

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: 2010-44190
Issue No: 2019
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 16, 2010
Shiawassee County DHS

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, 2010. The claimant's representative, Eric Byrnes, was present and provided testimony, along with the claimant's wife, [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. 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 \$1517.40 in RSDI and \$2065.56 from his General Motors pension. The claimant's wife receives \$741.40 in RSDI. (Department Exhibit 1, 2, 13 – 19)

3. The claimant is receiving a health insurance premium deduction and a community spouse deduction. (Department Exhibit 4)

4. The department determined the claimant's PPA would be \$1591 per month. (Department Exhibit 4)

5. On April 14, 2010, the department mailed the claimant notice of the PPA. (Department Exhibit 5 – 12)

6. The claimant's representative submitted a hearing request on April 26, 2010.

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**"). 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:

- . \$529, starting January, 2008
- . \$550, 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:

- . \$525, starting January 2008
- . \$547, starting July 2009

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:

- . \$1,750, starting April 2008.
- . \$1,822, starting July 2009.

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

- . \$2,610, starting January 2008.
- . \$2,739, starting January 2009.

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.

The department did not properly determine claimant's PPA. The department must count the gross amount of unearned income. (See BEM Items 500 & 546) In this case, the department did use the gross amount of RSDI income, but used the net income for claimant's [REDACTED]

Claimant was entitled to deductions in the amount of \$60 for a patient allowance, a deduction for the amount of insurance premiums being paid (currently \$224.36) and a community spouse deduction (currently \$1281.42). The claimant's representative testified that the amount of insurance premiums has increased, as has the mortgage payments (budgeted into the community spouse allowance). The claimant's representative was advised to submit documentation establishing the new insurance premium amount and the new mortgage amount (including taxes and insurance) to allow the department to budget in the new amounts when the documentation is received.

The claimant is not receiving any heat/utility allowance at this time. The claimant's representative testified that [REDACTED] is paying utilities. Department policy allows the claimant to deduct a utility standard of \$550 if the utility expense is verified. BEM 546. Thus, the department shall verify the expense (if not already verified), and include the allowance in the claimant's community spouse allowance.

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 as the department used the net income for the [REDACTED], when the gross amount should

have been used. Also, the department did not allow the claimant a heat/utility allowance, which shall be allowed if/when verified.

Accordingly, the department's actions are REVERSED.

The department shall rebudget the claimant's PPA in accordance with this decision and forward written notice to the claimant of the proper PPA amount.

SO ORDERED.

/S/
Suzanne L. Morris
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 23, 2010

Date Mailed: September 27, 2010

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.

SLM 

cc: 