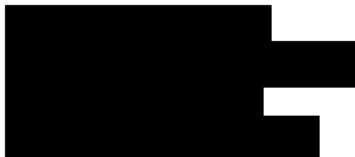


**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 20135643
Issue No.: 2019
Case No.: [REDACTED]
Hearing Date: February 28, 2013
County: Saginaw

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 hearing was held on February 28, 2013. Claimant's Conservator, [REDACTED] appeared and testified.

ISSUE

Did the Department of Human Services properly determine Claimant's post-eligibility patient pay amount on September 17, 2012?

FINDINGS OF FACT

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

- (1) On April 24, 2012, an application for Long Term Care (LTC) was submitted for Claimant by his [REDACTED] and [REDACTED].
- (2) On September 6, 2012, Claimant's LTC application was approved with a patient pay amount of \$ [REDACTED].
- (3) On September 21, 2012, Claimant's [REDACTED] submitted a request for 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

In this case Claimant has a legal obligation under his [REDACTED] to pay his [REDACTED] 45% of his [REDACTED] benefit. Claimant receives the entire [REDACTED] benefit and then pays his [REDACTED] the amount called for in the [REDACTED]. The issue raised by Claimant's [REDACTED] is whether that payment should be included in determining Claimant's post-eligibility patient pay amount.

Department of Human Services Bridges Eligibility Manual (BEM) 546 Post-Eligibility Patient-Pay Amounts dictates the calculation of patient pay amounts. It indicates that the entire retirement benefit be included in Claimant's countable income as unearned income. The policy then goes on to identify all allowed disregards, diversions, and expenses from countable income. A Claimant's payments to an [REDACTED] in accordance with a divorce decree, is not included in any of the allowed disregards, diversions, or expenses. The Department properly determined Claimant's post-eligibility patient pay amount on September 17, 2012.

Subsequent to this request for hearing, the Department case worker submitted a Medicaid Policy Exception Request regarding Claimant's payments to his [REDACTED] in accordance with their [REDACTED]. That request was denied. The granting or denial of policy exceptions is not within the jurisdiction of an Administrative Law Judge conducting hearings on Department of Human Services' issues 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.

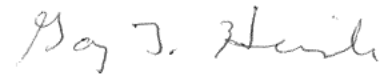
Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940); *Auto-Owners Ins Co v Elchuk*, 103 Mich App 542, 303 NW2d 35 (1981); *Delke v Scheuren*, 185 Mich App 326, 460 NW2d 324 (1990), and *Turner v Ford Motor Company*, unpublished opinion per curium of the Court of Appeals issued March 20, 2001 (Docket No. 223082).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly determined Claimant's post-eligibility patient pay amount on September 17, 2012.

20135643/GFH

It is ORDERED that the actions of the Department of Human Services, in this matter, are **UPHELD**.



Gary F. Heisler
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 3/25/13

Date Mailed: 3/26/13

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.

GFH/tb

cc:

