

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: 2008-30049
Issue No: 2019
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 9, 2009
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 telephone hearing was held on Tuesday, June 9, 2009. The claimant was not present, but his wife, [REDACTED], and paralegal, [REDACTED] appeared on the claimant's wife's behalf.

ISSUE

Did the department properly determine the claimant's Patient Pay Amount (PPA)?

FINDINGS OF FACT

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

(1) On June 19, 2008, the claimant applied for MA benefits with retroactive benefits to May 2008.

(2) The claimant is a recipient of long-term care under the Medical Assistance (MA) program.

(3) The claimant does not have a guardian/conservator.

(4) The claimant has a community spouse, but no children under the age of 18.

(5) The claimant does receive Social Security RSDI income of [REDACTED] and a pension in the amount of [REDACTED] in unearned income.

(6) The claimant does have a health insurance premium of [REDACTED]

(7) On August 4, 2008, the department caseworker calculated the claimant's eligibility for long-term care based on the claimant's unearned income from a pension of [REDACTED] and Social Security RSDI income of [REDACTED] for a total unearned monthly income of [REDACTED] (Department Exhibit A-D):

- The claimant qualified for a \$20 disregard, resulting in total income of [REDACTED]
- The claimant had total needs of [REDACTED], resulting from a protected income level of \$408 and a health insurance premium of [REDACTED]
- The claimant had an excess income/deductible of [REDACTED], resulting in a net income of [REDACTED] minus the total needs of [REDACTED]
- The claimant was allocated to pay [REDACTED] to his community spouse.
- The claimant was allowed to have a [REDACTED] patient allowance.
- As a result, the claimant's Patient-Pay Amount for long-term care per month was [REDACTED].

(8) On August 4, 2008, the department caseworker sent the claimant a notice that his Patient-Pay Amount would be [REDACTED]

(9) On August 4, 2008, the department caseworker calculated the claimant's community spouse monthly budget (Department Exhibit 1-2):

- The total shelter expense was [REDACTED], resulting from [REDACTED] in heat/utility allowance, [REDACTED] in monthly taxes. The claimant's spouse did not have insurance on their primary residence.
- The excess shelter allowance was [REDACTED], resulting from the total shelter expense of [REDACTED] minus the shelter standard of \$525.
- The maximum allowance from community spouse is [REDACTED]
- The claimant had an excess shelter allowance of [REDACTED] with a basic allowance of [REDACTED].
- The claimant's community spouse's unearned income was [REDACTED], which showed a deficit of [REDACTED], which resulted in a community spouse allowance of [REDACTED].
- The [REDACTED] plus the community spouse income plus the deficit of [REDACTED] equals the allowable maximum of a community spouse of [REDACTED].

(10) On August 4, 2008, the department caseworker sent the claimant's wife a notice that her community spouse allotment would be [REDACTED].

(11) On August 14, 2008, the department received a hearing request from the claimant's spouse.

(12) During the hearing, the claimant's wife testified that [REDACTED] is not enough to meet the couples combined expenses and that to make ends meet that she would require additional funds from the claimant's expenses.

(13) During the hearing, the Administrative Law Judge with the claimant's wife's consent, allowed the record to be open additional time to allow the claimant's wife's paralegal from [REDACTED] to make an argument for the hardship allowance.

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).

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 coverages). PEM, Item 546, p. 1.

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. PEM, Item 546, p. 1.

PROCESSING CHANGES

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. PEM, Item 546, p. 1.

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 the countable amount 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.

Exception: Do **not** use the following special exclusion policies regarding RSDI. These policies only apply to eligibility, **not** post-eligibility patient-pay amounts.

- .. PEM 155, "**503 COUNTABLE RSDI**"
- .. PEM 156, "**COUNTABLE RSDI**"
- .. PEM 157, "**COUNTABLE RSDI**"
- .. PEM 158, "**COUNTABLE RSDI**"

Note: The checks of clients on Buy-In increase about 3 months after Buy-In is initiated. Re-compute the PPA when the client's check actually changes. PAM 810 has information about Buy-In. PEM, Item 546, pp. 1-2.

- Earned and Other Unearned Income

Use PEM 500 and 530. For clients, use FIP- or SSI-related policy as appropriate. Use SSI-related policies for all other persons.

For the **client only**, disregard \$65 + ½ of his countable earned income. Use PRT 295 to determine the disregard. Earned income minus the disregard is **remaining earned income**. PEM, Item 546, p. 2.

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.

Exception: Use \$90 for any month a patient's VA pension is reduced to \$90 per month. See "**Exhibit**"

Use the appropriate protected income level for one from PRT 240 for clients who were **not** in, or are **not** expected to be in, LTC and/or a hospital the entire L/H month. PME, Item 546, p. 2.

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**"). PEM, Item 546, p. 2.

When a DHS-4592 indicating an intent to contribute **less** income is received:

- . **Decrease** the income diverted to the community spouse to the indicated amount.
- . Do **not increase** the income diverted to the community spouse with a new DHS-4592.
- . **Decrease** the income diverted if:
 - .. the community spouse's circumstances change, **and**
 - .. the change reduces the community spouse income allowance **below** the amount indicated on the DHS-4592.
- . Use timely negative action procedures to increase the patient-pay amount.

Do **not** use amounts from previous DHS-4592s when diverting income again after stopping a diversion for one of these reasons:

- . An L/H patient is discharged to a non-L/H setting for 30 or more days.
- . An L/H patient's ongoing MA case (including active deductible) terminates.
- . An L/H patient's spouse is hospitalized or in LTC for 30 or more consecutive days.

Start the diversion process from the beginning. PEM, Item 546, p. 5.

5. Community Spouse Income Allowance

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

Exception: Use court-ordered support as the community spouse income allowance if:

- . the L/H patient was ordered by the court to pay support to the community spouse, **and**
- . the court-ordered amount is **greater** than the result of Step 5. PEM, Item 546, p. 4.

Intent to Contribute

DHS-4592, Intent to Contribute Income

- . Determines the amount of income an L/H patient intends to contribute to his community spouse.
- . Instructs the L/H patient to report how much income he intends to make available.
- . Should be returned within 10 days.

If the DHS-4592 is **not** returned within 10 days:

- . do **not** delay case actions, and
- . budget the entire community spouse income allowance. PEM, Item 546, pp. 4-5.

Compute the community spouse income allowance using Steps 1 through 5 below. PEM, Item 546, p. 3.

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.

Include expenses for that residence even when the community spouse is away (e.g., in an AFC home). An AFC home or home for the aged is not considered a principle residence. PEM, Item 546, p. 3.

Shelter expenses are the total of the following monthly costs:

- . Land contract or mortgage payment, including principal and interest
- . 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:

- . \$587, starting January, 2007
- . \$464, starting January, 2006

Convert all expenses to a monthly amount for budgeting purposes. PEM, Item 546, p. 3.

2. Excess Shelter Allowance

Subtract the appropriate shelter standard from the shelter expenses determined in Step 1. The shelter standard for a month is:

- . \$516, starting January 2007
- . \$495, starting January 2006

The result is the **excess shelter allowance**. PEM, Item 546, p. 3.

3. Total Allowance

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

- . No change, starting January 2008
- . \$1,712, starting April 2007
- . \$1,719, starting January 2007

The result, up to the appropriate maximum, is the **total allowance**. The maximum allowance for a month is:

- . \$2,610, starting January 2008
- . \$2,547, starting April 2007
- . \$2,541, starting January 2007

Exception: In hearings, administrative law judges can **increase** the total allowance to divert more income to a L/H patient's community spouse. See PEM 600. PEM, Item 546, p. 4.

4. Countable Income

Determine the community spouse's countable income. See "**COUNTABLE INCOME**" in this item. PEM, Item 546, p. 4.

Budget the entire allowance **until** a DHS-4592 is returned indicating the L/H patient intends to contribute **less**. PEM, Item 546, p. 5.

HEALTH INSURANCE PREMIUMS

Include as a need item the cost of any health insurance (see PRG) premiums (including vision and dental insurance) the L/H patient pays, regardless of who the coverage is for. This includes Medicare premium that a customer pays.

Do not include premiums paid by someone other than the L/H patient as a need item.

Convert the cost of all premiums to a monthly amount for budgeting purposes. PEM, Item 546, p. 6.

In the instance case, the claimant applied for MA on June 19, 2008 with retroactive benefits to May 2008. The claimant does qualify for long-term care for MA, but as previously discussed, has a Patient-Pay Amount of [REDACTED] per month. The claimant's spouse receives unearned income of [REDACTED], which resulted in a deficit of only [REDACTED] to bring her up to the maximum of [REDACTED]

On June 26, 2009, the Administrative Law Judge received a memo from the claimant's wife's paralegal from [REDACTED] that included a June budget for the

claimant. (Claimant Exhibit A-C) The paralegal's memo cited property taxes and utilities that have already been considered. She also included transportation costs of auto payment, insurance, and gasoline, which are not covered. In addition, she claimed food and personal needs for the claimant's wife, which are also not covered. The memo also cites roof repair and basement repair due to leaking which are also not a part of the allowable deductions.

According to the policy found in PEM 600 the Administrative Law Judge may raise the total allowance used to calculate the community spouse income allowance to an amount greater than provided in PEM 546 to provide such additional income as is necessary due to exceptional circumstances resulting in significant financial stress. According to the policy, this does not include expenses of the community spouse for goods and services that exceed the total allowance provided by the policy which does not constitute exceptional circumstances. Food and services purchased for day-to-day living include clothing, drugs, food, shelter (mortgage, taxes, insurance, rent, and maintenance), telephone, trash pickup, doctor services, entertainment, heat, utilities, and transportation are not exceptional circumstances according to policy. An example of exceptional circumstances is a need for the community spouse to pay for support of the medical services at home to avoid being institutionalized. The expenses document by the claimant's wife's paralegal are for goods and services purchased for day-to-day living which do not constitute exceptional circumstances.

Therefore, the department determination of the claimant's monthly Patient-Pay Amount of [REDACTED] and community spouse income allowance of [REDACTED] must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly determined the claimant's Patient-Pay Amount of [REDACTED] and community spouse income allowance of [REDACTED]

Accordingly, the department's action is **AFFIRMED**.

/s/

Carmen G. Fahie
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 15, 2009

Date Mailed: September 15, 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.

CGF/vmc

cc:

[REDACTED]