

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-32496
Issue No(s): 2001
Case No.: [REDACTED]
Hearing Date: April 23, 2014
County: Alger 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, an in-person hearing was held on April 23, 2014, from Munising, Michigan. Participants on behalf of Claimant included [REDACTED], Attorney, and [REDACTED], spouse. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Assistant Attorney General, [REDACTED], Assistance Payments Supervisor, [REDACTED], Eligibility Specialist, and [REDACTED], Eligibility Specialist.

ISSUES

Did the Department properly determine the amount of income that can be diverted to Claimant's community spouse?

Whether there are exceptional circumstances that would allow for a greater protected spousal 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 January 31, 2014, Claimant applied for Medicaid.
2. The Department authorized a community spouse allowance of \$ [REDACTED]
3. On February 25, 2014, a Notice of Case Action was issued to Claimant stating Medicaid was denied effective January 1, 2014 due to assets in excess of program limits.
4. On March 6, 2014, a Benefit Notice was issued to Claimant stating he was eligible for Medicaid for the month of January.

5. On March 13, 2014, a Benefit Notice was issued to Claimant stating he was still eligible for Medicaid but must pay \$ [REDACTED] per month toward the cost of his hospital/long term care starting February 1, 2014.
6. On March 13, 2014, a Benefit Notice was issued to Claimant stating he was still eligible for Medicaid but must pay \$ [REDACTED] per month toward the cost of his hospital/long term care starting April 1, 2014.
7. On March 12, 2014, Claimant filed a Request for Hearing requesting that all of Claimant's income be diverted to the community spouse.

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 Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Long Term Care/Hospital (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. BEM 546 (10-1-2013) p. 4. There is a five step process to compute the community spouse income allowance:

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 \$575.

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 \$582.

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 \$1939. The result, up to the appropriate maximum, is the **total allowance**. The maximum allowance for a month is \$2898.

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 pp. 4-6.

In an administrative hearing regarding the community spouse income allowance, policy states:

Community Spouse Income Allowance MA Only

The ALJ may raise the total allowance used to calculate the community spouse income allowance to an amount greater than provided for in BEM 546 to provide such additional income as is necessary due to exceptional circumstances resulting in significant financial duress.

The fact that a community spouse's expenses for goods and services purchased for day-to-day living exceed the total allowance provided by policy does **not** constitute exceptional circumstance. Goods and services purchased for day-to-day living include:

- Clothing.
- Drugs.
- Food.
- Shelter (for example, mortgage, taxes, insurance, rent, maintenance).
- Telephone.
- Trash pickup.
- Doctor's services.
- Entertainment.
- Heat.
- Utilities.
- Taxes.
- Transportation (for example, car payments, insurance, maintenance, fuel, bus fare).

Employment expenses do **not** constitute exceptional circumstances.

An example of exceptional circumstances is the need for the community spouse to pay for supportive and medical services at home to avoid being institutionalized.

Significant financial duress does **not** exist if the community spouse could meet expenses using their assets. This includes assets protected for the community spouse's needs as the protected spousal amount.

The ALJ may also grant a greater protected spousal amount (BEM 402, Special MA Asset Rules) when necessary to raise the community spouse's income to the total allowance for the community spouse. The community spouse's income for this purpose includes the maximum amount the long term care facility and/or hospital (L/H) client could make available to their community spouse per BEM 546.

When the ALJ grants a greater amount in the above circumstances, the final decision specifies:

- The amount of the protected spousal amount (BEM 402).
- The total allowance (BEM 546) used for the community spouse when determining the community spouse income allowance.
- The assets to be transferred for use by the community spouse.
- When another hearing will be held to review the exceptional circumstances.

If exceptional circumstances no longer exist before the case is due for the follow-up hearing, send the information to MAHS. Be sure to include the register number of the last D&O. MAHS will then decide whether to reschedule that hearing.

BAM 600 (7-1-2013) pp. 36-37.

Following the five steps outlined above in the BEM 546 policy, the Department determined the protected spousal amount in Claimant's case would be \$1,282.68. (Eligibility Specialist Testimony and Exhibit A, page 39)

Claimant filed a Request for Hearing requesting that all of Claimant's income be allocated to his spouse for her support and maintenance per BEM 546. (Exhibit A, page 3)

The Department asserts that exceptional circumstances do not exist in this case to support an ALJ determination to increase the total allowance used to calculate the community spouse income allowance under the BAM 600 policy.

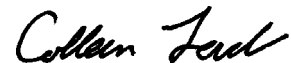
The Claimant asserts exceptional circumstances do exist in this case. Claimant referenced *Wisconsin Department of Health and Family Services v. Blumer*, 534 U.S. 473, 480 (2002) which notes that in the Medicare Catastrophic Coverage Act of 1988, Congress sought to protect community spouses from pauperization while preventing financially secure couples from obtaining Medicaid assistance. Claimant's spouse testified the Family Monthly Budget dated in February 2014 was fair and accurate. (See Exhibit A, page 20) Claimant asserts that the expenses from this budget that should be considered in this case include: all the housing expenses; transportation expenses, especially the 83 miles round trip to the nursing home; insurance expenses; food expenses; about half of the personal care expenses; and the taxes. Additionally, Claimant provided documentation of recent unusual expenses for replacing a washer and plumbing costs for the replacement washer as well as the septic system were noted. Claimant's wife testified that if major home repairs continue she may have to sell the home.

However, this ALJ must follow the above cited BAM 600 policy, which specifically states goods and services purchased for day-to-day living do **not** constitute exceptional circumstance. The types of expenses Claimant asserted should be considered are included in, or very similar to, the listed examples of day-to-day living expenses in BAM 600, such as: housing expenses, which include taxes, utilities, shelter maintenance and insurance; food expenses; and transportation expenses, which also include insurance and fuel. While unexpected, the replacement washer with related plumbing expenses, and running the camera to the septic tank are goods and services that relate to day-to day living.

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 the amount of income that can be diverted to Claimant's community spouse and that exceptional circumstances have not been established that would allow for a greater protected spousal 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: June 9, 2014

Date Mailed: June 9, 2014

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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:

