

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: 2009-14644
Issue No: 2019
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 22, 2009
Monroe 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 Thursday, October 22, 2009. The claimant was not present, but was represented by his sister-in-law, [REDACTED], and attorney, [REDACTED].

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) The claimant is a Medical Assistance (MA) recipient in long-term care.
- (2) The claimant receives \$2,145 from a pension from the [REDACTED]

[REDACTED]. (Department Exhibit 15)

(3) On July 14, 2003, a Judgment of Separate Maintenance was filed in the [REDACTED] [REDACTED] in the divorce of the claimant and his wife where the claimant was required to give the claimant's wife 50% of the defendant's gross monthly annuity. (Claimant Exhibit 1-10)

(4) Subsequently, the department did allow the 50% withheld for the claimant's wife as a community spouse income allowance because the claimant and his wife were still married.

(5) On [REDACTED], the claimant and his wife were divorced in the [REDACTED] [REDACTED] and the Circuit Court Judge incorporated the terms of the prior Judgment of Separate Maintenance previously entered into. (Claimant Exhibit A-C)

(6) The claimant has no community spouse and no children under the age of 18.

(7) The claimant does not receive any earned income on a monthly basis.

(8) The claimant does have health insurance premiums of \$231.06 per month.

(9) On January 26, 2009, the department caseworker calculated a new budget for the claimant based on his \$2,145 pension (Department Exhibit 11-14):

- The claimant qualified for a \$20 disregard, resulting in a net earned income of \$2,125.
- The claimant had excess income for full MA, which had an income limit of \$867.
- The claimant had a total need of \$639.06, which resulted from his protected income level of \$408 plus his health insurance premium of \$231.06.
- The claimant had an excess income/deductible of \$1,485, which resulted from his net income of \$2,125 minus his total need of \$639.06.

(10) On January 26, 2009, the department caseworker sent the claimant a notice that effective March 1, 2009 his Patient-Pay Amount would increase from \$722 to \$1,853.

(11) On January 30, 2009, the claimant requested a hearing, contesting the department's negative action.

(12) On January 30, 2009, the department caseworker requested clarification from the DHS Policy Unit stating that the claimant was in long-term care where his estranged wife was receiving \$1,014 of his pension under a Court Order. Since they were married, the department allowed the \$1,014 to be as a community spouse allowance. The claimant and his wife are now divorced. As a result, the department removed the community spouse income allowance and his Patient-Pay Amount increased from \$722 per month to \$1,853. The department counted his gross pension per PEM 500, p. 29 even though the court ordered amount is still being deducted before he gets his check and is sent to his ex-wife.

(13) On January 30, 2009, the Family Independence Manager received clarification from the Central Office DHS Policy Unit stating that the department was correct to count the gross benefit as unearned income even though the claimant was court ordered to pay half of his pension to his ex-wife. (Department Exhibit 16)

(14) On November 6, 2009, the claimant's attorney submitted a memorandum on the claimant's behalf making a persuasive argument as to why the claimant's gross pension should not be counted. The claimant's attorney cited that the claimant's unearned income should be derived from his 1099R, which he receives yearly from the Federal government and from which he uses as a basis for tax preparation. In addition, the claimant's Federal Income Tax 1040 also only counts the half of his pension that he actually receives. According to the claimant's attorney, unearned income is very specific according to tax law and if one considers all Federal laws a complete body with consistent terms where one would consider the income the Federal government reports to the claimant on a yearly basis on his 1099R as his gross monthly income.

Finally, the claimant's attorney argues that one annuity only generates one notice of annuity adjustment regardless of the number of people included where unearned income for each person generated from the annuity is given to that person in the form of a 1099R. In this case, the claimant and his ex-wife received an individual 1099R from this one annuity where two 1099R were distributed, but only one Notice of Annuity Adjustment. The claimant's 1099R statement of annuity paid showed the claimant received \$12,168 where his gross annuity was reduced by \$12,168 paid to the claimant's ex-wife under court ordered appointment. (Attorney Exhibit 1-11)

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 department manuals provide the following relevant policy statements and instructions for caseworkers:

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.

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.

The department is required to determine a client's post eligibility PPA. A post eligibility PPA is a long-term care client's share of his/her cost of long-term care of nursing home care. The PPA is the total income minus the total need. Total income is the claimant's countable unearned income. The total need is the sum of the patient allowance and health insurance premiums. PEM, Item 546.

In this case, the department properly counted the claimant's gross pension amount of \$2,145. As a result, the claimant's total countable unearned gross monthly income was \$2,145. In addition, the claimant does have a monthly insurance premium of \$231.06. PEM, Item 546.

The department determined that the claimant's total need amount would be of \$639.06 was subtracted from the claimant's total countable income of \$2,125, which resulted in the claimant having a PPA of \$1,485.

Therefore, the department's determination of the claimant's monthly PPA of \$1,485 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 monthly PPA of \$1,485.

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

/s/

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

Date Signed: December 21, 2009

Date Mailed: December 21, 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:

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