

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

IN THE MATTER OF:



Reg No.: 2010-51708

Issue No.: 2019

Case No.:

Load No.:

Hearing Date:

October 28, 2010

Lenawee County DHS

**ADMINISTRATIVE LAW JUDGE:** Landis Y. Lain

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on October 28, 2010. The claimant is in long term care and did not appear for the hearing. Claimant's daughter appeared and testified on her behalf.

**ISSUE**

Did the Department of Human Services (the department) properly determine claimant's patient pay amount?

**FINDINGS OF FACT**

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

- (1) Claimant and her daughter have a homestead.
- (2) The homestead is jointly owned with the daughter, but the daughter purchased the homestead prior to 2004 and has a mortgage on it.
- (3) The homestead is being rented and rental income is being paid to the daughter.
- (4) A rental lease agreement is between the daughter and the renter.

- (5) Because claimant's name is on the property as the joint owner, rental income has been counted as her income.
- (6) At re-determination it was discovered that the entire mortgage payment was being allowed as an expense against the rental income.
- (7) The department determined that per BEM, Item 504, p. 4., only interest and escrow amounts can be allowed as rental expenses.
- (8) The department also determined that when applying BEM, 504 policy for expenses it was more beneficial to use the standard rental expense of 65% instead of actual expenses.
- (9) The countable rental income increases from [REDACTED] per month, thus increasing the patient's pay amount.
- (10) On May 5, 2010, the department caseworker sent claimant notice of the patient pay amount.
- (11) On May 13, 2010, claimant filed a request for a hearing to contest the department's negative action.

### **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).

Rental income is defined as money an individual (landlord) receives for allowing another individual (renter) to use the landlord's property. It includes income from a lease (BEM, Item 504, p. 1). BRIDGES uses the standard percentage for expenses of either of the following:

1. The landlord chooses not to report actual expenses
2. The landlord does not verify recorded expenses exceeding the standard percentage.

When a landlord chooses to report actual expenses for the in-home rental or other rental income, BRIDGES uses the following to determine what expenses are allowed

201051708/LYL

and what should be entered in BRIDGES. Expenses must be the landlords obligation and must solely be the expenses of the rental property to be allowed. Allowable expenses may include:

- Rental estate insurance
- Repairs
- Heat
- Utilities
- Property taxes
- Lawn care
- Snow removal
- Furniture
- Advertising for renters
- Interest and escrow portion of mortgage, or
- Land contract payment

BRIDGES will not deduct expenses exceeding the gross rental income (and loss) from other types of income. (BEM, Item 504, pp. 3-4)

The department is to verify income at all of the following:

- Application, including a program add, prior to authorizing benefits.
- At member add only, the income of the member being added.
- Re-determination, and
- When program policy requires a change to be budgeted.

The client has primary responsibility for obtaining verification. (BEM, Item 504, p. 4)

In the instant case, claimant's representative testified that she and her husband own the home and they were the purchasers of the home. Claimant's representative stated that she put claimant on the deed so that claimant would have some place to live. Then claimant went into the nursing home. The claimant's representative then rented the property out to a third party for \$ [REDACTED] per month. The property has a \$ [REDACTED] per month mortgage and there are no taxes or insurance. The initial issue in this case is, is the rental income properly counted as claimant's income.

Income means a benefit or a payment received by an individual which is measured in money. It includes money an individual owns even if it is not paid directly such as income paid to a representative. Countable income is the amount remaining after applying policy. This is the amount used to determine eligibility and benefit level. Earned income means income received from another personal organization or from self-employment for duties that were performed for remuneration or profit. Some rental income is considered earned. Unearned income is all income that is not earned. Gross

201051708/LYL

income is the amount of income before any deductions such as taxes or garnishments. This may be more than the actual amount an individual receives (BEM, Item 500, p. 2).

Income paid to an individual acting as a representative for another individual is not the representative's income. The income is the other individual's income. Common representatives include:

- Legal guardian's
- Court appointed conservators
- Minor children's parents, and
- Representative payee's

A payment to an individual might include money intended for more than one individual. Create an income record for each individual and enter the individual's share as income (BEM, Item 500, p.5). Income is received jointly if the payment is made in the name of more than one individual other than a representative. Income received jointly is available. Add some to the contrary, each individual is considered to have an equal share. Divide joint equally among the recipients of the income (BEM, Item 500, p. 6).

In the instant case, income that is received jointly is considered available and there is no evidence in the file beyond claimant's representative's bald testimony that each individual is not entitled to an equal share of the proceeds from the home. The department is required to divide joint income equally among the recipients of the income. Claimant receives gross Social Security income in the amount of \$1733 per month. The rental property is \$800 per month.

BEM, Item 546, is the item used to determine post eligibility patient pay amounts (PPA's). A post eligibility PPA is the long-term patient share of their cost of long term care or hospital services. The department is to first determine MA eligibility. Then the department is to determine the post eligibility to patient pay amount when MA eligibility exists for long-term care patient's eligible under an SSI related Group 1 or Group 2 category. MA income eligibility and post eligibility patient pay amount determinations are not the same. Countable income and deductions from income are often different. Medical expenses, specific costs of long term care, are never used to determine a post eligibility patient pay amount. Do not recalculate the patient pay amount for the month debt. The post eligibility patient pay amount is total income minus total need. Total income is the client's countable unearned income plus its remaining earned income. Total need is the sum of the following when allowed by later sections of this item:

- patient pay allowance
- community spouse income allowance
- family allowance
- children's allowance

201051708/LYL

- health insurance premiums, and
- guardianship/conservator expenses.

For all persons in the item, determine countable income as follows: RSDI, income is to use countable income per BEM, Item 500 and 530. Deduct Medicare premiums actually withheld by including the L/H patients premium along with other health insurance premiums and subtracting a premium for other (example, the community spouse) from the unearned income. (BEM, Item 546, p. 1-2)

The patient allowance for clients who are in and/or expected to be in long term care and/or in hospital the entire L/H month is: \$ [REDACTED] if the month being tested is November 1999 or later and \$ [REDACTED] if the month being tested is before November 1999. The department is to use the appropriate protected income level for 1 from RFT 240 for clients who went to long term care and/or a hospital but are not expected to remain the entire L/H month. Keep in mind that the patient pay amount is not reduced or eliminated in the month the person leaves the facility. BEM, Item 546, p. 2.

In the instant case, there is no community spouse and no community spouse allowance.

This Administrative Law Judge finds that the department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant's patient pay amount should increase based upon the fact that claimant was a joint owner of the homestead and the homestead was receiving rental income. The countable rental income \$ [REDACTED] monthly, thus increasing the claimant's patient pay amount.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it increased claimant's patient pay amount based upon the receipt of rental income for a property which claimant jointly owned.

Accordingly, the department's decision is AFFIRMED.

201051708/LYL

/s/

Landis Y. Lain  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: January 31, 2011

Date Mailed: January 31, 2011

**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 60 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 of the rehearing decision.

LYL/alc

cc:

A large black rectangular redaction box covering several lines of text in the cc field.