

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. 20107850REMD  
Issue No. 2019  
Case No. [REDACTED]  
Load No. [REDACTED]  
Hearing Date: February 23, 2010  
Saginaw County DHS

**ADMINISTRATIVE LAW JUDGE:** Carmen G. Fahie

**REMANDED 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, an in-person hearing was held on Tuesday, February 23, 2010. The claimant was not present, but was represented by his son and conservator, [REDACTED], attorney, [REDACTED], and the claimant's ex-wife, [REDACTED] as a witness.

**ISSUE**

Did the Administrative Law Judge err in her determination of 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 a material fact:

1. On July 22, 2009, ALJ Carmen Fahie issued a Decision and Order in which the ALJ upheld the Department of Human Service's (DHS) determination of the claimant's PPA of [REDACTED].
2. On August 24, 2009, the State Office of Administrative Hearings and Rules, Administrative Hearings the Department of Human Services (SOAHR), received the claimant's request for a rehearing.

3. On September 2, 2009, the SOAHR denied the claimant's request for a rehearing and issued an Order for Dismissal of Rehearing.
4. On December 16, 2009, the State Office of Administrative Hearings and Rules, Administrative Hearings for the Department of Human Services issued an Order of REMD pursuant to the stipulation and revised order issued by the 10<sup>th</sup> Circuit Court in the County of Saginaw on [REDACTED] that the case be reheard and reconsidered by SOAHR.
5. Finding of Facts 1-14 in the Decision and Order mailed on July 22, 2009 are incorporated by reference except with a correction to Findings of Fact #2 that includes deductions for \$60 guardianship/conservator fee, \$96.40 for health insurance premium, and a \$60 patient allowance for a Patient Pay Amount of [REDACTED].
6. The claimant's attorney argued that the claimant's total income is not the [REDACTED] determined by the department because the claimant's divorce decree awards the claimant's wife one-half (1/2) of the claimant's retirement benefits from his railroad retirement Tier 1 or Tier 2 benefits.

### **CONCLUSIONS OF LAW**

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) 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).

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

#### **RAILROAD RETIREMENT BOARD BENEFITS All Programs**

Current and former employees of railroads and related industries and their families can get the following types of benefits.

- Disability.
- Retirement.
- Sickness.
- Strike.
- Survivors.
- Unemployment.

The U.S. Railroad Retirement Board makes the payments.  
Count the gross benefit amount as unearned income.

**Exception:** Exclude Medicare premium refunds as income and as assets. Refunds are made because there is a delay of about 120 days between when Medical Services Administration initiates Medicare buy-in and a person's benefit check actually changes. See PAM 810 for more information.

PEM 500, pp. 25 and 26.

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 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, health insurance premiums, and guardian/conservator expenses. PEM, Item 546.

In this case, the department properly calculated the claimant's gross railroad retirement benefit amount of [REDACTED] for a gross unearned monthly income of [REDACTED]. BEM, Item 500. Effective November 1999, the department must give claimant no more than a \$60 patient allowance and \$60 for guardianship/conservator expenses. As a result, the claimant deductions for \$60 guardianship/conservator fee, \$96.40 for health insurance premium, and a \$60 patient allowance for a Patient Pay Amount of [REDACTED]

If income is not excluded per PEM 400, pp. 12-14, then the income is included.

#### **ASSETS – CASH EXCLUSIONS**

##### **Excluded Income Under PEM 500**

##### **FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP**

Use this exclusion only if the funds are **not** commingled with countable assets and are **not** in time deposits

PEM 500 identifies certain sources of funds that are excluded as both income and assets. Time limits and other conditions applicable to the income exclusion also apply to the asset exclusion.

##### **Current Income Exclusion**

##### **FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP**

Do not count funds treated as income by a program as an asset for the same month for the same program.

When income must be prorated or averaged (example: self-employment) exclude the resulting assets for the months of proration.

**Retroactive RSDI and SSI Exclusion  
SSI-Related MA Only**

Exclude retroactive RSDI and SSA-issued SSI benefits for nine calendar months beginning the month after payment is received. Do **not** exclude purchases made with such funds including CDs and other time deposits.

This exclusion applies only to any unspent portion of the retroactive payment from RSDI or SSI. Once the money from the retroactive payment has been spent, this exclusion does not apply to the items purchased with the money, even if the nine month period has not expired.

The money may be commingled with other funds but, if this is done in such a fashion that the retroactive amount can no longer be separately identified, that amount will count toward the resource limit.

Use the following to separate countable and excluded funds that are commingled:

- Assume that countable funds are withdrawn first, leaving as much of the excluded funds as possible.
- Excluded funds withdrawn are **not** excluded if redeposited. The excluded amount can be increased only by deposits of subsequently received excluded payments.
- Count any interest paid to the account.

**Funds for Burial Arrangements  
SSI-Related MA Only**

Money set aside for burial expenses might be excludable. See [“Burial Fund Exclusion”](#) in this item. PEM 400, pgs 12-13.

Therefore, the department’s determination of the claimant’s monthly PPA of [REDACTED] must be upheld. Court-ordered legal obligations are not an allowable or excludable deduction per PEM 500 and must be included in determining MA eligibility.

## **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.

PEM 500, p. 2.

The claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law decides that I properly found that the department correctly determined that the claimant's Patient Pay Amount was [REDACTED].

It is therefore ordered that my Decision dated July 22, 2009 is **AFFIRMED**.

/s/ \_\_\_\_\_  
Carmen G. Fahie  
Administrative Law Judge  
For Ismael Ahmed, Director  
Department of Human Services

Date Signed: July 30, 2010

Date Mailed: July 30, 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.

CGF/VC

cc:

