

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-14653
Issue No(s): 2007
Case No.: [REDACTED]
Hearing Date: January 16, 2014
County: Calhoun

ADMINISTRATIVE LAW JUDGE: DARRYL T. 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 January 16, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant's wife, [REDACTED]. The Claimant did not participate. Participants on behalf of the Department of Human Services (Department) included Assistance Payments Supervisor [REDACTED].

ISSUE

Did the Department properly calculate Claimant's spousal allowance?

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 a Medicaid (MA) recipient.
2. Claimant is residing in long-term care.
3. Claimant's spouse resides in the couple's home.
4. Claimant and his spouse have unearned income.
5. Claimant and his spouse have medical expenses that have not been paid by Medicaid and other household expenses that exceed their available income.
6. As stated in an October 29, 2013 Community Spouse and Family Income Allowance Notice the Department calculated the couple's spousal allowance at \$ [REDACTED] monthly.
7. On November 15, 2013, the Claimant, through his spouse, requested a hearing on the spousal allowance.

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.

BAM 115 defines the abbreviation of "l/h" as long term care and/or hospital (L/H). BEM 546 provides the policy for determining post-eligibility patient-pay amounts. "A post-eligibility patient-pay amount is the L/H patient's share of the cost of LTC or hospital services."

The post-eligibility patient-pay amount is total income minus total need.

Total income is the client's countable unearned income plus his remaining earned income; see Countable Income in this item.

Total need is the sum of the following when allowed by later sections of this item:

- Patient allowance.
- Home maintenance disregard.
- Community spouse income allowance.
- Family allowance.
- Children's allowance.
- Health insurance premiums.
- Guardianship/conservator expenses.

Countable income includes: RSDI, Railroad Retirement and U.S. Civil Service and Federal Employee Retirement System, and non-SSI income for SSI recipients. After determining countable income, the Department will 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.

The patient is allowed to keep a nominal amount of income: "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 \$60." BEM 546, Page 3. At page 6 of BEM 546, the procedure for calculating the amount the "community spouse" can keep is detailed:

“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.” (Emphasis in original.)

“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.”

The five steps are:

1. Shelter expense: 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.
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.
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**. (Emphasis in original.)

BAM 600, at pages 36-37, gives the Administrative Law Judge the authority to allow more in spousal allowance:

“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 exceeded 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 Claimant's spouse does not challenge the figures that were used in calculating her allowance, and she does not challenge the math. Her dispute is that she and the Claimant have exhausted their assets, they have medical bills, utility bills, and other expenses that she cannot afford. She testified that she is 75 years old and is unable to mow her lawn or shovel snow in her driveway. She has already spent \$[REDACTED] in January 2014 to have her driveway shoveled.

In the calculation, the Department is to consider shelter expenses. At pages 4-5 of BEM 546, 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.

When the Department's witness testified, she explained that the Claimant's shelter expenses were \$ [REDACTED] consisting of property taxes (\$ [REDACTED] / [REDACTED] months or \$ [REDACTED] per month) and home owner's insurance of \$ [REDACTED] per month. The Department is supposed to calculate the shelter expenses, and then

“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.”

The next step is to “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]. (Note, these are the standards in effect as of the date of the hearing. The shelter standard in September 2013 was \$ [REDACTED] the basic allowance was \$ [REDACTED] and the maximum allowance was \$ [REDACTED].

The Department did not include any utilities in calculating the shelter expenses. The Claimant's spouse testified that she has been having difficulty paying her utility bills. Without considering Claimant's utility expenses, the Department has not accurately calculated the Excess Shelter Allowance. While it is possible that the utilities will not increase the excess shelter allowance, the Department erred in not taking those expenses into consideration in its calculations.

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 did not act in accordance with Department policy when it calculated Claimant's spousal allowance.

DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Redetermine Claimant's FIP and FAP benefit eligibility, effective September 1, 2013;
2. Issue a supplement to Claimant for any benefits improperly not issued.



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

Date Signed: January 17, 2014

Date Mailed: January 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

DTJ/las

cc:

