

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: 2008-31203  
Issue No: 2019  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
November 6, 2008  
Eaton County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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, an in-person hearing was held on November 6, 2008. Claimant's attorney appeared on his behalf and presented oral argument on why he believes the department's negative action should be reversed.

ISSUE

Did the department err in using the couple's principal residence expenses when calculating claimant's monthly Medicaid (MA) 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) Claimant is a married, elderly male who has resided in long-term care since 2006.
- (2) Claimant and his spouse own property at [REDACTED].
- (3) Claimant and his spouse lived together at that address until he entered long-term care, and also, claimant's spouse resided there alone until she moved to a senior living complex in 2007.
- (4) The property where the couple lived together is vacant and it has been vacant at all times relevant to this dispute.
- (5) Claimant's spouse has a [REDACTED] monthly rental obligation in her senior living complex (Department Exhibit #1, pg 13).
- (6) At claimant's mandatory, annual MA redetermination in 2008, the department stopped using claimant's spouse's monthly rental expense, and instead, began using the [REDACTED] property's expenses to calculate claimant's monthly MA Patient Pay Amount, which resulted in an increased financial obligation due and owing to claimant's long-term care facility in the amount of [REDACTED] per month (Department Exhibit #1, pgs 28-32).
- (7) Claimant's attorney timely requested a hearing to dispute this change, contending claimant's community spouse's rental expense should be reinstated in the department's monthly PPA calculation.
- (8) The department contends their previous use of claimant's spouse's monthly rental expense was erroneous, and thus, it required correction at claimant's mandatory 2008 annual redetermination.

#### 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).

The applicable departmental policy states:

### **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.

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.

The above-referenced policy specifically directs the department to allow shelter expenses from the couple's principal residence when the obligation to pay them exists in either the long-term care patient's name or in his community spouse's name, even when the community spouse is "away." Although this policy offers examples of what constitutes being away from the couple's principal residence (e. g., in an AFC home or home for the aged), it was never intended to limit the term "away" to those two circumstances.

The facts of record are clear. The only residence in which this married couple ever resided together is their home [REDACTED]. Furthermore, claimant's attorney does not dispute claimant and his spouse still own that home. Consequently, the department had no alternative but to use the shelter expenses associated with that home when calculating claimant's monthly PPA, despite the fact claimant's community spouse has been away from it since 2007 when she moved to a senior living complex. As such, the department's correction of their former computational error at claimant's 2008 MA redetermination was correct and it must be upheld.

Lastly, this Administrative Law Judge notes all of the debate at hearing about the department's definition of a homestead (or lack thereof) is completely irrelevant and immaterial because the key term here is not "homestead", but rather, "principal residence." And in this case, there was/is only one principal residence for this couple in [REDACTED].

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly used this couple's principal residence expenses when calculating claimant's monthly Medicaid (MA) Patient Pay Amount (PPA).

Accordingly, the department's action is AFFIRMED.

/s/ \_\_\_\_\_  
Marlene B. Magyar  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: May 19, 2009

Date Mailed: May 20, 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 receipt 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.

MBM/db

cc:

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