

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201366365
Issue No: 2014, 2027
Case No: [REDACTED]
Hearing Date: October 10, 2013
Gladwin 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 August 16, 2013. After due notice, a telephone hearing was held on October 10, 2013. Claimant's authorized representatives, [REDACTED] and [REDACTED] appeared and provided testimony on Claimant's behalf. The department was represented by [REDACTED] [REDACTED] an eligibility specialist, with the department's Gladwin County office.

ISSUE

Whether the Department of Human Services (department) properly denied Claimant's application for Medical Assistance (MA) Extended Care benefits effective May 1, 2013 due to excess income?

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 May 29, 2013, Claimant's authorized representative submitted an application for MA Long Term Care benefits on Claimant's behalf. In the application, it was noted that Claimant is living at The Brook, a nursing facility in Gladwin, Michigan. (Department Exhibit 2)
2. On or about June 6, 2013, the department obtained verification from Claimant's nursing facility that Claimant is in an assisted living facility.
3. On June 6, 2013, the department mailed Claimant's authorized representative a Verification Checklist (DHS 3503), advising that because

Claimant is not a long term care patient, the enclosed Assistance Application must be completed on Claimant's behalf. The department further requested that verification of Claimant's assets be provided as specified in the Verification Checklist. The information was due to the department by June 17, 2013. (Department Exhibit 3)

4. On June 11, 2013, the Region VII Area Agency on Aging notified the department that, effective June 11, 2013, Claimant has been enrolled in the MiChoice Medicaid Waiver Program. (Department Exhibit 4)
5. On June 20, 2013, Claimant's authorized representative submitted all required verifications to the department, including the completed Assistance Application and verification that Claimant receives the following monthly unearned income: a gross benefit from Veteran Affairs in the amount of \$ [REDACTED] (\$ [REDACTED] of which is considered an Aid & Attendance amount); gross RSDI benefits in the amount of \$ [REDACTED] and a Medicare reimbursement check in the amount of \$ [REDACTED] (Department Exhibit 4)
6. On July 12, 2013, the department notified Claimant that effective May 1, 2013, her application for MA Extended Care benefits had been denied because her income exceeds the limit for the program. The department further informed Claimant that, effective May 1, 2013, she had been approved for Medicaid benefits subject to a deductible in the amount of \$ [REDACTED] (Department Exhibits 5, 6)
7. On August 6, 2013, Claimant's authorized representative submitted a hearing request on Claimant's behalf, protesting the department's denial of her application for MA Extended Care benefits. (Department Exhibit 1)

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 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).

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). The local office is responsible for determining a Client's eligibility, calculating their level of benefits and protecting their rights. BAM 105.

MA Extended Care is an SSI-related Group 1 MA category and eligibility under this category is to be considered by the department only if eligibility does not exist under BEM 154 through BEM 163 [which policies pertain to Special Disabled Children, 503 Individuals, COBRA Widow(er)s, Early Widow (er)s, Disabled Adult Children, and AD-Care, respectively). BEM 164. In addition to this category, the department is required to consider Medicare Savings Program eligibility. BEM 164.

The MA Extended Care category is available only to L/H and waiver clients who are aged (65 or older), blind or disabled. BEM 164. A "L/H patient" is defined 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. B PB Glossary, p. 25. A "waiver client" is a client approved for the MI Choice Waiver Program, which program provides home and community-based services for aged and disabled persons who, if they did not receive such services, would require care in a nursing home. BEM 106.

In determining an individual's income eligibility for MA Extended Care, the department must apply the MA policies in BEM 500 and 530 to determine gross income, and must not apply the deductions in BEM 540 and 541. BEM 164. Gross income cannot exceed 300 percent of the SSI federal benefit rate as set forth in Reference Table 248. BEM 164.

Gross income is the amount of income before any deductions such as taxes or garnishments. BEM 500, p. 3. This may be more than the actual amount an individual receives. BEM 500, p. 3. Some examples of amounts which may be withheld, but are still considered part of gross income are: income taxes; health or life insurance premiums; Medicare premiums; union dues; loan payments; garnishments and court-ordered or voluntary child support payments. BEM 500, p. 3.

When determining a client's income eligibility, the department must consider the gross amount of RSDI benefits received as unearned income. BEM 503, p. 21. The department must also consider the gross amount of a Veterans Affairs' pension or compensation as unearned income, except that the department must exclude any portion of a payment resulting from an Aid and Attendance or Housebound allowance, (except the \$ [redacted] reduced VA payment made to certain MA recipients in Medicaid-certified long term care facilities), and any portion of a payment resulting from unusual medical expenses, and the department may exclude augmented benefits. BEM 503, p. 28.

While the department will exclude from countable income certain reimbursements received from another individual, an agency or an organization that covers past, current or future expenses, allowances in pension benefits for the Medicare Part B premium are **not** considered a reimbursement and are budgeted as unearned income. BEM 500, p. 8. (Emphasis in original).

In this case, at the October 10, 2013 hearing, the department's representative testified that in processing Claimant's June 20, 2013 application for MA Extended Care benefits, the department relied upon verification that Claimant receives the following monthly unearned income: a gross benefit from Veteran Affairs in the amount of \$ [REDACTED] (\$ [REDACTED] of which is considered an Aid & Attendance amount); gross RSDI benefits in the amount of \$ [REDACTED] and a Medicare reimbursement check in the amount of \$ [REDACTED]. After excluding that portion of Claimant's Veteran Affairs' payment resulting from an Aid and Attendance or Housebound allowance, the department calculated Claimant's monthly gross unearned income to be \$ [REDACTED] (\$ [REDACTED] + \$ [REDACTED] + \$ [REDACTED]). The department thereafter applied to Claimant's case the SSI payment level set forth in Reference Table 248 for an individual in an independent living arrangement (\$ [REDACTED]) and determined in accordance with BEM 164 that the gross income limit for the Extended Care program is \$ [REDACTED] or 300 percent of \$ [REDACTED]. The department further determined that because Claimant's gross income of \$ [REDACTED] exceeds this limit, albeit by \$ [REDACTED], Claimant was not eligible for MA Extended Care benefits due to excess income.

However, Claimant's authorized representative disagreed with the department's calculation of Claimant's gross unearned amount of \$ [REDACTED] because it effectively counted twice Claimant's receipt of a Medicare Part B allowance in the amount of \$ [REDACTED]. Specifically, the department counted this amount as it was included in the gross amount of RSDI benefits received by Claimant (notwithstanding that it was deducted by the SSA), and then the department counted this amount again as it was received by Claimant as a Medicare reimbursement check direct deposited to Claimant's account.

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, as well as relevant department policy. In doing so, this Administrative Law Judge finds that department policy does not support the department's inclusion of Claimant's receipt of a Medicare reimbursement check direct deposited to Claimant's account in the amount of \$104.90 as countable income, where that same amount was already included by the department as countable income in Claimant's receipt of gross RSDI benefits in the amount of \$1,134.90. Consequently,

the department improperly calculated Claimant's monthly gross unearned income to be \$ [REDACTED] when in fact Claimant's monthly gross unearned income is \$ [REDACTED]

Even if the department had properly calculated Claimant's monthly gross unearned income amount, this Administrative Law Judge further finds that the department did not apply the correct SSI payment level set forth in Reference Table 248 in determining the gross income limit for the MA Extended Care program. Specifically, the department applied to Claimant's case the SSI payment level for an individual in an independent living arrangement (\$ [REDACTED] and determined in accordance with BEM 164 that the gross income limit for the Extended Care program is \$ [REDACTED] or 300 percent of \$ [REDACTED]

However, it is undisputed that Claimant is in an assisted living arrangement. And, while Reference Table 248 includes no separate category for "assisted living" and department policy is otherwise woefully silent in providing any guidance on this type of living arrangement, Reference Table 248 does include a "personal care" living arrangement category. Moreover, the department's Bridges Glossary defines "personal care services" as "assistance that is provided to a person who needs help in performing his own personal daily activities (e. g., eating, grooming, medication, shopping, laundry, cooking)." BPG Glossary, p. 33. This definition is consistent with the definition of a "personal care facility" set forth in the Social Security Administration's description of Michigan's state supplementation payment levels, on which RFT 248 is based.¹ This Administrative Law Judge further notes that, based on the online description of the facility at which Claimant resides, it is clear that the assisted living branch of The Brook in Gladwin, Michigan constitutes a "personal care facility" because its assisted living services include furnished meals, check-ins, medication management, and assistance with dressing/undressing, personal grooming and bathing.² Accordingly, this Administrative Law Judge finds that the department relied upon the incorrect SSI payment level of \$ [REDACTED] as set forth in Reference Table 248 for an individual in an independent living arrangement and should have instead relied upon the SSI payment level of \$ [REDACTED] for an individual in a personal care facility. When the correct SSI payment of \$ [REDACTED] is relied upon, the gross income limit for the MA-Extended Care program is \$ [REDACTED] an amount which is greater than Claimant's own gross income of \$ [REDACTED]

Consequently, this Administrative Law Judge finds that, based on the competent, material and substantial evidence presented during the October 10, 2013 hearing, the department did not act in accordance with policy in denying Claimant's June 20, 2013 application for MA-Extended Care benefits effective May 1, 2013 due to excess income.

¹ http://www.socialsecurity.gov/policy/docs/progdesc/ssi_st_asst/2011/mi.html.

² <http://www.brookretirement.com/assisted-living>.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did not act in accordance with policy in denying Claimant's application for MA -Extended Care benefits effective May 1, 2013 due to excess income and the department is ordered to do the following within 10 days of the mailing of this decision and order:

1. Immediately reinstate and reprocess Claimant's June 20, 2013 application for MA-Extended Care benefits and determine Claimant's eligibility for such benefits for the benefit period effective May 1, 2013 based on the department's correct calculation of Claimant's gross unearned income and the department's application of the correct SSI payment level in RFT 248 to Claimant's personal care facility living arrangement; and
2. Issue any supplemental checks to Claimant if she is otherwise entitled to them.

It is **SO ORDERED**.

/s/ _____

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

Date Signed: October 18, 2013

Date Mailed: October 21, 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/hj

cc:

