STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [redacted]

Claimant

Reg. No: 2008-15509
Issue No: 2019
Case No: [redacted]
Load No:
Hearing Date:
February 3, 2009
Mecosta County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on November 20, 2008, and continued on February 3, 2009. Claimant's son, and authorized hearing representative, appeared and testified.

ISSUE

Did the Department of Human Services properly determine claimant's patient-pay amount?

FINDINGS OF FACT

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

(1) Claimant was providing home care for his wife.

(2) On December 23, 2007, claimant broke his hip and was admitted to the hospital.

(3) On December 26, 2007, claimant was admitted to a nursing home for rehabilitation before returning home.

(4) On December 26, 2007, claimant's wife was admitted to the hospital emergency room and immediately transferred to a nursing home for custodial care.

(5) On December 28, 2007, an application for Medical Assistance (MA) was submitted for claimant.

(6) On February 7, 2008, claimant's application for Medical Assistance (MA) was approved. Claimant had a partial month patient pay amount of $[redacted] for December 2007 and a patient pay amount of $[redacted] per month beginning in January 2008.

(7) On February 15, 2008, claimant's authorized hearing representative submitted a request for hearing.

(8) In April 2008, claimant left the nursing home and returned to his own home.

(9) On November 20, 2008, a hearing was begun on this matter. The hearing was adjourned in order for more specific information regarding claimant's wife's entry to a nursing home.

(10) On February 3, 2009, the hearing was completed.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Department policy provides the following guidance for case workers. The department's policies are available on the internet through the department's website.

PROGRAM REFERENCE GLOSSARY STATE OF MICHIGAN DEPARTMENT OF HUMAN SERVICES

COMMUNITY SPOUSE

L/H or waiver patient's spouse when the spouse:

- Has NOT been, and is NOT expected to be, in a hospital and/or LTC facility for 30 or more consecutive days, and
- For waiver patients only, the spouse is NOT also approved for the waiver.

L/H PATIENT

The MA client who was in the hospital and/or LTC facility in an L/H month. Mr. Jones in the examples below is the L/H patient.

L/H MONTH

A calendar month containing:

- At least one day that is part of a period in which a person was (or is expected to be) in an LTC facility and/or hospital for at least 30 consecutive days, **and**
- **No** day that the person was a waiver patient.

Examples:

- Mr. Jones is admitted to an LTC facility on October 5th and is discharged December 1st. October, November and December are L/H months.
- Mr. Jones is admitted to a hospital October 31st, transferred to an LTC facility in November and discharged from the LTC facility December 15th. October, November and December are L/H months.
- Mr. Jones is admitted to a hospital October 28th and discharged December 11th. He is approved for the waiver effective December 17th. October and November are L/H months.

LONG-TERM CARE (LTC)

LTC means being in any of the following:

- A nursing home that provides nursing care.
- A county medical care facility that provides nursing care.
- A hospital long-term care unit.
- A DCH facility that provides active psychiatric treatment.
- A special MR nursing home.
- A DCH facility for the mentally retarded that provides ICF/MR nursing care.

A person may receive hospice care in one of these facilities. He is still considered in LTC.

LTC

Long-Term Care.

WAIVER See PEM 106.

WAIVER PATIENT

Person whose month being tested is a waiver month.

WAIVER MONTH

Calendar month containing at least one day that the person is (was) approved for the waiver (see PEM 106). The Extended-Care category (PEM 164) CANNOT be used if the person's waiver medical approval date is unknown.

PEM 106 MA WAIVER FOR ELDERLY AND DISABLED

DEPARTMENT POLICY

MA Only

This waiver is called the MI Choice Waiver Program. This waiver program provides home and community-based services for aged and disabled persons who, if they did not receive such services, would require care in a nursing home.

Services provided under this waiver program must be less costly for MA than the cost of nursing home services for the total number of waiver clients, not per person.

The MI Choice waiver is **not an MA category**, but there are special eligibility rules for people approved for the waiver. See "DHS Local Office Responsibilities" below.

PEM 546 POST-ELIGIBILITY PATIENT-PAY AMOUNTS

DEPARTMENT POLICY

MA Only

Use this item to determine post-eligibility patient-pay amounts (PPAs). A post-eligibility PPA is the L/H patient's share of their cost of LTC or hospital services. First determine MA eligibility. Then determine the post-eligibility PPA when MA eligibility exists for **L/H patients** eligible under:

- A Healthy Kids category, or
- A FIP-related Group 2 category, or
- An SSI-related Group 1 or 2 category ***except:***

  •• QDWI, or
  •• SSI recipients, or
  •• Only Medicare Savings Program (with **no** other MA coverage).

MA income eligibility and post-eligibility PPA determinations are **not** the same. Countable income and deductions from income often differ. Medical expenses, such as the cost of LTC, are never used to determine a post-eligibility PPA. Do not recalculate a PPA for the month of death.

PATIENT-PAY AMOUNT

The post-eligibility PPA is total income minus total need.

Total income is the client's countable unearned income plus his remaining earned income. See "COUNTABLE INCOME" below.

Total need is the sum of the following when allowed by later sections of this item:

- Patient Allowance.
- Community Spouse Income Allowance.
- Family Allowance.
- Children's Allowance.
- Health Insurance Premiums.
- Guardianship/Conservator Expenses.

COUNTABLE INCOME

For all persons in this item, determine countable income as follows:

- RSDI, Railroad Retirement and U.S. Civil Service and Federal

Employee Retirement System.

Use countable income per PEM 500 and 530. Deduct Medicare premiums actually withheld by:

- Including the L/H patient's premium along with other health insurance premiums, and
- Subtracting the premium for others (example, the community spouse) from their unearned income.

PATIENT ALLOWANCE

The patient allowance for clients who are in, or are expected to be in, LTC and/or a hospital the entire L/H month is:

- $60 if the month being tested is November 1999 or later, and

- $30 if the month being tested is before November 1999.

COMMUNITY SPOUSE INCOME ALLOWANCE

L/H patients can divert income to meet the needs of their community spouse. The **community spouse income allowance** is the maximum amount they can divert. However, L/H patients can choose to contribute less. Divert the **lower** of:

- The community spouse income allowance, or
- The L/H patient's intended contribution (see "Intent to Contribute" below).

Compute the community spouse income allowance using steps one (1) through five (5) below.

1. Shelter Expenses

Allow shelter expenses for the couple's principal residence as long as the obligation to pay them exists in either the L/H patient's or community spouse's name.

Shelter expenses are the total of the following monthly costs:

- Land contract or mortgage payment, including principal and interest.
- Home equity line of credit (HELOC) or second mortgage.
- Rent.
- Property taxes.
- Assessments.
- Homeowner's insurance.

- Renter's insurance
- Maintenance charge for condominium or cooperative.

Also add the appropriate heat and utility allowance if there is an obligation to pay for heat and/or utilities. The heat and utility allowance for a month is:

- $550 starting January, 2009.
- $529 starting January, 2008.

Convert all expenses to a monthly amount for budgeting purposes.

2. Excess shelter allowance

Subtract the appropriate shelter standard from the shelter expenses determined in step one. The shelter standard for a month is:

- $516, starting January, 2007.
- $525, starting January, 2008.

The result is the **excess shelter allowance**.

3. Total allowance

Add the excess shelter allowance to the appropriate basic allowance. The basic allowance for a month is:

- $1750, starting April 2008.
- $1712, starting April, 2007.

The result, up to the appropriate maximum, is the **total allowance**.

The maximum allowance for a month is:

- $2610, starting January 2008.
- $2739, starting January 2009.

4. Countable income

Determine the community spouse's countable income. See “COUNTABLE INCOME” in this item.

5. Community spouse income allowance

Subtract the community spouse's countable income from the total allowance. The result is the **community spouse income allowance**.

In this case the authorized hearing representative's concern is household expenses that claimant incurred maintaining his home. The department's position is that claimant's wife was not a community spouse, so no income was diverted to maintain the home. The department asserts claimant's wife cannot be a community spouse because she went into long term care. In accordance with the department policy, claimant's patient-pay amount was correctly determined.

Claimant's authorized hearing representative asserts that the classifications of long term care and community spouse are arbitrary and capricious as it relates to claimant's situation. The authorized hearing representative emphasized that claimant was only admitted to the nursing home temporarily and would be returning to his own home, yet the department's policy does not take those circumstances into consideration. The authorized hearing representative also asserts that since the department's policy does not address these very plausible circumstances, the policy does not comport with legislative intent.

The claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

> Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940); *Auto-Owners Ins Co v Elchuk*, 103 Mich App 542, 303 NW2d 35 (1981); *Delke v Scheuren*, 185 Mich App 326, 460 NW2d 324 (1990), and *Turner v*

Ford Motor Company, unpublished opinion per curium of the Court of Appeals issued March 20, 2001 (Docket No. 223082).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly determined Claimant's patient-pay amount.

It is ORDERED that the actions of the Department of Human Services, in this matter, are UPHELD.

/s/
Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 25, 2009

Date Mailed: February 27, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

GFH[redacted]

cc: [redacted]