



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: October 21, 2016  
MAHS Docket No.: 16-011680  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Darryl Johnson

### **HEARING DECISION**

Following Petitioner'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 October 13, 2016, from Lansing, Michigan. The Petitioner was represented by [REDACTED]. The Department of Health and Human Services (Department) was represented by Eligibility Specialist [REDACTED], and Assistance Payments Supervisor, [REDACTED].

### **ISSUE**

Did the Department properly exclude payments on a pre-paid funeral contract from Petitioner's Medical Assistance (MA) budget?

### **FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner is a recipient of Medical Assistance (MA) which helps her pay for her long-term care (LTC).
2. Petitioner has been in LTC since February 2016.
3. On April 6, 2012, Petitioner entered into a contract for the purchase of a pre-paid funeral plan that requires her to pay \$ [REDACTED] per month for ten years.

4. When the Department calculated Petitioner's patient-pay amount (Exhibit 2 Page 2) it only counted her unearned income of \$ [REDACTED], her health insurance of \$ [REDACTED], and her patient allowance of \$ [REDACTED], leaving her patient-pay amount at \$ [REDACTED] per month.
5. In a Health Care Coverage Determination Notice dated July 12, 2016, the Department informed Petitioner that she was provided with MA beginning July 1, 2016, and that "the premium paid for the funeral contract each month is not an allowable expense per policy." (Exhibit 1 Pages 15-16.)
6. On August 9, 2016, the Department received Petitioner's hearing request, Petitioner protested the findings of the Health Care Coverage Determination Notice.

### **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.

In this case, the Department found that a pre-paid funeral contract for which Petitioner was making monthly payments was not an allowable deduction from her income when calculating her patient-pay amount for LTC. BEM 546 (7/1/16) is the governing policy for calculating post-eligibility patient-pay amounts. The manual is 12 pages in length and will not be quoted in its entirety. BEM 546 p. 1:

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.

Petitioner is a single woman. She has no community spouse or family who depend upon her. If she had a community spouse, a judge could deviate from the policy and divert more income to the community spouse. BEM 546 p. 5. That is the only area within the policy that permits a judge to exercise discretion.

Looking at the expenses that are allowed, there is nothing that permits the Department to count a prepaid funeral plan as a "need" in determining the patient-pay amount.

Based upon the available evidence, the only allowable "needs" are health insurance premiums (\$ [REDACTED]) and the patient allowance (\$ [REDACTED]). When those are deducted from her unearned income of \$ [REDACTED], she is left with a patient-pay amount of \$ [REDACTED].

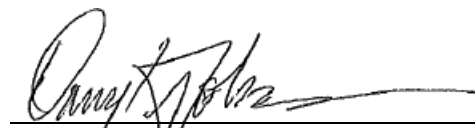
It is understandable that Petitioner would want to be able to continue paying for the prepaid funeral plan. Her attorney-in-fact has been paying those premiums and under-paying for Petitioner's LTC. That is a choice that she can make but it will have consequences.

### **DECISION AND ORDER**

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 Petitioner's patient-pay amount.

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

DJ/mc



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**Darryl Johnson**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

**DHHS**

[Redacted]

**Petitioner**

[Redacted]

**Authorized Hearing Rep.**

[Redacted]