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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-018846
Issue No.: 2007
Case No.: [redacted]
Hearing Date: March 05, 2015
County: WAYNE- 82

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on March 5, 2015, from Detroit, Michigan. Participants on behalf of Claimant included AHR [redacted] Participants on behalf of the Department of Human Services (Department) included Assistant Attorney General [redacted], and [redacted], Family Independence Manager.

ISSUE

Did the Department properly determine Claimant's required Patient Pay Amount (PPA) and Community Spouse Income Allowance (CSIA) for the purposes of Medical Assistance (MA) benefits?

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 MA recipient.

2. On October 28, 2014, the Department calculated Claimant's PPA and CSIA; the PPA was determined at [redacted], and the CSIA was calculated at [redacted]

3. On October 28, 2014, Claimant was sent notices of these calculations, which were effective December 1, 2014.

4. The CSIA, and in turn, the PPA, was determined without taking into account the shelter expenses of Claimant's community spouse.

5. On May 13, 2012, Claimant entered long term care (LTC), and moved out of the principal residence shared with the community spouse.

6. On October 28, 2014, Claimant's community spouse sold the principal residence, and entered into a shelter agreement with a family member.

7. The agreement in question specifically outlines rent obligations, and is labeled as a "Personal Care and Residential Agreement".

8. The Department refused to consider this rental amount in the CSIA and PPA calculations because the current shelter was "not the couple's principal residence".

9. On December 22, 2014, Claimant requested an administrative hearing.

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 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 administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Claimant's community spouse entered into a shelter and rental agreement with a family member in July, 2014; on October 28, 2014, the community spouse sold the principal residence. When the PPA and the CSIA were recalculated, they were recalculated without incorporating the rental amount the community spouse was liable for under the new rental agreement. Claimant disputes that determination, arguing that the under policy, the rental expenses should be taken into account when making a CSIA and PPA determination.

It should be noted that at hearing, the Department made two arguments. First, the Department argued that the policy prohibits rental expenses being calculated into CSIA and PPA budgets when the rental expense was not for the shelter originally resided in by the Claimant and the community spouse. In the alternative, the Department argued that the current rental agreement did not sufficiently lay out the specific costs for both rent and personal care, and thus could not be used in the CSIA and PPA calculations.

It is a long established principal of administrative law that the Administrative Law Judge only review the case presented and the issues appealed—more specifically, the

undersigned is only to review the specific reasons for the Department action. While the latter argument presented by the Department is interesting, it was not the reason that the rental expense was denied, nor was it an issue upon which the Claimant presented an appeal.

Department Exhibit A, the Department's hearing summary, specifically lays out that the "shelter expenses are not in the client or the client's spouse's name" as the reason for the Department's initial decision. Department Exhibit F, policy clarifications requested by the Department, shows that the rental expense was denied in the PPA and CSIA calculations because the rented shelter was "not the couple's principal residence".

Therefore, as the Department, by the evidence and testimony presented, based its calculations on a specific interpretation of BEM 546, and not on a failure to present sufficient rental verification, the undersigned will limit this review only to a determination of whether the Department's interpretation of BEM 546 was correct.

BEM 546, pg. 4 (2014) states that when calculating a PPA, one must first determine the CSIA; among things used to determine the CSIA are shelter expenses:

> "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 such as PACE, MIChoice, or others listed in the BEM manual.
>
> 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.
>
> 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.

The Department argued that BEM 546 allows only rental expenses for the “couple’s principal residence”, and defined that term as the home which the couple shared prior to the Claimant entering LTC.

After long consideration, the undersigned feels that this interpretation reads a definition into the policy that is unsubstantiated by a plain reading.

Nothing in the policy states that the “couple’s principal residence” must be the original home shared by the couple. Policy states only that the shelter expense be for the “principal residence”, which would imply a residence to which the couple could inhabit; nothing in the policy states that this must be the original home. The policy appears more concerned with an obligation to pay shelter expenses, which certainly exists in the present case.

Furthermore, given that the intent of the policy is to prevent the community spouse from “also becoming an L/H client”, it would be counterintuitive to require the community spouse to remain in a home that may in the future become financially impossible to hold, structurally uninhabitable, or a health hazard. Such a requirement to remain in the original home, regardless of the tenability of that prospect, would counterintuitively lead to more community spouses becoming an L/H client. The ability to change residences would allow those who would otherwise become an L/H client to enter a new residence as opposed to entering LTC.

Finally, if the intent of policy had been to prevent a community spouse from ever changing residences, policy could have explicitly said that. Policy does not state this, nor does policy imply that the community spouse, upon a client entering LTC, is prohibited from ever moving, at the potential penalty of an increase PPA and decreased CSIA.

In the current case, the community spouse changed residences, for which the purpose of was to avoid LTC, which is consistent with policy. While the Claimant's name is not specifically on the rental agreement in question (Department Exhibit B), the obligation to pay is in the name of the community spouse, and there is nothing in the rental agreement prohibiting the Claimant from moving into the residence with the community spouse. Additionally, rent is specifically outlined in policy as an acceptable shelter expense when calculating the CSIA and PPA.

While there is admittedly some question as to how much of the expense is rent and how much is for personal care, this is a lack of information easily solved through a verification request, and per the rationale given above, not in the purview of this hearing. However, given that the agreement is entitled "Personal Care and Residential Agreement" and contains references specifically to rent owed by the community spouse, there is little argument that the agreement in question constitutes a rental agreement.

Thus, for the reasons above, the undersigned holds that the Department misinterpreted policy when it refused to allow the rental expense of Claimant's community spouse into the calculations used to determine the PPA and the CSIA. While there may be questions as to the specific rental amount vs. personal care amount, the specific issue was not the issue upon which the Department based its initial decision, and is therefore not before the undersigned.

As such, 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 Community Spouse Income Allowance and Claimant's Patient Pay Amount.

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. Recalculate and reprocess Claimant's Community Spouse Income Allowance and Claimant's Patient Pay Amount.

Robert J. Chavez
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/26/2015**

Date Mailed: **5/26/2015**

RJC / tm

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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: [redacted]