

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-010894
Issue No.: 2007
Case No.: [REDACTED]
Hearing Date: December 18, 2014
County: Oakland-District 2

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 December 18, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant's attorney-in-fact [REDACTED], and his attorney-at-law [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] and Assistance Payments Supervisor [REDACTED]. Assistant Attorney General [REDACTED] represented the Department.

ISSUE

Should the Claimant's spouse receive a Community Spousal Allowance beyond that provided by policy formula?

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 is in long-term care (LTC).
2. His spouse receives a Community Spouse Allowance (CSA) of \$ [REDACTED]
3. In a hearing request received August 28, 2014, Claimant's spouse has asked to have her CSA increased.

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.

In the Department's hearing summary (Exhibit 1 Page 1) the income and expenses associated with Claimant's case are detailed. The parties do not dispute the factual statements in the hearing summary. The issue is whether Claimant's spouse should be granted an increase in her CSA.

BAM 600 (1/1/15) at pages 38-39 states:

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.

The testimony from Claimant's spouse is that she is paying \$ [REDACTED] per month to the Internal Revenue Service for an outstanding balance on their 2013 federal tax bill. She has no assets that can be used to satisfy the outstanding balance. Exhibit F¹ is a statement from the Department of the Treasury showing a tax owed of \$ [REDACTED] and a monthly payment of \$ [REDACTED]. "Taxes" are specifically mentioned as one of the "goods and services purchased for day-to-day living". The installment agreement arose because taxes were underpaid in 2013. Had they been paid timely, there would not be any monthly payment obligation. Undoubtedly that monthly payment means fewer dollars available to meet other monthly expenses or discretionary spending. Because taxes are a "normal" expense associated with day-to-day living, the undersigned does not see this case as one where "exceptional circumstances" exist.

¹ Exhibits A-R are Exhibits submitted by Claimant's spouse, many of which reflect recurring expenses incurred by Claimant and his spouse, as well as their income.

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 CSA. It is also found that, because no exceptional circumstances exist, no additional CSA will be granted.

DECISION AND ORDER

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



Darryl Johnson
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **12/23/2014**

Date Mailed: **12/23/2014**

DJ/las

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, 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 48909-8139

cc:

