

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-25639
Issue No(s): 2001
Case No.: [REDACTED]
Hearing Date: March 25, 2014
County: Allegan County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on March 25, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], daughter and Power of Attorney. [REDACTED], son in law, was also present. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Long Term Care Specialist (LTCS) and [REDACTED], Payments Supervisor.

ISSUE

Did the Department properly determine Claimant's Medicaid patient pay amount?

FINDINGS OF FACT

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

1. On September 20, 2013, a Medicaid application was filed for Claimant.
2. On November 18, 2013, a Notice of Case Action was issued to Claimant stating Medicaid was approved with a monthly patient pay amount of \$ [REDACTED] for September 2013 and ongoing.
3. On December 2, 2013, a hearing request was filed on Claimant's behalf contesting the Department's action.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual

(BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

A post-eligibility patient-pay amount is the long term care/hospital (L/H) patient's share of the cost of long term care (LTC) or hospital services. BEM 546 (7-1-2013) p. 1.

The post-eligibility patient-pay amount is total income minus total need. Total income is the client's countable unearned income plus her remaining earned income. Total need is the sum of the following when allowed by later sections of BEM 546 policy: patient allowance; home maintenance disregard; community spouse income allowance; family allowance; children's allowance; health insurance premiums; and Guardianship/Conservator expenses. BEM 546 p. 1.

To determine countable income, the Department is to:

For all persons in this item, determine countable income as follows:

- RSDI, Railroad Retirement and U.S. Civil Service and Federal Employee Retirement System.
- Non-SSI income for SSI recipients

Use countable income per BEM 500 and 530. Deduct Medicare premiums actually withheld by:

- Including the L/H patient's premium along with other health insurance premiums, and
- Subtracting the premium for others (example, the community spouse) from the unearned income.

Exception: Do **not** use the following special exclusion policies regarding RSDI. These policies only apply to eligibility, **not** post-eligibility patient-pay amounts.

- BEM 155, 503 COUNTABLE RSDI.
- BEM 156, COUNTABLE RSDI.
- BEM 157, COUNTABLE RSDI.
- BEM 158, COUNTABLE RSDI.

Note: The checks of clients on buy-in increase about three months after buy-in is initiated. Recompute the

patient-pay amount when the client's check actually changes. BAM 810 has information about buy-in.

- **Earned and Other Unearned Income.**

Use BEM 500 and 530. For clients, use FIP- or SSI-related policy as appropriate. Use SSI-related policies for all other per-sons.

For the **client only**, disregard \$65 + 1/2 of his or her countable earned income. Use RFT 295 to determine the disregard. Earned income minus the disregard is **remaining earned income**.

BEM 456 p. 2

Income remaining after applying the policy in the income related items is called countable. This is the amount used to determine eligibility and benefit levels. Count all income that is not specifically excluded. BEM 500 (7-1-2013) p. 4.

Other retirement income includes annuities, private pensions, military pensions, and state and local government pensions. The gross benefit is counted as unearned income. Allowances in pension benefits for the Medicare Part B premiums are not considered a reimbursement and should be included in the amounts entered in the Bridges unearned income logical unit of work. Sometimes benefits are reduced because of a previous overpayment. In such cases, the reduced amount is the gross amount; see BEM 500, Reduced Benefits Due to Overpayment. BEM 503

The patient allowance for clients who are in, or are expected to be in, LTC and/or a hospital the entire L/H month is \$■ BEM 546 p. 3

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, or, the L/H patient's intended contribution. The policy sets out the five steps for computing the community spouse income allowance. 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. BEM 546 p. 4.

Community spouse is defined as L/H or waiver patient's spouse when the spouse: has NOT been, and is NOT expected to be, in a hospital and/or LTC facility for 30 or more consecutive days, and for waiver patients only, the spouse is NOT also approved for the waiver. BPG Glossary (7-1-2013) p. 14.

Guardianship/Conservator expenses allows for \$■ per month when an L/H patient pays for his court-appointed guardian and/or conservator. Guardianship/conservator

expenses must be verified and include: basic fee, mileage, and other costs of performing guardianship/conservator duties. BEM 546 p. 9.

Regarding health insurance premiums, the Department is to include as a need item the cost of any health insurance premiums (including vision and dental insurance) the L/H patient pays, regardless of who the coverage is for. This includes Medicare premiums that a client pays. BEM 546 p. 8.

In this case, Claimant's daughter asserts that amounts automatically deducted from Claimant's income and some expenses should not have been included in calculating the countable income or should have been considered in determining the total need. Specifically, amounts withheld for state and federal taxes, court ordered spousal support to Claimant's ex-husband, expenses for Power of Attorney services, and post retirement life insurance. However, the above cited BEM policies do not allow for these exclusions or considerations. BEM 503 directs that the gross amount of pension income is to be counted. BEM 500 directs that all income not specifically excluded is to be counted.


There is no specific policy allowing for taxes or court ordered spousal support payments to an ex-spouse to be excluded. Further, the BEM 546 policy provisions for a community spouse income allowance cannot be considered in Claimant's case because the spousal support payments are for an ex-spouse, not a spouse remaining in the home. Claimant also cited various tax provisions, including Michigan Administrative Code R. 206.4 addressing household income, as well as 26 U.S. Code 62 Adjusted Gross Income and 26 U.S. Code 71 addressing Alimony and Separate Maintenance Payments. However, R 206.4 is part of the Department of Treasury Bureau of Revenue Income Tax section and 26 U.S. Code 62 and 26 U.S. Code 71 are part of the Internal Revenue Code. This action at issue is a Department of Human Services Medicaid eligibility issue; therefore, the tax citations are not applicable.

The Claimant's daughter also asked about expenses for Power of Attorney services and life insurance premiums. The BEM 546 policy does allow for Guardianship/Conservator expenses to be considered in the total need. However, this is limited to court appointed Guardians/Conservators and does not apply to expenses for Power of Attorney services. Further, under the BEM 546 policy only health insurance premiums can be considered in the total need, there is no policy allowing for life insurance premiums to be considered.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it determined Claimant's Medicaid patient pay amount.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.



Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 17, 2014

Date Mailed: April 17, 2014

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

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

CL/hj

cc:

