

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. 201164  
Issue No. 2013  
Case No. [REDACTED]  
Load No. [REDACTED]  
Hearing Date: November 30, 2010  
Washtenaw County DHS

**ADMINISTRATIVE LAW JUDGE:** Jana A. Bachman

**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, an in-person hearing was held on November 30, 2010. Claimant was represented by [REDACTED]

**ISSUE**

Whether the Department of Human Services (department) acted in compliance with department policy when it determined claimant's Medical Assistance (MA) benefits.

**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 resides in Long Term Care (LTC) and is a recipient of MA.
2. Claimant's spouse is a community spouse and a community spouse allowance was included when determining claimant's MA eligibility.

3. Claimant granddaughter resides with his community spouse and her needs are not included in the community spouse/family allowance.

### **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).

Department manuals provide the following policy statements and instructions for caseworkers:

The post-eligibility PPA is total income minus total need.

**Total income** is the client's countable unearned income plus his remaining earned income. See "Countable Income" below.

**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.
- Guardianship/Conservator Expenses.

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.
- The L/H patient's intended contribution (see "Intent to Contribute" below).

Compute the community spouse income allowance using steps one through five below.

#### **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 principal residence.

**Shelter expenses** are the total of the following monthly costs:

- Land contract or mortgage payment, including principal and interest.
- Home equity line of credit (HELOC) or second mortgage.
- 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. Convert all expenses to a monthly amount for budgeting purposes.

**Excess shelter allowance.**

Subtract the appropriate shelter standard from the shelter expenses determined in step one. The shelter standard for a month is:

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

The result is the **excess shelter allowance**.

**Total allowance.**

Add the excess shelter allowance to the appropriate basic allowance. The basic allowance for a month is:

\$1750, starting April 2008.  
\$1822, starting July 2009.

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

\$2610, starting January 2008.  
\$2739, starting January 2009.

**Exception:** In hearings, Administrative Law Judges can **increase** the total allowance to divert more income to an L/H patient's community spouse. See BAM 600.

### **Countable income.**

Determine the community spouse's countable income. See "COUNTABLE INCOME" in this item.

### **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 five.

### **Intent to Contribute**

#### **DHS-4592, Intent to Contribute Income:**

- Determines the amount of income an L/H patient intends to contribute to his community spouse
- Instructs the L/H patient to report how much income he intends to make available
- Should be returned within 10 days

If the DHS-4592 is **not** returned within 10 days:

- Do **not** delay case actions, and
- Budget the entire community spouse income allowance.

Budget the entire allowance **until** the DHS-4592 is returned indicating the L/H patient intends to contribute **less**.

When the DHS-4592 indicating an intent to contribute **less** income is received:

Decrease the income diverted to the community spouse to the indicated amount.

Do not increase the income diverted to the community spouse without a new DHS-4592.

Decrease the income diverted if:

- The community spouse's circumstances change, **and**
- The change reduces the community spouse income allowance below the amount indicated on the DHS-4592.

Use timely negative action procedures to increase the patient-pay amount.

Do **not** use amounts from previous DHS-4592s when diverting income again after stopping a diversion for one of these reasons:

- An L/H patient is discharged to a non-L/H setting for 30 or more days.
- An L/H patient's ongoing MA case (including active deductible) terminates.
- An L/H patient's spouse is hospitalized or in LTC for 30 or more consecutive days.

Start the diversion process from the beginning.

## **FAMILY ALLOWANCE**

An L/H patient's income is diverted to meet the needs of certain family members. The amount diverted is called the family allowance.

**Family members** must:

Live with the community spouse, **and**

Be either spouse's:

- Married and unmarried children under age 21.
- Married and unmarried children age 21 and over if they are claimed as dependents on either spouse's federal tax return.
- Siblings and parents if they are claimed as dependents on either spouse's federal tax return.

The **basic allowance** for each dependent is the monthly amount **minus** the dependent's countable income, divided by 3. The monthly amount is:

\$1750, starting April, 2008.

\$1822, starting July, 2009.

The **family allowance** is the sum of the dependents' basic allowances.

## **CHILDREN'S ALLOWANCE**

L/H patients without a community spouse can divert income to their unmarried children at home who:

- Are under age 18, **and**
- Do not receive FIP or SSI.

The amount diverted is called the children's allowance. It is the children's protected income level from RFT 240 **minus** their net income. Net income is:

- 80% of countable earned income per RFT 295, **plus**
- Countable unearned income.

**Do not** divert income if information concerning the children's income is **not** provided.

### **HEALTH INSURANCE PREMIUMS**

Include as a need item the cost of any health insurance (see PRG) premiums (including vision and dental insurance) the L/H patient pays, regardless of who the coverage is for. This includes Medicare premiums that a client pays.

L/H patient pays health insurance premiums for two (self and spouse). Allow health insurance premiums for two.

Do not include premiums paid by someone other than the L/H patient as a need item.

Convert the cost of all premiums to a monthly amount for budgeting purposes.

Allow the \$5 deduction paid by GM retirees which includes LTC insurance coverage as an insurance expense deduction.

### **GUARDIANSHIP/ CONSERVATOR EXPENSES**

Allow \$60 per month when an L/H patient pays for his court-appointed guardian and/or conservator. Guardianship/conservator expenses must be verified and include:

- Basic fee.
- Mileage.
- Other costs of performing guardianship/conservator duties.

### **DHS-3227, TENTATIVE PATIENT-PAY AMOUNT NOTICE**

Send a DHS-3227, Tentative Patient-Pay Amount Notice, within five working days of application when:

- The applicant is in LTC, **and**
- **A final determination will not** be made within five working days from date of application.

Send the DHS-3227 to the client and the LTC facility.

## **NOTIFICATION**

Notify both L/H patients and their community spouses **in writing** of:

- Their hearing rights, and
- The amount of and method for computing the:
- Community spouse income allowance, and
- Family allowance.

### **Provide notice when:**

- First calculating community spouse income or family allowance.
- The amount of either allowance changes.
- L/H patients, their community spouses, or representatives of either spouse request it.

### **Use the following forms to provide notice:**

**DHS-4587, Community Spouse and Family Income Allowance Notice.**

**DHS-4584, Community Spouse and Family Income Allowance Record.**

**Send a DHS-4592, Intent to Contribute Income, when the community spouse income allowance is greater than zero.**

## **OFFSETS**

Long-term care (LTC) facilities may deduct the following from a person's PPA:

The cost of certain medically necessary services not covered by MA such as

chiropractic, podiatry, dental (other than emergency dental and oral surgery) and hearing aid dealers, and

The MA co-payments for covered services.

The remainder of the PPA is then applied to the cost of care provided by the LTC facility. Department of Community Health, determines whether an offset is allowable.

PPAs are **not** offset by local office staff.

BRIDGES ELIGIBILITY MANUAL (BEM) 546; Social Security Act, Section 1924  
42 CFR 435.725, .726 and .832.

In this case, claimant asserts that granddaughter should be included when determining the community spouse/family allowance because granddaughter is

claimed as a dependent on the community spouse's income tax return. She asserts that the department community spouse/family policy that does not include grandchildren is illegally restrictive. Claimant asserts that exclusion of her granddaughter causes her significant financial duress. These views are not consistent with department policy or law. Siblings, parents, and children of the community spouse and/or LTC spouse are included under certain circumstances. But, in no case under either law or policy, is a grandchild to be included as a family member when determining community spouse/family allowance. There may be other types of public assistance for which the granddaughter may qualify; however, she is not a minor child of, dependent child of, sibling of, or parent of claimant and/or his community spouse and so is properly not included in the community spouse determination. Thus, the department has met its burden of proof and its action must be upheld. Finding of Fact 1-3.

### **DECISION AND ORDER**

The Administrative Law Judge based upon the above findings of fact and conclusions of law, decides the Department of Human Services acted in compliance with department policy when it determined claimant's eligibility for Medical Assistance.

Accordingly, the department's action is HEREBY UPHELD.

/s/  
\_\_\_\_\_  
Jana A. Bachman  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: December 21, 2010

Date Mailed: December 21, 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 receipt 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.

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