

STATE OF RHODE ISLAND
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
APPEALS OFFICE

V.

DOCKET No. 25-1490

Department of Human Services

DECISION

I. INTRODUCTION

A Microsoft Teams hearing on the above-entitled matter came before an Appeals Officer on June 3, 2025. The Appellant, [REDACTED] (hereinafter the “Appellant”), declined the option for a video hearing. The Appellant initiated this matter to appeal the cost of care for Long-Term Services and Supports Medicaid (LTSS) as stated in the benefit decision notice (BDN) dated March 20, 2025, issued by the Department of Human Services (DHS). DIIS testified that the Appellant’s cost of care is correct, because DHS denied the Appellant’s request to factor in a pre-eligibility medical expense (PEME) for an unpaid nursing home bill from November 2024 into her cost of care, in accordance with 210-RICR-50-00-8.7(A)(3)(b). The Appellant’s attorney, Peter Hainley Esq. (hereinafter “Attorney Hainley”), testified that the Appellant’s cost of care is incorrect, that the unpaid nursing home bill should be accepted as a PEME because it was unpaid at the time of the Appellant’s LTSS application, and that the nursing home bill met all the regulatory requirements to be accepted as a PEME. For the reasons discussed in more detail below, the Appellant’s Appeal is granted.

II. JURISDICTION

The Executive Office of Health and Human Services (EOHHS) is authorized and designated by R.I.G.L. § 42-7.2-6.1 and EOHHS regulation 210-RICR-10-05-2 to be the entity responsible for appeals

and hearings related to DHS and EOHHS programs. The Administrative Hearing was held in accordance with the Administrative Procedures Act, R.I.G.L. § 42-35-1 et seq., and EOHHS regulation 210-RICR-10-05-2.

III. ISSUE

Did DHS correctly deny the Appellant's PEMF request and determine the Appellant's cost of care for LTSS in accordance with Federal and State Policy?

IV. STANDARD OF PROOF

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, unless otherwise specified, a preponderance of the evidence is generally required to prevail. See 2 Richard J. Pierce, *Administrative Law Treaties* §10.7 (2002) & *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 1130, 134 (R.I. 1989) (preponderance standard is the "normal" standard in civil cases). This means that for each element to be proven, the factfinder must believe that the facts asserted by the proponent are more probably true than false. When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. See *Narragansett Electric Co. vs. Carbone*, 898 A.2d 87 (R.I. 2006).

V. PARTIES AND EXHIBITS

Present for DHS was Senior Casework Supervisor, Vanessa Ward, who provided testimony and offered the following exhibit as evidence:

Exhibit #1 – BDN, Date: March 20, 2025.

The Appellant was not present at the hearing. Attorney Hainley attended the hearing on the Appellant's behalf, provided testimony, and offered the following exhibit as evidence:

Exhibit #2 – Electronic Appeal, Date: April 1, 2025.

VI. RELEVANT LAW/REGULATIONS

Unpaid past expenses for medically necessary services may be deducted from available income in certain circumstances. For such expenses to reduce available income for beneficiary liability determination purposes, they must meet all the criteria to be considered allowable and exclude any costs of care already used to meet the beneficiary's spenddown. A medical expense must be allowable under this section to be deducted in the LTSS income calculation. An allowable expense must meet the following conditions:

a. **Medically necessary.** The expense must be medically necessary.

b. **Non-Medicaid Service.** The expense must not be covered by Medicaid. An expense cannot be deducted if it is a Medicaid-covered service and is incurred in a month in which eligibility may exist, including the month of application and the retroactive eligibility period. Exceptions are granted for Medicaid covered services only if the health costs were incurred for a medically necessary service provided prior to the retroactive eligibility period and are a legally binding debt obligation or attachment or lien as indicated in § 8.6(A)(2)(b) of this Part.

c. **No Third-Party Payment.** An allowable expense must not be eligible for payment by a third party. For these purposes, a third party could be individuals, entities or benefits that are, or may be, liable to pay the expense including, but not limited to: other health care coverage, such as coverage through Medicare, private or group health insurance, long-term care insurance or through the Veterans Administration (VA) health system; automobile insurance; court judgments or settlements; or Workers' Compensation.

d. **Allowed Expense Period.** The expense must be incurred during a month in which the applicant / beneficiary is receiving Medicaid-funded LTSS or the retroactive period unless the exception for legally binding debt or attachments apply. The first day of the month an application for LTSS is filed, or a request for review of an expense is submitted is the start date for determining whether an expense

qualifies, regardless of whether retroactive coverage is requested or approved. See 210-RICR-50-00-8.7(A)(2)(a-d).

Limits – If all of the above conditions apply, the expense may still not be allowed in certain circumstances:

- a. **Expense in penalty period.** An expense cannot be deducted for an LTSS service incurred during a penalty period **in** due to an uncompensated transfer. However, non-LTSS expenses, such as **primary**, acute or subacute care services incurred during a period of ineligibility, may be an allowable expense if all other conditions are met.
- b. **Used for other reductions.** The expense must not have been treated as or paid:
 - 1) To reduce excess resources – an expense paid by an applicant to meet resource eligibility limits cannot be deducted in the income calculation. As an income exclusion or deduction – an expense previously used as a deduction in the income calculation cannot be used under this section.
 - 2) As an income exclusion or deduction – an expense previously used as a deduction in the income calculation cannot be used under this section.

See 210-RICR-50-00-8.7(A)(3) et seq.

VII. FINDINGS OF FACT

1. The Appellant submitted an LTSS application to DHS on December 1, 2024. The Appellant did not request retroactive LTSS coverage.
2. The Appellant requested that an unpaid nursing home bill of \$7,849.00 from November 2024 be accepted as a PEME.
3. DHS approved the Appellant's LTSS application as of December 1, 2024, but denied the Appellant's PEME request, citing 210-RICR-50-00-8.7(A)(3)(b).

4. DHS did not provide any testimony or evidence to show that the Appellant's nursing home bill was previously used to reduce excess resources or as an income exclusion or deduction.
5. Attorney Hainley testified that the nursing home bill was not used to become eligible for LTSS by reducing excess resources as it was unpaid at the time of the Appellant's LTSS application.
6. Attorney Hainley testified that the nursing home bill met all other regulatory requirements to be accepted as a PEME.

VIII. DISCUSSION

As stated above, unpaid past expenses for medically necessary services may be deducted from available income in certain circumstances. For such expenses to reduce available income for beneficiary liability determination purposes, they must meet all the criteria to be considered allowable and exclude any costs of care already used to meet the beneficiary's spenddown. The expense may still not be allowed if it used to reduce excess resources or if it was previously used as an income exclusion or deduction.

DHS testified that it denied the Appellant's request to utilize their November 2024 nursing home bill as a PEME because of DHS' interpretation of 210-RICR-50-00-8.7(A)(3)(b), which states that an expense may still not be allowed if it is used to reduce excess resources or if it was previously used as an income exclusion or deduction.

DHS did not provide any testimony or evidence to show that the Appellant's nursing home bill was previously used to reduce excess resources or as an income exclusion or deduction and Attorney Hainley testified that the nursing home bill was not used to become eligible for LTSS by reducing excess resources as it was unpaid at the time of the Appellant's LTSS application. Because of Attorney Hainley's testimony that the nursing home bill was unpaid at the time of the Appellant's LTSS application and because of the lack of any evidence or testimony to show otherwise, there is a preponderance of evidence to show that DHS incorrectly denied the Appellant's PEME request and incorrectly determined the Appellant's cost of care for LTSS.

IX. CONCLUSION OF LAW

After careful review of the testimony and evidence present at the administrative hearing, this Appeals Officer concludes that:

1. DHS did not provide any testimony or evidence to show that the Appellant's nursing home bill was previously used to reduce excess resources or as an income exclusion or deduction.
2. DHS incorrectly denied the Appellant's PEME request and incorrectly determined the Appellant's cost of care for LTSS.

X. DECISION

Based on the foregoing findings of fact, conclusions of law, evidence, and testimony it is found that a final order be entered that there is not sufficient evidence to support DHS' denial of the Appellant's PEME request and their calculation of the Appellant's cost of care for LTSS. DHS is to recalculate the Appellant's cost of care for LTSS by factoring in the Appellant's nursing home bill of \$7,849.00 from November 2024 as a PEME and issue a new BDN.

APPEAL GRANTED

/s/ Jack Peloquin

Jack Peloquin

Appeals Officer

NOTICE OF APPELLATE RIGHTS

This final order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such an appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.

CERTIFICATION

I hereby certify that I mailed, via regular mail, postage prepaid, a true copy of the foregoing to

[REDACTED]

[REDACTED] and to [REDACTED]

[REDACTED]; copies were sent, via email, to [REDACTED],

Rebecca Cahoon, Vanessa Ward, Rose Leandre, Jacqueline Neirinckx, Kirsten Cornford, Michael

Pangman, and the DHS Policy Office at dhs.policyquestions@dhs.ri.gov on this 10TH day of

JUNE, 2025.


