

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2009-31949
Issue No: 2019

[REDACTED]

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris

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 September 16, 2009 by Administrative Law Judge [REDACTED]. The claimant did not appear, but was represented by attorney [REDACTED]. [REDACTED], the claimant's wife, testified as a witness. The department was represented by [REDACTED]. This hearing decision is being written by Administrative Law Judge [REDACTED] as [REDACTED] has left her employment with the State Office of Administrative Hearings and Rules. The written and spoken record was reviewed.

ISSUE

Did the department properly determine the claimant's Patient Pay Amount (PPA) for February and March, 2009?

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 long-term care (LTC) patient who meets the non-financial eligibility requirements for Medical Assistance (MA).
2. Claimant and his spouse receive monthly unearned income. The claimant receives [REDACTED] in RSDI. The claimant's wife receives [REDACTED] in RSDI, [REDACTED] in employment earnings and [REDACTED] in a monthly annuity payment.

3. The claimant is receiving a health insurance premium deduction and a community spouse deduction.
4. The department determined the claimant's PPA would be [REDACTED] per month for February and March, 2009.
5. On April 1, 2009, the department mailed the claimant notice of the PPA.
6. The claimant's representative submitted a hearing request on March 6, 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to department policy in BEM Item 546, the client's PPA must be determined when determining post-eligibility for MA benefits. The PPA is the client's share of costs for long-term care. It is the client's total countable income minus the client's total need. The total need is the sum of the following:

- Patient Allowance.
- Community Spouse Income Allowance.
- Family Allowance.
- Children's Allowance.
- Health Insurance Premiums.
- Guardianship/Conservator Expenses. BEM Item 546

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.

GUARDIANSHIP/ CONSERVATOR EXPENSES

Allow \$60 per month when an L/H patient pays for his court-appointed guardian and/or conservator. Guardianship/conservator expenses include:

- Basic fee.
- Mileage.

Other costs of performing guardianship/conservator duties.

BEM ITEM 546

For MA purposes, all earned and unearned income available to the claimant is countable. The amount counted may be more than the client actually receives because it is the amount before any deductions or the gross amount. Unearned income includes RSDI benefits and pension payments, and the gross amount must be counted for MA purposes. BEM, Item 500

GARNISHMENT OR OTHER WITHHOLDING

All Programs

Income includes amounts withheld from income which are:

Voluntary.
To repay a debt.
To meet a legal obligation.

Some examples of amounts which may be withheld, but are still considered income are:

Income taxes.
Health or life insurance premiums.
Medicare premiums.
Union dues.
Loan payments.
Garnishments.
Court-ordered or voluntary child support payments.

BEM ITEM 500

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

Compute the community spouse income allowance using Steps 1 through 5 below. BEM, 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. BEM, 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:

- . ██████████ starting January, 2008
- . ██████████ starting January, 2009

Convert all expenses to a monthly amount for budgeting purposes. BEM, 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:

- . [REDACTED], starting January 2008
- . [REDACTED], starting July 2009

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

3. Total Allowance

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

- . [REDACTED], starting April 2008.
- . [REDACTED], starting July 2009.

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

- . [REDACTED], starting January 2008.
- . [REDACTED], starting January 2009.

4. Countable Income

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

In this case, the claimant's representative is disputing the Patient Pay Amount (PPA) for February and March, 2009. The department initially computed the PPA for February and March, 2009 at [REDACTED]. However, the department realized that the claimant's total health insurance deduction had not been included. The claimant pays for three health

insurance premiums-- [REDACTED] for Medicare, [REDACTED] for Medicare Part D; and [REDACTED] for a supplemental coverage. Once these three insurance premiums were corrected, the department computed the claimant's PPA to be [REDACTED]. The claimant was issued a corrected notice of the PPA on April 1, 2009.

However, there still appears to be two errors in the department's computation of the PPA. The first is that the home insurance was not included in the Community Spouse Monthly Budget until April, 2009 (it was omitted from the February and March, 2009 budgets). The claimant's application clearly lists the home insurance as a required payment in the amount of [REDACTED] yearly. Department policy allows the cost of homeowner's insurance as part of the shelter expense deduction. BEM 546. If the department needed verification of this expense, they should have sent the claimant/representative a Verification Checklist (DHS-3503). No such document has been introduced into evidence by the department, so it does not appear that the department requested the verification of this expense. Thus, the department should have verified (if not already done) and included this expense on the February and March, 2009 Community Spouse Monthly Budget.

Second, the department did not include all of [REDACTED] insurance premiums as a deduction to her earned income. Department policy indicates that the Community Spouse Income Allowance must take into account the community spouse's countable income. BEM 546. Countable income is defined as all income not specifically excluded. BEM 500. However, BEM 546, page two allows the client or community spouse to deduct the cost of health insurance premiums from their countable income.

In this case, the claimant's application and attachment clearly identified [REDACTED] Medicare supplement insurance premium through American National [REDACTED] and her long-term care insurance premium through Monumental Life ([REDACTED]), which should have been allowed as deductions to her countable income. The program glossary indicates that health insurance includes long-term care insurance. (page 19). Therefore, these are both allowable health insurance premiums.

The department did deduct [REDACTED] Medicare premium [REDACTED] from her countable income, but did not deduct the other two health insurance premiums from her countable income and did not deduct her Medicare Part D premium, if applicable. This Administrative Law Judge is unable to tell from the evidence presented if Mrs. Whitton has Medicare Part D coverage. If she does, this insurance premium would be allowable as a deduction from her countable income. As indicated previously, if the department needed verification of these amounts, they should have issued a Verification Checklist (DHS-3503). As they did not, the department erred in not deducting [REDACTED] health insurance premiums from her gross income.

It is noted that the claimant's attorney disagreed with the July, 2009 PPA. However, the hearing request in this matter was submitted in March, 2009. Thus, the July, 2009 action can not be adjudicated in this hearing.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did not properly budget the claimant's PPA.

Accordingly, the department's determination is REVERSED. The department shall rebudget the claimant's PPA in accordance with this decision, including the homeowner's insurance in the shelter expense and deducting each of [REDACTED] other insurance premiums from her countable income as used in the community spouse allowance.

SO ORDERED.

_____/s/_____
Suzanne L. Morris
Administrative Law Judge
On behalf of Jana Bachman
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 2/24/11

Date Mailed: 2/24/11

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.

[REDACTED]