

Medicaid Reimbursement for Home Care Expenses

You may request reimbursement for certain medical expenses incurred before you receive the Medicaid card, which were paid by you or on your behalf.

1. *Medicaid is retroactive for up to three calendar months prior to the month of the Medicaid application.* Medical and home care expenses incurred and paid for during those months are reimbursable, as well as expenses incurred up to the time the Medicaid card is issued.¹ The applicant must have been eligible for Medicaid in the months the expenses were incurred - someone who had transferred excess assets in January and applied in February would NOT be eligible for reimbursement for medical expenses incurred and paid for in January, even though January is in the 3-month retroactive period.
 - Be sure to say “yes” on Question 1 in Section G (p.5) of the Medicaid application (DOH-4220, see <https://www.health.ny.gov/forms/doh-4220.pdf>), indicating that you have paid or unpaid medical bills within 3 months before the month of application. Otherwise, Medicaid will not determine your eligibility during those retroactive months, and won’t set the “effective date” of eligibility back to a retroactive month.
 - *Services by non-Medicaid as well as Medicaid providers* in the retroactive and application period are reimbursable, but only at the Medicaid rates.²
2. *If Medicaid incorrectly denied a Medicaid or home care application or delayed in processing it, Medicaid must reimburse the recipient for medical expenses paid as a result of the “error or delay.”*³ EXAMPLE: On an initial application, Medicaid incorrectly calculated your income. After a fair hearing you won a decision ordering the local district to recalculate your income. SEE page 3 below for tips and cautions.
 - *Services by non-Medicaid providers are reimbursable during a period of error and delay, an exception to the rule that once the application is filed, Medicaid will only pay Medicaid providers.*⁴ However, beware of a [2010 ADM-09 - Reimbursement of Paid Medical Expenses Under 18 NYCRR §360-7.5\(a\)](#) that limits reimbursement for services after the application is filed to services provided by Medicaid providers.

HOW TO FILE FOR HOME CARE REIMBURSEMENT IN NYC

Send a cover letter including all the documents listed below, and explaining what you want, by certified mail to:

Ms. Evadne Duff
HRA Home Care Services Program
Reimbursement Unit
785 Atlantic Avenue, 3rd Floor
Brooklyn, NY 11238-2205
Phone is (929) 221-1193

If you wish to request reimbursement for expenses other than personal care (home attendant), such as prescriptions, certified home health agency (CHHA) care, physician bills, etc., send your request to:

Office of Financial and Program Planning
Medicaid Client Reimbursement Unit
330 W 34th St Rm 516
New York NY 10001-2406
Phone 212-643-3386
Fax 212-643-1287

1. Copies of canceled checks (or digital cancelled check images) and/or receipts or other proof of payment.⁵ If there are time records or logs showing dates and hours worked, include them.
2. A copy of the CASA or Medicaid notices and fair hearing decisions showing (1) that client is eligible for Medicaid, the effective date, and the amount of the spend-down, if any, and (2) the amount of home care approved. If the client was approved for home care through a Managed Long-Term Care Plan (MLTC), provide the initial plan of care showing the effective date and number of hours of home care authorized.
3. One-page reimbursement form, signed by the person seeking reimbursement, available at <http://www.wnylc.com/health/download/12/>
4. Reimbursement worksheet, listing for each check paid the date, check #, amount paid, the name of the aide, dates of service covered by each payment, hours per day,

and hourly rate. You can use an Excel template available at <http://www.wnyc.com/health/download/13/>

5. NYC Substitute Form W-9 (available at <http://www.wnyc.com/health/download/166/>) – The person to be reimbursed must complete this form.
6. ***If the aide(s) was/were paid in cash, or by checks made to the order of “cash,” then you must also submit an affidavit.*** HRA requires a notarized statement by each aide who received cash. You can use this template: <http://www.wnyc.com/health/download/14/>

We suggest that you include:

- The individual aide’s name and address,
- The name and address of the home care client and a statement that the aide provided services for her/him,
- The beginning and end dates on which the aide worked.
- The total service days – if she worked 5 days per week for 5 weeks, the total would be 25 days.
- The salary, indicating whether by week, day, or hour, and the total payment received.
- The aide signs the form before a notary public

WARNINGS AND TIPS

1. Any disagreement with the DSS on the “effective date” of Medicaid eligibility – including retroactive coverage – or of an increase in hours authorized must be worked out with the DSS or at a fair hearing. The reimbursement unit has no power to move back the eligibility date or increase the authorization in hours.
2. HOURS – The Reimbursement unit will only reimburse the family/client for the number of hours per week the CASA or MLTC plan authorized. So if the family paid for 24-hour care, but the MLTC only approved 8 hours, reimbursement will be for only 8 hours per day, unless the family successfully appeals the MLTC plan’s determination on hours at a fair hearing, or convinces the plan to increase hours.

3. Beware of the EFFECTIVE date of any increase in the number of hours authorized. If you want reimbursement at a higher number of hours than the number initially authorized, then you will need to convince the MLTC plan or a Judge at a fair hearing that the increase should be retroactive. The “effective date” of the increase you request will depend on the situation -- it might be the date of the application, the beginning of the 3-month retroactive period, or the date of a new M11q filed on an ongoing case. If a hearing decision simply grants an increase in hours, but does not specify that the plan erred in its initial authorization, you risk being denied reimbursement because the plan may interpret the hearing decision as increasing hours only *prospectively*. In that case, you’d get no reimbursement.
4. SPENDDOWN CASES – If applicant has a *spend-down or surplus*, Medicaid will reduce the reimbursement by the amount of the spend-down. However, certain past medical bills can be applied to get “credit” against the surplus. With your request, include: (i) old unpaid medical bills, for services provided up to six years before, if they are still “viable,” meaning that the provider is still seeking payment, and (ii) paid bills for services provided within the 3 months before the month you applied for Medicaid, or in the months the application was pending. In your cover letter, ask Medicaid to use these bills to meet the spend-down, so that the applicant will get full reimbursement for the home care bills.

WHAT TO EXPECT AFTER YOUR REQUEST IS FILED

It takes a long time to receive a response from a request for reimbursement. You can call to push it along. A denial of the reimbursement, or an inadequate reimbursement amount, can be appealed at a fair hearing.

Endnotes

¹ [18 NYCRR 360-7.5\(a\)\(5\)](#); 88 ADM-31 implements *Krieger v. Perales*, 503 N.Y.S.2d 418 (2d Dept. 1986), aff'd, 518 N.Y.S.2d 957 (1987).

² Under *Seitelman v. Silverman*, 601 N.Y.S.2d 391 (N.Y.Co. 1993), aff'd, 630 N.Y.S. 2d 296 (App. Div. 1st Dept. 1995), modified, 91 N.Y.2d 618, 674 N.Y.S.2d 253 (1998), bills of non-Medicaid providers must be reimbursed for services in the 3-month period, but only at the Medicaid rate. Regarding Medicaid rate, on May 15, 2002, HRA issued a written procedure

limiting the reimbursement rate for home attendant services to the \$7.39 hourly wage rate, unless the client/family paid for services through an agency, allowing a \$12.84 reimbursement rate. Challenges to this policy are pending. Contact: Ken Stephens, The Legal Aid Society, 718-991-4758 ext 271. Seitteman does not limit reimbursement for services in the 3-month retroactive period to in-state services, and would apply to emergency services rendered out-of-state. *Massand v. Hammons*, 662 N.Y.S.2d 754 (1st Dept. 1997).

³ [42 U.S.C. § 1396d\(a\)](#), [SSL § 367-a\(1\)](#), [18 NYCRR 360-7.5\(a\)\(1\)](#). 87 ADM-48.

⁴ Though Medicaid usually reimburses only at the MEDICAID rate, in *Greenstein v. Perales*, 833 F. Supp. 1054 (S.D.N.Y. 1993)(appeal settled, Second Modified Judgment, 2/24/95), the State agreed to pay reimbursement at the ACTUAL rate. However, on May 15, 2002, HRA issued a written procedure limiting the rate to the \$7.39 hourly wage rate, unless the client/family paid for services through an agency, allowing a \$12.84 reimbursement rate - applying the same rule to the *Seitelman* 3-month pre-application period. Plaintiffs' counsel in *Greenstein* is negotiating with the City. CONTACT: Donna Dougherty, JASA/Queens Legal Services for the Elderly, 718-286-1500.

⁵ Reimbursement for payments in cash is generally denied. However, in *Muhlstein v. HRA*, 865 N.Y.S.2d 647 (2nd Dept. Oct. 2008), the court holds it would be arbitrary and capricious of agency to ignore precedents set by prior hearing decisions allowing reimbursement of cash paid for home care. For example, court cited *Matter of MG*, Fair Hearing No. 3834019J (August 4, 2003, D'Andrea, ALJ)(Tonya Wong, Legal Services for New York City, representative for appellant)(copy available on <http://onlineresources.wnyc.net> fair hearing data base). Finds the signed affidavits of the two home health care aides acknowledging receipt of cash payments should be considered on the issue of reimbursement, in light of the prior acceptance of such evidence, the State held that the home care aides' signed affidavits acknowledging receipt are sufficient proof of payment in cash.