

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2011-4144 MHF

████████████████████

Appellant

_____ /

DECISION AND ORDER

This case is before the State Office of Administrative Hearings and Rules pursuant to the provisions of MCL 330.1834 and Chapter 4 of the Administrative Procedures Act of 1969, as amended, MCL 24.271 *et seq.*

After due notice, a hearing was held on ██████████. ██████████, attorney, appeared on behalf of the Appellant who was present and testified. His witness was ██████████, ██████████ of the Appellant. ██████████, represented the Department. He had no witnesses.

ISSUE

Did the Department properly determine the Appellant's annual financial liability?

FINDINGS OF FACT

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

1. The Appellant was admitted to the ██████████ on ██████████. He was transferred to the ██████████ on ██████████. See Testimony of ██████████.
2. An annual financial determination was completed by the ██████████ reimbursement staff on ██████████. The determination found Appellant's monthly ability to pay as \$ ██████████ and a lump sum ability to pay of \$ ██████████, based on \$ ██████████ total value of assets and \$ ██████████ yearly net income. (Exhibit A).
3. The Department's reimbursement staff considered Appellant's liabilities as well as his income and assets when determining his monthly ability to pay. (Exhibits A-K).
4. On ██████████, the Department sent the Appellant written notification of

his monthly ability to pay as ██████████ effective ██████████. (Exhibit A).

5. On ██████████, the Department received a copy of Appellant's request for an administrative hearing. (Exhibit #1)

CONCLUSIONS OF LAW

Section 802 of the Michigan Mental Health Code, being MCL 330.1802; establishes financial liability for mental health services provided by the Michigan Department of Community Health. Section 804 states:

(1) A responsible party is financially liable for the cost of services provided to the individual directly by or by contract with the department or a community mental health services program.

(2) The department or a community mental health services program shall charge responsible parties for that portion of the financial liability that is not met by insurance coverage. Subject to section 814, the amount of the charge shall be whichever of the following is the least amount:

(a) Ability to pay determined under section 818 or 819.

(b) Cost of services as defined in section 800.

(c) The amount of coinsurance and deductible in accordance with the terms of participation with a payer or payer group.

(3) The department or community mental health services program shall waive payment of that part of a charge determined under subsection (2) that exceeds financial liability. The department or community mental health services program shall not impose charges in excess of ability to pay.

(4) Subject to section 114a, the department may promulgate rules to establish therapeutic nominal charges for certain services. The charges shall not exceed \$3.00 and shall be authorized in the recipient's individual plan of services. MCL 330.1804

Section 822 of the Michigan Mental Health Code, being MCL 330.1822 requires all responsible parties to make:

... available to the Department or Community Mental Health Services Program any relevant financial information that the

department or community mental health services program is not prohibited by law from seeking and obtaining, and that the Department or Community Mental Health Services Program deems essential for the purpose of determining ability to pay. Willful failure to provide the relevant financial information may result in a determination of ability to pay up to the full cost of services received by the individual.

Expenses means the reasonable un-reimbursed expenditures of money, actual and estimated, during a financial year to maintain a standard of living essential for one's self and his or her dependents. All of the following are considered necessities:

- (i) Food, clothing, and personal necessities.
- (ii) Shelter, including utilities and repairs for the upkeep of a homestead.
- (iii) Employment or business expenses.
- (iv) Medical services.
- (v) Taxes.
- (vi) Elementary, secondary, and postsecondary education.
- (vii) Repayment of personal financial obligations contractually established before an application was made for services, including such outstanding debt as lease payments, credit card obligations, and other educational or training expenses.
- (viii) Payments made under a divorce decree or court order. Transportation to maintain employment and necessary family activities.

R 330.8005(c)

MCL 330.1800(j) defines responsible party as a person who is financially liable for services furnished to the individual. Responsible party includes the individual and, as applicable, the individual's spouse and parent or parents of a minor.

The Department established that the Appellant is a "responsible party" and that he received inpatient psychiatric services provided by the Department for which he is financially liable.

The Department is mandated by state law to determine the Appellant's ability to pay:

- (1) The department or a community mental health services program shall determine an adult responsible party's ability to pay for residential services and inpatient services other than psychiatric inpatient services of less than 61 days by taking into consideration the adult responsible party's total

financial circumstances, including, but not limited to, income, expenses, number and condition of dependents, assets, and liabilities.

MCL 330.1819

The Department further established that it properly performed an ability to pay determination for the Appellant. In performing the determination with information supplied by the Appellant's ██████████, the Department determined Appellant's monthly ability to pay as \$ ██████████, effective ██████████, based on \$ ██████████ total value of assets and \$ ██████████ yearly net income. (Exhibit A). The Department's reimbursement staff considered Appellant's liabilities as well as his income and assets when determining his monthly ability to pay. (Exhibits A-K).

The Appellant filed a request for an administrative hearing stating that the assets as claimed were exaggerated, that he was not able to pay and that the amount to be repaid was inaccurate. (Exhibit #1).

It is a statutory requirement that an individual pay for his cost of care at a state facility. The Appellant cannot be relieved of a statutory obligation to pay unless he avails himself of a statutory exemption.

The Michigan Mental Health Code, Section MCL 330.1824 and the Administrative Code does prohibit undue burden imposed by an ability to pay:

A responsible party's ability to pay shall not create an undue financial burden that does either of the following:

- (a) Deprives the party and his or her dependents of the necessities described in these rules.
- (b) Deprives the party and his or her dependents of the financial means to maintain or re-establish the individual in a reasonable and appropriate community-based setting.

R 330.8279

There was no testimony that the Appellant and his spouse would suffer an undue financial hardship for lack of necessities, but rather that his ██████████ be exempt because she did not voluntarily agree or contract with the Department for the provision of services to her ██████████.

Appellant's counsel argued, accordingly, that valuation of liabilities should be refigured with jointly held assets withdrawn from the calculations and that certain assets – including

real estate - were over-valued owing to current economic trends and miscommunication from the spouse to ██████████.

Counsel next argued that the daily charges at both the ██████████ and the ██████████ were excessive at ██████████ a day and ██████████ a day, respectively. He explained the Appellant's in-patient stay at the Centers as a bare subsistence service level - typically found at a county jail – which usually charges inmates a \$ ██████████ reimbursement rate. To support this argument the Appellant testified that his daily and weekly psychiatric contact was minimal and that he was basically in a holding pattern until ██████████ would authorize his release to community service. Counsel characterized the ██████████ stay at ██████████ as unnecessary and unreasonable.

The Appellant was court-ordered to the ██████████. He has resided in the ██████████ since ██████████, and ██████████ since ██████████. His necessities and treatment were covered at each institution. Sent to the ██████████ by the courts – this decision was beyond the jurisdiction of the State Office of Administrative Hearings and Rules for the Department of Community Health. The ALJ further observes that the daily rate charged at each institution comprise many more professional services than those observed by the Appellant in his brief testimony and would entail a cost determination beyond the scope of this hearing. The issue before the ALJ today is whether the Department, as represented by ██████████, accurately determined the Appellant's annual ability to pay – it is not to determine whether the daily rates charged by the Department compete favorably with county jails.

As for the spousal exclusion argument, the Appellant is referred to MCL 330.1800(j) *supra* where the ALJ finds the Appellant's ██████████ – “as applicable¹” – to be a responsible party and one who is financially liable for services furnished to the individual – her ██████████.


At time of hearing there was no known financial factor preventing the re-establishment of the Appellant in a reasonable and appropriate community-based setting. There is no finding of undue financial burden. The Appellant failed to preponderate his burden of proof that the Department failed to properly calculate his annual financial determination and ability to pay.

The Department provided sufficient evidence to establish that it properly determined the Appellant's ability to pay for inpatient services.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly determined the Appellant's annual financial liability.

¹ The ALJ found the argument regarding non-applicability of the spouse to be unpersuasive.


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Decision and Order

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Dale Malewska
Administrative Law Judge

cc:



Date Mailed: 1/25/2011

***** NOTICE *****

The Appellant may appeal the above Decision and Order to the probate court for the county in which he/she lives. The Appellant's appeal to the probate court must be within 60 days from the date of the Decision and Order.