

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: 2009-17947
Issue No: 2019
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 1, 2009
Dickinson County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 July 1, 2009. Claimant is in a nursing home and did not appear. Claimant's [REDACTED] appeared and testified on claimant's behalf.

ISSUE

Did the department incorrectly compute the Medicaid (MA) patient pay amount (PPA) that the claimant must pay for her nursing home care?

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 in a nursing home and was receiving MA with patient pay amount of \$243 per month.

2. Department computed a new budget with increased Social Security amount that resulted in patient pay amount being raised to \$417 per month. Claimant was mailed a notice of the new patient pay amount in February, 2009.

3. Claimant's husband then provided new property taxes and insurance information that was used to compute a new MA budget which resulted in patient pay amount of \$366 per month.

4. Claimant's husband requested a hearing on February 27, 2009.

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).

Departmental policy addresses Patient Pay Amount (PPA), and 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.

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.

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.

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.

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.

Review of department's MA budgets shows that the claimant receives \$1,950 per month in RSDI benefits, out of which \$1,273.20 per month is diverted to her spouse for his support. Claimant's spouse then also receives \$680.40 in RSDI for himself, giving him monthly income of \$1,953.60. Claimant's husband has no mortgage or rent expense, and pays \$55.51 in property taxes and \$26.69 in house insurance per month. Claimant's husband states he needs more money and that the MA budgeting procedures are not fair. This Administrative Law Judge concludes that the department has computed MA budgets and PPA correctly.

Furthermore, increase of the spousal allowance is not warranted, as departmental policy speaks to such increase by the Administrative Law Judge only if an exceptional circumstance exists resulting in significant financial duress. Day to day living expenses does not constitute significant financial duress. Example of such duress is if the community spouse, such as claimant's husband, needs medical and supportive services at home in order to avoid being institutionalized. PAM 600. No such circumstances exist here.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department correctly computed the MA PPA that the claimant must pay towards her nursing home care.

Accordingly, department's action is AFFIRMED, and it is SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 22, 2009

Date Mailed: September 23, 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.

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