

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201312504
Issue No: 2019
Case No: [REDACTED]
Hearing Date: April 11, 2013
Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

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 received by the Department of Human Services (department) on November 5, 2012. After due notice, a telephone hearing was held on April 11, 2013. Claimant's daughter-in-law and authorized representative, [REDACTED], appeared and provided testimony on Claimant's behalf. The department was represented by Tara-Kai Esco, a long term care specialist with the department's Macomb County office.

ISSUE

Whether the department properly determined Claimant's Medical Assistance (MA) long term care patient pay amount for the benefit period effective October 1, 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. Claimant was a recipient of MA benefits at all times pertinent to this hearing.
2. On October 23, 2012, the department approved Claimant's long term care patient pay amount for the benefit period effective October 1, 2012 in the amount of \$1384.00.¹ (Department Exhibits 1-2)

¹ This Administrative Law Judge recognizes that the Notice of Case Action mailed to Claimant on October 23, 2012, a copy of which was included in Claimant's hearing request, indicates that the department had approved Claimant's long term care patient pay amount for the benefit period effective October 1, 2012 in the amount of \$1472.00 – however, the department representative testified that the correct patient pay amount for this benefit period is in fact \$1384.00.

3. On November 5, 2012, Claimant's authorized representative submitted a Request for Hearing, protesting the department's determination of Claimant's long term care patient pay amount. (Request for Hearing)

CONCLUSIONS OF LAW

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. Department of Human Services Bridges Administrative Manual (BAM) 600 (2011), p. 1. The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in sections 400.901 to 400.951 of the Michigan Administrative Code (Mich Admin Code). An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. Mich Admin Code R 400.903(1).

The Medical Assistance (MA) program was established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The department administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the BAM, the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. Medicaid is also known as Medical Assistance (MA). BEM 105.

Department policy provides that once the department has determined that MA eligibility exists for an L/H patient,² the department must thereafter determine the post-eligibility patient-pay amount - which is the L/H patient's share of the cost of long term care (LTC) or hospital services. BEM 546. The post-eligibility patient-pay amount is determined by subtracting the client's total need from the client's total income. BEM 546.

A client's total income consists of her countable unearned income plus her remaining earned income. BEM 546. Unearned income includes, but is not limited to, the gross amount of a pension or compensation payment from the Department of Veteran Affairs (VA). BEM 503. However, the department must exclude any portion of a payment resulting from an Aid and Attendance or Housebound allowance, *except* the \$90 reduced VA payment made to certain MA recipients in Medicaid-certified long term care facilities. BEM 503, p. 27 (Emphasis added).

² The Bridges Policy Glossary (BPG) defines an "L/H patient" as a Medicaid client who was in the hospital and/or long term care facility (LTC) in a hospital and/or long term care facility (L/H) month. An "L/H month" is in turn defined in the BPG as a calendar month containing: (i) at least one day that is part of a period in which a person was (or is expected to be) in an LTC facility and/or hospital for at least 30 consecutive days, and (ii) no day that the person was a waiver patient. BPG, p. 25.

A client's total need consists of the sum of the following when allowed under the provisions of BEM 546:

- Patient allowance.
- Home maintenance disregard.
- Community spouse income allowance.
- Family allowance.
- Children's allowance.
- Health insurance premiums.
- Guardianship/conservator expenses.

The patient allowance for clients who are in, or are expected to be in, LTC and/or a hospital an entire L/H month is \$60.00. BEM 546. However, the department must use a patient allowance in the amount of \$90.00 for any month that a patient's VA pension is reduced to \$90.00 per month. BEM 546.

In this case, the department approved Claimant's long term care patient pay amount for the benefit period effective October 1, 2012 in the amount of \$1384.00 based on the department's determination that Claimant's total monthly unearned income was \$1785.00, which included Claimant's receipt of RDSI benefits in the amount of \$1695.00 and Claimant's receipt of VA compensation in the amount of \$90.00. The department further determined that Claimant's total need was \$401.00, which included Claimant's health insurance premiums in the amount of \$311.00 and Claimant's patient allowance in the amount of \$90.00. Subtracting Claimant's total need of \$401.00 from Claimant's total income of \$1785.00 results in a long term care patient pay amount of \$1384.00

At the April 11, 2013 hearing in this matter, Claimant's authorized representative, Debra Savino, testified that she believes Claimant is being unfairly penalized by department policy based on her receipt of VA compensation in the amount of \$90.00. Mrs. Savino elaborated that, were Claimant not to receive the \$90.00 in VA compensation, that amount would not be included in Claimant's countable income and also would not be considered a patient allowance of \$90.00 – instead, Claimant's patient allowance would be \$60.00 and Claimant's total long term care patient pay amount would be \$1325.00, not \$1384.00.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds, to the extent that Claimant's hearing request expresses disagreement with a particular department policy as applied to her circumstances, Claimant's request is not within the scope of authority delegated to this

Administrative Law Judge 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).

This Administrative Law Judge further finds, based on the competent, material, and substantial evidence presented during the April 11, 2013 hearing, that the department properly included Claimant's receipt of VA compensation in the amount of \$90.00 as countable income pursuant to BEM 503, and the department also properly included this same amount as Claimant's patient allowance in calculating Claimant's total need pursuant to BEM 546.

Accordingly, the Administrative Law Judge finds that the department properly determined Claimant's long term care patient pay amount for the benefit period effective October 1, 2012 in the amount of \$1384.00.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly determined Claimant's long term care patient pay amount for the benefit period effective October 1, 2012 in the amount of \$1384.00. The department's actions in this regard are therefore **UPHELD**. It is **SO ORDERED**.

/s/ _____
Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 12, 2013

Date Mailed: April 15, 2013

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.

The Claimant may appeal this 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 errors, or other obvious errors in the hearing decision that effect the substantial rights of 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 at:

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

SDS/cr

cc:

[REDACTED]

Macomb County DHS #12

[REDACTED]

EQADHShearings

S. D. Sonneborn

MAHS