

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

IN THE MATTER OF:

████████████████████
████████████████████
████████████████████

Reg. No.: 201335718
Issue No.: 2014
Case No.: ██████████
Hearing Date: July 25, 2013
County: Mason-00

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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, an in-person hearing was held on July 25, 2013, from Ludington, Michigan. Participants on behalf of Claimant included Claimant's wife, ██████████, and Claimant's Attorney, ██████████. Participants on behalf of the Department of Human Services (Department) included Eric Carlson, and Pamela Wells.

ISSUE

Did the Department properly determine that divestment occurred and impose a divestment penalty?

FINDINGS OF FACT

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

1. Claimant applied for Medicaid on October 30, 2012.
2. On January 17, 2013, the Department determined that Claimant had a ██████ deductible and because the Claimant was not eligible for full coverage MA no community spouse allowance was calculated.
3. On December 4, 2012, the Probate Court for Mason County issued an "Order Expanding the Community Spouse's monthly income allowance" that reads in pertinent part as follows: "IT IS HEREBY ORDERED that ██████████ monthly income, and all subsequent increases, are assigned to ██████████, as an on-going SUPPORT ORDER, for the remainder of ██████████ life."
4. Claimant was receiving a ██████ gross monthly pension from ██████
5. Claimant requested hearing on March 12, 2013, contesting the determination of MA eligibility and patient pay amount.

6. At hearing, the Department agreed that Claimant was eligible for MA-LTC benefits in October 2012, November 2012, December 2012, January 2013, March 2013, July 2013, and August 2013.

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.

COMMUNITY SPOUSE INCOME ALLOWANCE:

L/H patients can divert income to meet the needs of the 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; and
- The L/H patient's intended contribution; see Intent to Contribute in this item.

Compute the community spouse income allowance using steps one through five below. An L/H client can transfer income to the spouse remaining in the home, even if that spouse no longer meets the definition of a community spouse, because they are in a MA waiver program. That is because without the transfer of income the spouse would not be able to remain in the home and avoid also becoming an L/H client:

1. 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 (for example, in an adult foster care home). An adult foster care 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, 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. The heat and utility allowance for a month is [REDACTED]. Convert all expenses to a monthly amount for budgeting purposes.

2. EXCESS SHELTER ALLOWANCE:

Subtract the appropriate shelter standard from the shelter expenses determined in step one. The shelter standard for a month is [REDACTED]. The result is the **excess shelter allowance**.

3. TOTAL ALLOWANCE:

Add the excess shelter allowance to the appropriate basic allowance. The basic allowance for a month is [REDACTED]. The result, up to the appropriate maximum, is the **total allowance**. The maximum allowance for a month is [REDACTED].

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.

4. COUNTABLE INCOME:

Determine the community spouse's countable income; see **countable income** in this item.

5. 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. BEM 546

Additionally, This Administrative Law Judge finds that the Mason County Probate Court Order dated December 4, 2012, properly assigned Claimant's pension income to his wife, [REDACTED], and this assignment comports with BEM 546. Due to this assignment, the pension income should not be counted for Claimant in determining his Medicaid eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department did act properly when they denied Claimant's application for Medicaid due to excess income did not act properly when determined Claimant's MA-LTC eligibility.

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is AFFIRMED **REVERSED** for the reasons set forth in this decision.

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

1. Reinstate and reprocess Claimant's MA-LTC application excluding his pension income.
2. Activate MA-LTC benefits going back to the date of application, if Claimant is otherwise eligible.
3. Activate MA-LTC for October 2012, November 2012, December 2012, January 2013, March 2013, July 2013, and August 2013, based on the settlement agreement placed on the record.



Aaron McClintic
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 08/19/2013

Date Mailed: 08/20/2013

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. (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; or
 - typographical errors, mathematical errors, or other obvious errors in the hearing decision that affect the substantial rights of the Claimant; or
 - 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
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

AM/pw

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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