

ELA Member Sues Tennessee Over Failure to Deduct Pre-Eligibility Medical Expenses

Maryland ElderLawAnswers member Ron M. Landsman, who successfully sued Maryland over its refusal to deduct “pre-eligibility medical expenses” (PEMEs) from Medicaid recipients' patient pay amounts (PPA), has again teamed with elder law litigator René H. Reixach, Jr., to file suit in Tennessee on behalf of a woman with disabilities who owes her nursing home \$21,723.66. The complaint alleges that Tennessee is violating the Medicaid Act and its own state Medicaid plan by deducting PEMEs incurred within three months of filing a Medicaid application only when the patient was otherwise financially eligible for Medicaid.

Kerry Growdon, a 62-year-old woman with disabilities, entered a nursing home in July 2010. After incurring \$21,723.66 in nursing home bills that she has not paid and that the nursing home has not written off, Ms. Growdon became eligible for Medicaid in September 2010. For the last two years, Ms. Growdon has attempted to have these PEMEs deducted from her PPA, but the state has refused, citing a 2011 Memorandum from Patti Killingsworth, the Assistant Commissioner of the Bureau of TennCare and its Chief of Long Term Care, that states that PEMEs from three months prior to a Medicaid application are deductible only if “the person would have been income and resource eligible [i.e., eligible for Medicaid] at the time the expense was incurred.”

According to the complaint, “[t]he ‘eligibility’ requirement stated in the Killingsworth Memo is directly contrary to the Medicaid Act, the TennCare plan and the TennCare Policy Manual. In fact, the TennCare Policy Manual states, ‘Medical expenses incurred during Medicaid/TennCare ineligibility do not impact on whether the bill is an allowable medical expense.’ ” (emphasis in original) The complaint notes that the Centers for Medicare and Medicaid Services (CMS) rejected Michigan's attempt to impose the same deduction requirement, as well as an earlier request by Tennessee that failed to include any pre-eligibility deduction at all.

Ms. Growdon's suit, which was filed in the U.S. District Court for the Eastern District of Tennessee, Southern Division, requests a permanent injunction allowing Ms. Growdon to deduct her PEMEs from her PPA, along with an order forcing the state to change its policy to comply with federal law.

Landsman and Reixach are assisted in the case by Robert Mark Addison, Stephen D. Barham and D. Aaron Love of the Chattanooga, Tennessee firm Chambliss, Bahner & Stophel, P.C. (Dana Perry of Chambliss, Bahner & Stophel is an ElderLawAnswers member attorney.) Landsman and Reixach also recently filed a class action lawsuit against Florida over its PEME policy.