



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 25, 2016
MAHS Docket No.: 16-012755
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 20, 2016, from Lansing, Michigan. The Petitioner was represented by his wife, [REDACTED], and his friend, [REDACTED]. The Department of Health and Human Services (Department) was represented by Hearings Facilitator [REDACTED] and Eligibility Specialist [REDACTED].

ISSUE

Did the Department properly determine the Community Spouse Allowance for Petitioner's spouse within the Medical Assistance (MA) program?

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 an on-going recipient of long-term care (LTC) benefits in the MA program.
2. Petitioner is required to pay \$ [REDACTED] as his patient-pay amount (PPA), and \$ [REDACTED] of Petitioner's income is diverted back to his spouse as the community spouse allowance (CSA).
3. The Department has concluded that Petitioner's patient-pay amount from July 1, 2016, through September 30, 2016, must be corrected to \$ [REDACTED], and

beginning October 1, 2016, it will be changed to \$ [REDACTED]. A help desk ticket, # [REDACTED], has been submitted to correct the error.

4. Petitioner submitted a hearing request on August 26, 2016, requesting a higher CSA and a lower PPA.

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.

BEM 546 (7/1/16) defines the policy for determining the amount a patient must pay after he is determined to be eligible for MA, if the patient is eligible for hospital and/or long term care facility (LTC) in a hospital and/or long term care facility (L/H). See BPG Glossary (10/1/15), p. 38. BEM 546, p. 1 states:

DEPARTMENT POLICY

MA Only

Use this item to determine 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. First determine MA eligibility. Then determine the post-eligibility patient-pay amount when MA eligibility exists for **L/H patients** eligible under:

- A Healthy Kids category.
- A FIP-related Group 2 category.
- An SSI-related Group 1 or 2 category **except:**
 - QDWI.
 - Only Medicare Savings Program (with **no** other MA coverage).

MA income eligibility and post-eligibility patient-pay amount determinations are **not** the same. Countable income and deductions from income often

differ. Medical expenses, such as the cost of LTC, are never used to determine a post-eligibility patient-pay amount. Do **not** recalculate a patient-pay amount for the month of death.

PATIENT-PAY AMOUNT

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

For all persons in this item, determine countable income as follows:

- RSDI, Railroad Retirement and U.S. Civil Service and Federal Employee Retirement System.
- Non-SSI income for SSI recipients

Use countable income per BEM 500, 501, 502, 503, 504 and 530. 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.

Exception: Do **not** use the following special exclusion policies regarding RSDI. These policies only apply to eligibility, **not** post-eligibility patient-pay amounts. VA Aid

and Attendance income is not excluded from the Patient Pay Calculation.

- BEM 155, 503 COUNTABLE RSDI.
- BEM 157, COUNTABLE RSDI.
- BEM 158, COUNTABLE RSDI.
- BEM 503, Countable VA PENSION.

Note: The checks of clients on buy-in increase about three months after buy-in is initiated. Recompute the patient-pay amount when the client's check actually changes. BAM 810 has information about buy-in.

- **Earned and Other Unearned Income.**

Use BEM 500, 501, 502, 503, 504 and 530. For clients, use FIP- or SSI-related policy as appropriate. Use SSI-related policies for all other persons.

For the **client only**, disregard \$65 + 1/2 of his or her countable earned income. Use RFT 295 to determine the disregard. Earned income minus the disregard is **remaining earned income**.

PATIENT ALLOWANCE

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.

Exception: The patient allowance for a veteran is \$90 per month.

Use the appropriate protected income level for one from RFT 240 for clients who enter LTC and/or a hospital but are not expected to remain the entire L/H month.

Reminder: The patient-pay amount is not reduced or eliminated in the month the person leaves the facility

If the patient is married, they can have some money diverted to provide for their "community spouse" who is not hospitalized.

COMMUNITY SPOUSE INCOME ALLOWANCE

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. Divert the **lower** of:

- The community spouse income allowance.
- The L/H patient's intended contribution; see Intent to Contribute in this item.

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 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.

Convert all expenses to a monthly amount for budgeting purposes.

2. Excess shelter allowance.

Subtract the appropriate shelter standard from the shelter expenses determined in step one. The shelter standard for a month is \$601.

The result is the **excess shelter allowance**.

3. Total allowance.

Add the excess shelter allowance to the appropriate basic allowance. The basic allowance for a month is \$2003. The result, up to the appropriate maximum, is the **total allowance**. The maximum allowance for a month is \$2981.

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. (Emphasis added.)

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**.

Exception: Use court-ordered support as the community spouse income allowance if:

- The L/H patient was ordered by the court to pay support to the community spouse, **and**
- The court-ordered amount is **greater** than the result of step five.

Petitioner does not contend that the Department erred when it calculated the community spouse allowance. He is asking that the Administrative Law Judge increase the amount diverted to the community spouse.

Looking to BAM 600 (10/1/16), p. 39-40, guidance is found for how the Administrative Law Judge can grant an increase in the CSA.

Community Spouse Income Allowance

MA Only

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.

In this case, Petitioner provided a list of debts and other expenses that the couple has (Exhibit A, Page 2) which they are paying every month. They have several credit cards totaling \$ [REDACTED] for Petitioner, and \$ [REDACTED] for his wife. His monthly payments total \$ [REDACTED], and hers total \$ [REDACTED]. Total debt shown on that page is \$ [REDACTED], and the monthly payments are \$ [REDACTED].

Exhibit A, Page 3 lists the income each party has, with his monthly income totaling \$ [REDACTED], and hers totaling \$ [REDACTED]. Combined, they have a monthly income of \$ [REDACTED]. The Department had set his PPA at \$ [REDACTED], which is shown as his "home and care" on Page 3. Her rent is \$ [REDACTED]. Their health, life, car, and renter's insurances total \$ [REDACTED]. They spend \$ [REDACTED] per month on utilities at their home. As explained in the exhibit, they are in a negative position each month, and nothing was budgeted for "food, gas, medications, paper products or clothing."

The Department submitted the CSA budget (Exhibit 1 Page 22) that calculated the PPA at \$ [REDACTED], and the PPA at \$ [REDACTED] beginning October 1, 2016.

The Department provided the budget at Exhibit 1, Page 22. It correctly established the shelter expense (rent) at \$ [REDACTED]¹. But, instead of using the heat and utility (h/u) standard of \$ [REDACTED] that is called for by BEM 546 at p. 5, it used just \$ [REDACTED]. The total of the shelter expense and the h/us standard is \$ [REDACTED]. The shelter standard of \$ [REDACTED] (BEM 546, p. 5) is to be subtracted from that to determine the excess shelter allowance. The Department calculated the excess shelter allowance to be \$ [REDACTED], but it should be \$ [REDACTED]. The Department allows a basic allowance of \$ [REDACTED]. *Id.* The basic allowance of \$ [REDACTED] is added to the excess shelter allowance of \$ [REDACTED], providing a potential total allowance of \$ [REDACTED]. Because that is less than the maximum allowance of \$ [REDACTED], Petitioner is allowed the total allowance of \$ [REDACTED]. The community spouse's unearned income (\$ [REDACTED]) is subtracted from the total allowance, and health insurance premiums (\$ [REDACTED]) are added to that, and the sum is the potential spousal allowance of \$ [REDACTED], which is contrasted to the Department's calculation of \$ [REDACTED].

In the Department's budget it identified the Petitioner's "Intended Contribution" as \$ [REDACTED]. Petitioner intended to contribute more than the calculated CSA, but the Department can only allow the CSA that is permitted by the policy. Therefore, the CSA is limited to \$ [REDACTED].

¹ What is not clear is where or how the Department included rent insurance in the budget. Their Exhibit A, Page 3, indicates she spends \$ [REDACTED] per month on that expense, and that is a shelter expense beyond the h/u standard.

An Administrative Law Judge can raise the CSA to provide additional income necessary due to exceptional circumstances. The fact that Petitioner's spouse's expenses for goods and services purchased for day-to-day living exceed the allowance provided by policy is not an exceptional circumstance. An example of an exceptional circumstance is if the community spouse needs to pay for supportive and medical services at home to avoid institutionalization. There is no evidence that is present here to show that there is any "exceptional circumstance" that warrants an increase in the CSA. The fact that they have considerable debt – and corresponding monthly payments – is a self-imposed fact. Although there is evidence that some of the debt is related to health expenses such as hearing aids, there is also evidence that some of it was due to veterinary expenses. There is no additional CSA awarded here. However, the correction in the h/u standard will likely result in an increased CSA.

DECISION AND ORDER

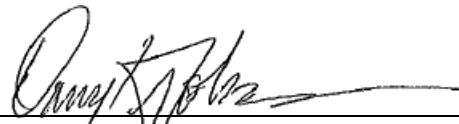
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it failed to allow the full heat and utility standard in determining the CSA.

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 Petitioner's Community Spouse Income Allowance as of July 1, 2016, using the correct heat and utility standard of \$ [REDACTED] and including her rent expense if that is not already budgeted.
2. Provide Petitioner and his spouse with such benefits as they might have been eligible to receive if the Department had correctly determined the budgets initially.

DJ/mc



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]