neither party makes a timely application for agency review. O.C.G.A. § 49-4-153(b)(1) and (c). When a decision becomes Final, an application for judicial review must be filed within thirty (30) days in the Superior Court of Fulton County or the county of residence of the appealing party. If the appealing party is a corporation, the action may be brought in the Superior Court of Fulton County or the superior court of the county where the party maintains its principal place of doing business in this state. O.C.G.A. § 49-4-153(c).

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

LYNDA S. TOWNSEND,
Petitioner

v.

DHS, FAMILY & CHILDREN SRVS.,
Respondent.

:
:
:
: Docket No. OSAH-DFCS-NH-1450263-105-
: Langston
:
: Agency Ref. No. 60751513
:



AUG 13 2014

Victoria J. ...
Victoria J. ...
Executive Assistant

**INITIAL DECISION
ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DETERMINATION**

I. Summary of Proceedings

The Petitioner, Lynda S. Townsend, appeals the Division of Family and Children Services' determination that Petitioner owes \$670.00 per month as her monthly Medicaid cost share for nursing home care. The Petitioner seeks an order directing the Department to reduce the cost share amount to \$0 for one month and \$347.03 for an additional month to account for certain medical expenses. On June 10, 2014, the Petitioner filed a Motion for Summary Determination. After the Court granted Respondent's Motion for Continuance for additional time to file a response to the Petitioner's Motion, the Respondent filed a timely response on July 18, 2014. The Petitioner filed Proposed Findings of Fact and Conclusions of Law on August 4, 2014. After consideration of the parties' arguments and submissions, the Motion for Summary Determination is **GRANTED** and the Respondent's decision is **REVERSED** and **REMANDED** for further determination of the appropriate Medicaid cost share amount.

II. Standard on Summary Determination

Summary determination in this proceeding is governed by Office of State Administrative Hearings (OSAH) Rule 15, which provides, in relevant part:

A party may move, based on supporting affidavits or other probative evidence, for summary determination in its favor on any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination.

Ga. Comp. R. & Regs. 616-1-2-.15(1). On a motion for summary determination, the moving party must demonstrate that there is no genuine issue of material fact such that the moving party "is entitled to a judgment as a matter of law on the facts established. Pirkle v. Env'tl. Prot. Div., Dep't of Natural Res., OSAH-BNR-DS-0417001-58-Walker-Russell, 2004 Ga. ENV. LEXIS 73, at *6-7 (OSAH 2004) (citing Porter v. Felker, 261 Ga. 421 (1991)); See generally Piedmont Healthcare, Inc. v. Ga. Dep't of Human Res., 282 Ga. App. 302, 304-305 (2006) (noting that a summary determination is "similar to a summary judgment" and elaborating that an

administrative law judge "is not required to hold a hearing" on issues properly resolved by summary determination.)

Further, pursuant to OSAH Rule 15:

When a motion for summary determination is supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination.

Ga. Comp. R. & Regs. 616-1-2-.15(3). See Lockhart v. Dir., Env'tl. Prot. Div., Dep't of Natural Res., OSAH-BNR-AE-0724829-33-RW, 2007 Ga. ENV LEXIS 15, at *3 (OSAH 2007) (citing Leonaitis v. State Farm Mutual Auto Ins. Co., 186 Ga. App. 854 (1988)).

III. Findings of Undisputed Material Facts

1.

Petitioner applied for Medicaid on December 27, 2013 and was approved on February 20, 2014. Following approval, a cost share budget was prepared, which indicated how much of Petitioner's income must be paid toward her nursing home care. The Respondent determined that Petitioner's monthly cost share is \$670.00. (Petitioner's Statement of Material Facts ¶ 1.)

2.

There is no transfer penalty in this case. (Petitioner's Statement of Material Facts ¶ 2.)

3.

In this case, Petitioner submitted Incurred Medical Expenses on Form 942 as follows:

| | | | |
|------------|-------------|---|------------|
| 8/5/2013 | Dr. Perry | UPR/LXTR ART Study 3+ Levels | \$4.36 |
| 8/10/2013 | Dr. Brown | Emergency Care Department | \$94.99 |
| 9/27-30/13 | Dr. Johnson | Hospital Stay | \$60.01 |
| 10/1-7/13 | Dr. Johnson | Hospital stay | \$81.65 |
| 9/26-30-13 | Rogers | Hospital stay | \$104.95 |
| 10/1-8/13 | Rogers | Hospital stay | \$104.95 |
| 9/25-26/13 | Tally | Hospital stay | \$312.48 |
| 12/23/2013 | Pharmerica | Medication | \$94.99 |
| 12/23/2013 | Floyd EMS | Transport from hospital to nursing home | \$119.79 |
| 11/11/13 | Dr. Smith | Doctor visit | \$38.86 |
| Total | | | \$1,017.03 |

(Petitioner's Statement of Material Facts ¶3; Petitioner's Exhibit A.)

4.

Section 2555 of the ABD Manual provides for an income diversion for the purpose of paying outstanding medical and health care expenses from an applicant's monthly income. Section

2555 provides, "Medical expenses incurred by the recipient that are not subject to payment by Medicaid or other third parties can be deducted in the patient liability/cost share budget."

Incurred medical expenses (IME) include the following¹:

- Health and/or dental insurance premiums (100%)
- Co-insurance and deductible payments not covered by Medicaid
- A prescription drug that is NOT covered on an A/R's Medicare Part D plan may only be allowed as an IME if the A/R provides verification that s/he has gone through the appeals process with their plan's carrier and has received an unfavorable decision.
- Medicare Part D premiums, co-pays and deductibles incurred until such time they are paid by Medicaid. Unless you have evidence to the contrary, assume these bills will be incurred through the month following the month that the case is finalized. The A/R will not be reimbursed for any of these expenses they have paid.
- Deductions for expenses not covered by Medicaid as listed on the DMA pricing document, such as the following:
 - dental services
 - medical supplies
 - orthopedic services
 - physician services
 - prescribed over the counter drugs
 - prescription drugs on the DMA pricing document
 - psychiatric or psychological services
- Long Term Care Medical Expenses
(Petitioner's Statement of Material Facts ¶4.)

5.

The Respondent agreed to make an \$802.25 IME adjustment based on eight of the ten submitted medical services. (See Respondent's Exhibit A.)

6.

However, the Respondent disallowed two the IMEs because the providers, Pharmerica and Floyd EMS, did not properly submit claims to Medicaid for payment. The Form 942 pertaining to Floyd EMS and Pharmerica contain blank signature boxes. The Respondent agreed to make the proper adjustments for these services if and when the Petitioner submits appropriate documentation. (See Petitioner's Exhibit A; Respondent's Exhibit A.)

IV. Conclusions of Law

1. A Medicaid recipient who is required to contribute to the cost of care is allowed specific deductions in the patient liability/cost share budget. Medicaid Manual, § 2552-1. Incurred Medical Expenses (IMEs) are one type of deduction to the cost share budget. Medicaid Manual, §§ 2552, 2555.

¹ This list is not all inclusive.

2. To receive a deduction for IMEs, the Petitioner must submit a Form 942. Medicaid Manual, § 2555. A Form 942 must have an original provider signature and a date on which the form was signed by the provider. Medicaid Manual, Appendix F.
3. The Court finds that the Respondent must deduct the following IME expenses from the Petitioner's cost share budget:

| | |
|-----------------|-----------------|
| August 5 | \$4.36 |
| August 10 | \$94.99 |
| September 27-30 | \$60.01 |
| October 1-7 | \$81.65 |
| September 26-30 | \$104.95 |
| October 1-8 | \$104.95 |
| September 25-26 | \$312.48 |
| November 11 | \$38.86 |
| Total: | \$802.25 |

4. However, the remaining IME expenses should not be deducted until the Respondent receives appropriate documentation. The Pharmerica and Floyd EMS Form 942s are invalid because they did not contain a provider signature. As a provider signature is a required element to a Form 942, the Respondent properly disallowed these deductions.

V. Conclusion

For the reasons set forth above, the Petitioner's Motion is **GRANTED** with respect to the \$802.25 deduction for the Petitioner's properly filed Incurred Medical Expenses. Accordingly, the Respondent's decision is **REVERSED** and **REMANDED** for further determination of the appropriate Medicaid cost share amount.

SO ORDERED THIS 13th day of August, 2014



DAVID C. LANGSTON
Administrative Law Judge



Victoria L. Hightower
Georgia Office of State Administrative Hearings
230 Peachtree Street, NW, Suite 850
Atlanta, Georgia 30303

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