

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Register No.:2011-43319
Issue No.:2019
Case No. [REDACTED]
Hearing Date:
September 8, 2011
Montcalm 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, an in-person hearing was held on September 8, 2011. The claimant is in long term care. Claimant was represented at the hearing by [REDACTED]

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 is a Medical Assistance benefit recipient.
- (2) Claimant receives RSDI income.
- (3) On February 14, 2011, the Department generated a 1605 Notice of Case Action notifying claimant of case opening and patient pay amount of \$ [REDACTED] for Long term care (LTC).
- (4) The department gave claimant a community spouse allowance of \$ [REDACTED] a \$ [REDACTED] patient allowance and a Medicare deductible expense of \$ [REDACTED]

- (5) On April 15, 2011, claimant's representative filed a request for a hearing to contest the patient pay amount, stating that the department failed to include homeowner's taxes and insurance in the calculations. Claimant also alleges that the community spousal amount should be increased due to hardship circumstances.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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).

BEM, Item 546, is the item used to determine post eligibility patient pay amounts (PPA's). A post eligibility PPA is the L/H 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 L/H 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 of death. 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 allowance, community spouse, income allowance, family allowance, children's allowance, health insurance premiums, and guardianship/conservator expenses. BEM, Item 546, p. 1.

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 enter to long term care and/or a hospital but are not expected to remain the entire L/H month. Reminder: 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, the department caseworker conceded on the record that the department failed to count homeowner's property taxes and insurance in the original calculation of the community spouse's monthly budget. (Exhibit 16).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it failed to include homeowner's property taxes and insurance in the calculation of the community spouse's monthly budget.

Accordingly, the department's decision is REVERSED. The claimant's representative is ORDERED to provide the department with the appropriate documentation of homeowner's property taxes and insurance within ten days. The department is ORDERED to reinstate claimant's Medical Assistance application, include the homeowner's property taxes and insurance in the calculations pursuant to department policy and re-determine the patient pay amount. The department shall notify claimant in writing of the new patient pay amount.

/s/

Landis Y. Lain
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: September 15, 2011

Date Mailed: September 15, 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.

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