

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: 20113670  
Issue No: 2013  
Case No: [REDACTED]  
Hearing Date: March 15, 2011  
Antrim County DHS

**ADMINISTRATIVE LAW JUDGE:** Janice G. Spodarek

**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 March 15, 2011. Claimant did not appear. Claimant was represented by [REDACTED]

**ISSUES**

Did the Department of Human Services (DHS) properly budget claimant's RSDI income?

**FINDINGS OF FACT**

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

1. At all relevant times prior to the issue herein, claimant has resided in long-term care. Claimant receives RSDI. Claimant's patient pay amount is [REDACTED]
2. On February 4, 2010, claimant gave the Michigan DHS a copy of a letter he received from the Social Security Administration regarding his RSDI. That letter states in part:

...We are writing to you about Court Order [REDACTED] concerning your responsibility for child support and/or alimony. We have been ordered to take [REDACTED] from each monthly payment that you are due to pay your obligation for child support and/or alimony....Exhibits 5 and 6.

3. Claimant's Conservator indicated she believed the deduction amount was correct.
4. Claimant's Conservator understands that the amount deducted is a Social Security withholding and not a DHS withholding.
5. The department did not change claimant's patient pay amount as policy requires the department to count the gross amount of the RSDI income without an allowance for an alimony deduction.
6. On May 24, 2010, the department issued notice showing a patient pay deductible that went from [REDACTED] to [REDACTED]. The reduction appears to be the Conservator monthly fee.
7. On September 15, 2010, the Conservator requested an administrative hearing.

### **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).

Relevant policy and procedure is found primarily in PEM Item 503. This policy discusses unearned income. With regards to RSDI income, this policy states:

All types of assistance: RSDI is a federal benefit administered by the SSA that is available to retired and disabled individuals, dependents, and survivors of deceased workers. BRIDGES counts the gross benefit amount as unearned income. PEM Item 503, p 20.

In other parts of this policy, alimony is discussed. This policy does not allow for a deduction from the MA budget or from the long-term care calculation for alimony payments.

Claimant's representative does not dispute the amounts used in calculating claimant's eligibility. Claimant's representative understands that the alimony, the amount, and whether it is a court-ordered deduction is not within the purview of this Administrative Law Judge but in fact is court-ordered and constitutes an agreement between a Michigan Court, the Social Security Administration, and the laws of Michigan. This Administrative Law Judge has no jurisdiction over any of these areas.

DHS policy requires that the department count the gross amount of the RSDI income. PEM Item 503. Claimant's representative offered no law, policy, or case law which would indicate that the DHS policy and procedure would allow claimant to have an alimony deduction applied to his patient pay amount. Social Security Sections 2901(a)(10), 1931; 42 CFR 435, Subpart H and I; MCL 400.106.

In the alternative, claimant's representative requests that this Administrative Law Judge make an exception on behalf of claimant and/or change the policy. 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).

For these reasons, and the reasons stated above, the department's calculation of claimant's patient pay amount was correct and thus, upheld.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were correct.

Accordingly, the department's actions are UPHELD.

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/s/  
Janice G. Spodarek  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: March 23, 2011

Date Mailed: March 23, 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 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.

JGS/db

cc:

