

STATE OF MICHIGAN

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012 39490
Issue No.: 2019
Case No.: [REDACTED]
Hearing Date: June 28, 2012
County: Wayne County DHS 82

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on June 7, 2012, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant, [REDACTED] (the Claimant's spouse) and [REDACTED] a witness. The Claimant did not attend the hearing. Participants on behalf of the Department of Human Services (Department) included [REDACTED], ES and [REDACTED], FIM.

ISSUE

Did the Department correctly determine the Claimant's community spouse income allowance?

FINDINGS OF FACT

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

1. The Claimant is an ongoing recipient of Medical Assistance and resides in a Long Term Care facility.
2. The Department determined that the Claimant's Patient Pay Amount was \$2604 based upon various unearned income received from retirement, RSDI and rental properties. Based upon its calculation it determined that the Community Spouse Allowance was \$104.88.
3. At the hearing the Department could not determine how the Community Spouse Allowance amount was determined.

4. The Claimant's spouse also requested that the Department consider the effects of a Bankruptcy Chapter 13 Plan on its calculation of income and costs of mortgage expenses, which she had previously submitted to the Department and requested they be reviewed. The Department advised Claimant's spouse at the time that the plan could not be considered. Claimant Exhibit 1.
5. At all time relevant to the filing of the application and its denial, the Claimant was the owner of a rental property.
6. The Claimant, through his spouse, requested a hearing on February 28, 2012, protesting the computation of the Community Spouse Allowance and the Patient Pay Amount.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015.

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.

The Adult Medical Program (AMP) is established by 42 USC 1315, and is administered by the Department pursuant to MCL 400.10, *et seq.*

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 AACS, R 400.3151 through R 400.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001 through R 400.5015.

At the hearing after a review of the amount of income and assets of the Claimant and his spouse it was determined that the Department did not meet its burden of proof, as it could not determine or explain how the Community Spousal Allowance of \$104.88 was arrived at. Exhibit 13. Additionally, it is determined that the Department did not consider the effects of a Bankruptcy Chapter 13 Plan on the real estate mortgage expenses on the Claimant's real property. The Department should review and consider the Claimant's spouse's request that it consider the Chapter 13 Plan when determining the Patient Pay Amount and the Community Spouse Allowance. The Chapter 13 Plan was entered in November 2011, when the Patient Pay Amount budget was prepared and determined. Claimant Exhibit 1. It may be that additional costs are being incurred as housing expenses as a result of the bankruptcy, which might require a change in the budget a fact which the Department should determine.

Based upon the foregoing, the Department's determination of the Patient Pay Amount and the Community Spouse Allowance is deemed incorrect and not in accordance with Department policy, as the Department did not provide sufficient evidence that its calculations were correct.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department

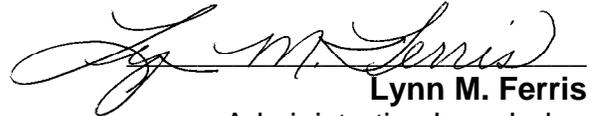
did act properly when
 did not act properly when it determined the the Patient Pay Amount and the Community Spouse Allowance.

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is AFFIRMED REVERSED for the reasons stated on the record.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall initiate recalculation of the Patient Pay Amount and the Community Spouse Allowance, as determined in November 2011.
2. The Department shall consider the effects, if any, of the Chapter 13 Plan on its recalculation of the Patient Pay Amount and the Community Spouse Allowance.

3. The Department shall issue a supplement/adjustment of the Patient Pay Amount and the Community Spouse Allowance for benefits the Claimant was otherwise entitled to receive, if any, in accordance with Department Policy.


Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 17, 2012

Date Mailed: July 17, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases).

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail to:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

LMF/hw

cc:

