



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR



Date Mailed: September 20, 2017
MAHS Docket No.: 17-008532
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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. After due notice, telephone hearing was held on August 30, 2017, from Lansing, Michigan. The Petitioner was represented by his spouse, [REDACTED]. The Department was represented by [REDACTED] Hearing Facilitator, and [REDACTED] Long Term Care Specialist.

ISSUE

Did the Department of Health and Human Services (Department) properly determine Petitioner's patient-pay amount (PPA) towards his Long Term Care (LTC) Medical Assistance (MA)?

FINDINGS OF FACT

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

1. On February 1, 2017, the Department received Petitioner's application for Medical Assistance (MA) requesting Long Term Care (LTC) benefits. Exhibit A, pp 17-25.
2. The Petitioner receives monthly Retirement, Survivors, and Disability Insurance (RSDI) in the gross monthly amount of \$ [REDACTED] and is responsible for a Medicare insurance premium of \$ [REDACTED]. Exhibit A, p 37.
3. The Petitioner's spouse receives monthly Retirement, Survivors, and Disability Insurance (RSDI) in the gross monthly amount of \$ [REDACTED] and is responsible for a Medicare insurance premium of \$ [REDACTED]. Exhibit A, p 38.

4. Petitioner claims his son as a tax dependent and files his tax return jointly with his spouse. Exhibit A, p 39.
5. Petitioner's son is disabled and receives Supplemental Security Income (SSI) benefits. Exhibit A, pp 43-46.
6. Petitioner has an \$ [REDACTED] monthly shelter obligation. Exhibit A, pp 26-35.
7. On May 25, 2017, the Department notified Petitioner that he is approved for Long Term Care (LTC) for January of 2017, with a \$ [REDACTED] patient-pay amount (PPA) effective January 1, 2017. Exhibit A, pp 66-67.
8. On June 23, 2017, the Department received Petitioner's request for a hearing protesting the level of Medical Assistance (MA) she was approved for. Exhibit A, p 15-16.
9. On June 30, 2017, the Department notified Petitioner that he was approved for Long Term Care (LTC) with a \$ [REDACTED] patient-pay amount (PPA). Exhibit A, pp 77-78.

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.

Medical Assistance (MA) is a Department administered program that provides for the medical care of individuals whose own income and resources are insufficient to meet the costs of their medical needs. Because MA is a means-tested program, its benefits are only available to those whose income and resources fall below a certain level. Once person eligible for MA benefits enters into Long Term Care (LTC), most of the income the MA recipient does have must be applied to the cost of long term care.

Before the Medicare Catastrophic Coverage Act of 1998 (MCCA), an institutionalized LTC recipient could make income available to the community spouse only up to the medical assistance eligibility level or the public assistance standard of need, whichever was higher. Under prior law, many community spouses found themselves virtually

impoverished because the greater part of the couple's income was applied in the name of the institutional spouse.

Under the MCCA, the financially dependent spouse of an individual who requires LTC, is entitled to a minimum monthly maintenance allowance awarded from the income of the institutionalized LTC spouse. 42 USC 1396r-5.

The Department will determine an institutionalize person's level of contributions toward the cost of their LTC only when eligibility for MA has already been established. The MA recipient in need of LTC is required to make contributions, which are known as the patient-pay amount. The patient-pay amount is the MA group's total income minus total need. Department of Health and Human Services Bridges Eligibility Manual (BEM) 546 (July 1, 2017), p 1.

The needs of a LTC recipient are determined based on the patient allowance, a home maintenance disregard, a community spouse income allowance, a family allowance, a children's allowance, health insurance premiums, and any conservator expenses. BEM 546.

Petitioner receives total monthly income in the gross monthly amount of [REDACTED], which was not disputed during the hearing. This was reduced by the standard \$ [REDACTED] patient allowance, a family allowance of \$ [REDACTED] \$ [REDACTED] for health insurance premiums, and a community spouse allowance of \$ [REDACTED]

Petitioner's son lives with his wife and the Social Security Administration determined that the son is disabled. The son's sole source of income is Supplemental Security Income (SSI) benefits, which are not countable for the purposes of determining a family allowance. Therefore, Petitioner received the maximum family allowance, which is \$ [REDACTED] BEM 546, p 7.

The Department determined that Petitioner's spouse is entitled to a \$ [REDACTED] community spouse allowance for her needs, which is the sum of her monthly health insurance premium payment of \$ [REDACTED] her monthly RSDI benefit of \$ [REDACTED] and her basic spousal allowance of \$ [REDACTED]. The spousal allowance consists of the sum of the minimum monthly maintenance needs allowance of \$ [REDACTED], her [REDACTED] monthly shelter expense, the \$ [REDACTED] standard heat and utility standard, less the [REDACTED] shelter standard. BEM 546, pp 4-6.

The Medicare Catastrophic Coverage Act of 1998 added protections to avoid the impoverishment of the community spouse. A community spouse dissatisfied with a determination of the community spouse monthly income allowance is entitled to a fair hearing where the community spouse may request an amount adequate to provide additional income to avoid significant financial duress due to exceptional circumstances. 42 USC 1396r-5.

The Michigan Administrative Hearing System (MAHS) has been delegated the authority to grant a hearing to determine the community spouse income allowance. Department of Health and Human Services Bridges Administrative Manual (BAM) 600 (April 1, 2017), p 5.

Further, administrative law judges have the authority to increase the total allowance to divert more income to a patient's community spouse. BEM 546, p 5.

Petitioner's spouse is considered a community spouse. The community spouse is responsible for significant household expenses already considered in the Department's determination of the PPA. Petitioner's spouse is also responsible for the care of a son, who is unable to support himself due to total disability. Petitioner's disabled son is unable to manage his own financial needs based on his sole source of income, which consists of SSI benefits. As a result, Petitioner receives the maximum family allowance allowed by policy towards the determination of the PPA.

However, the family allowance and community support allowance are insufficient to prevent the impoverishment of the community spouse. The income received in Petitioner's household would be sufficient to support the community spouse while her husband is in long term care, but is not sufficient to support both the community spouse and their disabled son. Petitioner's son cannot support himself with only his SSI benefits.

The MCCA recognizes that the burden on the community spouse to care for a disabled child constitutes an exceptional circumstance for which an increased allowance can be granted. (see, HR Conf Rep No. 100-661, 100th Cong, 2d Sess, reprinted in 1988 US Code Cong & Admin News, at 1044-1045).

This Administrative Law Judge finds that the minimum monthly maintenance needs allowance is insufficient to prevent the impoverishment of the community spouse based on her exceptional circumstances, which justify an additional transfer of resources from the institutionalized spouse as authorized by the MCCA.

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 Community spouse basic allowance is insufficient to prevent impoverishment of the community spouse. The Department's determination of the patient-pay amount is therefore **REVERSED**. Since the basic monthly allowance of \$ [REDACTED] is insufficient to prevent impoverishment of the community spouse, it shall be replaced by the maximum community spouse income allowance of \$ [REDACTED] raising the community spouse monthly allowance to \$ [REDACTED]


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:

Increase the basic spousal allowance to \$ [REDACTED] from \$ [REDACTED] redetermine the monthly community spouse allowance, and redetermine Petitioner's patient-pay amount based on these new allowances effective January 1, 2017.

KS/nr



Kevin Scully
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]