

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

**IN THE MATTER OF:**

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Reg. No.: 15-003973  
Issue No.: 2007  
Case No.: ██████████  
Hearing Date: April 29, 2015  
County: Wayne (82-Adult Medical)

**ADMINISTRATIVE LAW JUDGE:** Alice C. Elkin

**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 April 29, 2015, from Detroit, Michigan. Participants on behalf of Claimant included ██████████

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████████████████████ Participants on behalf of the Department of Health and Human Services (Department) included ██████████

**ISSUES**

1. Did the Department properly calculate Claimant's Medical Assistance (MA) patient pay amount for December 1, 2014, ongoing?
2. Did the Department properly close Claimant's Medicare Savings Program (MSP) case?

**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 resides in a long-term care facility.
2. Claimant is an ongoing recipient of MA benefits under the extended care program with eligibility subject to a monthly patient pay amount.
3. Although Claimant was initially notified that her MA case was due to close effective December 1, 2014, because she had failed to timely submit a redetermination, her

redetermination was received on November 26, 2014, before the certification period expired, and was processed by the Department (Exhibits B-F).

4. On March 12, 2015, the Department sent Claimant a Health Care Coverage Determination Notice notifying her that she was eligible for MA LTC benefits with a monthly patient pay amount of (i) \$891 for the period between May 1, 2014, and September 30, 2014, (ii) \$1,679 for the period between December 1, 2014, and December 31, 2014, (iii) and \$1,697 for January 1, 2015, ongoing. In the specialist's comments section of the Notice, Claimant was informed that the increase in the patient pay amount was due to the fact that Claimant's pension income was not previously budgeted. The Notice also notified Claimant that she was not eligible for MSP benefits (Exhibit G).
5. On March 17, 2015, the Agent filed a request for hearing disputing the Department's actions concerning Claimant's MA case.

### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and 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 Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

As a preliminary matter, it is noted that the Agent established that she was authorized to act on Claimant's behalf, and she revoked on the record and in writing the authorization she granted to Claimant's nursing home and its agent to represent Claimant.

The Agent testified that she disputed the Department's calculation of Claimant's patient pay amount. A patient pay amount is the client's monthly share of the cost of long-term care or hospital services. BEM 546 (October 2013), p. 1; Bridges Policy Glossary (BPG) (July 2014), p. 47. The March 12, 2015, Health Care Coverage Determination Notice indicated that Claimant's patient pay amount was \$891 for May 1, 2014, to September 30, 2014, \$1,679 for December 2014 and \$1,697 for January 1, 2015, ongoing (Exhibit G). The Agent testified that, prior to the increase to \$1,679, she had been paying a patient pay amount of \$996, and the Department testified that its system showed that, consistent with the Agent's testimony, the patient pay amount for October

2014 and November 2014, two months not identified on the Notice, was \$996. Therefore, the issue at the hearing was the calculation of Claimant's patient pay amount for December 2014 and January 1, 2015, ongoing.

The patient pay amount is total income minus total need. BEM 546, p. 1. Total income is the client's countable unearned income plus her remaining earned income. BEM 546, pp. 1, 2. Although the Department did not provide a Patient Pay Amount summary showing how Claimant's patient pay amount was calculated, the Department testified that Claimant received gross monthly income totaling \$1,844 for the month of December 2014 and \$1,862 for January 1, 2015, ongoing. The Department testified that the total income was based on Claimant's receipt of \$1,056.90 in gross monthly Retirement, Survivors, and Disability Insurance (RSDI) benefits in December 2014, which increased to \$1,074.90 beginning January 2015, and of \$787.78 in gross monthly pension.

At the hearing, the Agent did not dispute Claimant's pension income amount but did dispute the RSDI figure used by the Department. The Department presented a report for Claimant from the SOLQ, the Department's data exchange with the Social Security Administration, to support its testimony (Exhibit H). The Agent was given the opportunity to present a letter from the Social Security Administration showing the monthly gross RSDI income. Although no response was received from the Agent before this Hearing Decision was issued, it is noted that the redetermination signed by the Agent and submitted to the Department on November 26, 2014, identified Claimant's RSDI income amount as \$1,057, consistent with the Department's testimony (Exhibit E, p. 30). Therefore, the evidence presented supports the Department's calculation of unearned income.

The Department also testified as to the total needs budgeted into the calculation of Claimant's patient pay amount. Total need is the sum of the following when allowed: 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. The Department testified that Claimant received a deduction for the following need-based expenses: (i) \$104.90 for her Part B Medicare health insurance premium; and (ii) \$60 towards her patient allowance. BEM 546, pp. 2, 7. Because there was no evidence that Claimant was married or had any children, or had any guardianship expenses, the Department properly did not consider the community spouse, family or children's allowance or guardianship expenses. There was also no evidence presented that Claimant would be a resident of a long-term care facility for less than six months and, therefore, eligible for a home maintenance disregard.

Although the Agent testified that the \$105.00 and \$2.17 deductions shown on Claimant's pension disbursement statement (Exhibit F) were additional insurance premiums, they are not clearly identified as health insurance premiums on the statement. Moreover, no health insurance premiums were identified on the redetermination other than Claimant's Part B Medicare premiums (Exhibit E, p. 27).

Because the Department properly considered the information available to it, the Department properly calculated the total need as \$164.90. See BEM 546, p. 11. The Agent was advised that she could provide verification of the additional insurance expenses for inclusion in the calculation of future patient pay amounts.

Claimant's total income of \$1,844 for the month of December 2014 less \$164.90, the sum of the allowable total needs, results in a patient pay amount of \$1,679 for December 2014. In calculating Claimant's patient pay amount for January 1, 2015, ongoing, the Department considered the cost-of-living increase in Claimant's RSDI effective January 1, 2015. However, Department policy provides that, for MA purposes, RSDI cost-of-living increases received in January are disregarded in determining countable RSDI income for January, February or March and the Department should use the gross RSDI income for the previous December when the month being tested is January, February or March. BEM 503 (July 2014), p. 29. The exclusions to this rule do not apply to the calculation of patient pay amounts. BEM 546, p. 2. Therefore, for calculating the patient pay amount from December 2014 to March 2015, the countable RSDI income is \$1,056.90, and the Department did not act in accordance with Department policy when it considered the cost-of-living increase for the January 2015 to March 2015 patient pay amount.

Although the Agent's hearing request does not specifically request a hearing concerning the Department's closure of Claimant's Medical Savings Program (MSP), the Agent requested a hearing with respect to Claimant's MA case. MSP is an MA program which provides for State assistance with certain Medicare costs, including payment of a client's Part B Medicare premium. BEM 105 (October 2014), p. 3. The March 12, 2015, Health Care Coverage Determination Notice notifying Claimant of her patient pay amount also notified Claimant that she was no longer eligible for MSP benefits because she had full MA coverage. While the Department's reason for case closure is unclear, it is noted that, as a result of her income Claimant was no longer income eligible for benefits under any category of MSP. BEM 165 (January 2015), pp. 1, 2, 7; RFT 242 (October 2014), pp. 1-2. Therefore, the Department acted in accordance with Department policy when it closed Claimant's MSP case.

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 closed Claimant's MSP case and calculated Claimant's patient pay amount for December 2014 but did not act in accordance with Department policy when it calculated Claimant's patient pay amount for January 1, 2015, ongoing.

### **DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the closure of Claimant's MSP case and the calculation of her patient pay amount for

December 2014 and **REVERSED IN PART** with respect to the calculation of her patient pay amount for January 1, 2015 ongoing.

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 Claimant's patient pay amount from January 1, 2015, ongoing;
2. Issue supplements to Claimant and her MA providers for any MA benefits that she was entitled to receive but did not from January 1, 2015, ongoing; and
3. Notify Claimant and the Agent in writing of its decision.



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**Alice C. Elkin**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

Date Signed: **5/6/2015**

Date Mailed: **5/7/2015**

ACE / pf

**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]