



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

Date Mailed: April 27, 2018
MAHS Docket No.: 18-000555
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, an in person hearing was held on March 28, 2018, from [REDACTED] Michigan. Petitioner was represented by Attorney, [REDACTED]. The Department of Health and Human Services (Department) was represented by Assistant Attorney General, [REDACTED], [REDACTED], Eligibility Specialist; and [REDACTED], Department Analyst, appeared and testified. Department Exhibit A, pp. 1-31 was received and admitted. Petitioner exhibit 1, was received and admitted.

ISSUE

Did the Department properly process Petitioner's submission of a Probate Court Order for spousal support?

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 [REDACTED], an Initial Asset Assessment was completed, and an Initial Asset Assessment Notice was issued. (Ex. A, pp. 6-8)
2. Petitioner was approved for Medicaid effective [REDACTED].
3. Petitioner was approved for MI Choice Waiver on [REDACTED], and remained on Waiver until [REDACTED].

4. On [REDACTED], Petitioner entered a long-term care facility. (Exhibit A, p.17)
5. Petitioner's Medicaid eligibility continued when he entered the long-term care facility.
6. A Health Care Coverage Determination Notice was issued on [REDACTED], notifying Petitioner that he would have a patient pay amount of \$ [REDACTED] effective [REDACTED]. (Exhibit A, pp.18-21)
7. The [REDACTED] Probate Court entered an order on [REDACTED], ordering Petitioner to pay spousal support to his wife, [REDACTED], retroactive to [REDACTED], in the amount of \$ [REDACTED] per month. (Exhibit A, p.22)
8. The Probate Court Order was submitted to the Department on October 24, 2017.
9. The Probate Court Order was reviewed, and the Department determined that the Order of Support did not constitute a change affecting Client's Medicaid eligibility because it was not a deduction from his income.
10. On [REDACTED], the Department issued a Health Care Coverage Determination Notice that increased Petitioner's patient pay amount from \$ [REDACTED] to \$ [REDACTED] effective [REDACTED], based on an increase of Petitioner's social security income. (Ex.1)
11. On [REDACTED], Petitioner requested hearing disputing the Department's refusal to act on Petitioner's report of the [REDACTED], protective order of spousal support issued by the [REDACTED] County Probate Court. (Exhibit A, p.4-5)

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.

DEPARTMENT POLICY

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. BEM 546

Medicaid

A redetermination is an eligibility review based on a reported change.

A renewal is the full review of eligibility factors completed annually. BAM 210 p.1

All Other Reported Changes

FIP, RCA, SDA, CDC and MA

Act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change. BAM 220 p.7

Determining
Eligibility

All Programs

Determine eligibility and benefit amounts for all requested programs. Supplemental Security Income (SSI) recipients, title IV-E recipients, special needs adoption assistance

recipients, and department wards are automatically eligible for current MA; see BEM 117 and 150.

Review the effect on eligibility whenever the client reports a change in circumstances. Actions must be completed within the time period specified in BAM 220. BAM 105 p.19

Treatment of income and resources for certain institutionalized spouses

Processing Changes

The group must report changes in circumstances within 10 days. Redetermine the group's eligibility when a change that may affect eligibility is reported.

Apply changes for the corresponding period as follows if MA coverage has been authorized: BEM 545

Changing Post-Eligibility PPAs

When changing a post-eligibility PPA for an MA beneficiary:

Begin a **higher** PPA the first day of the month following the month in which the negative action pend period ends.

Begin a **lower** PPA the first day of the month:

The change occurred, if it was reported within 10 days.

The change was reported, if not reported within 10 days.

Changes that result in a lower PPA include reduced income and higher needs as allowed by BEM 546. For example, a beneficiary will have a higher patient allowance when in an LTC facility only part of a month. BEM 547 p.3

FEDERAL STATUTES

(e) Notice and fair hearing

(1) Notice

Upon—

(A) a determination of eligibility for medical assistance of an institutionalized spouse, or

(B) a request by either the institutionalized spouse, or the community spouse, or a representative acting on behalf of either spouse,

each State shall notify both spouses (in the case described in subparagraph (A)) or the spouse making the request (in the case described in subparagraph (B)) of the amount of the community spouse monthly income allowance (described in subsection (d)(1)(B) of this section), of the amount of any family allowances (described in subsection (d)(1)(C) of this section), of the method for computing the amount of the community spouse resources allowance permitted under subsection (f) of this section, and of the spouse's right to a fair hearing under this subsection respecting ownership or availability of income or resources, and the determination of the community spouse monthly income or resource allowance.

(2) Fair hearing

(A) In general

If either the institutionalized spouse or the community spouse is dissatisfied with a determination of—

- (i) the community spouse monthly income allowance;
- (ii) the amount of monthly income otherwise available to the community spouse (as applied under subsection (d)(2)(B) of this section);
- (iii) the computation of the spousal share of resources under subsection (c)(1) of this section;
- (iv) the attribution of resources under subsection (c)(2) of this section; or
- (v) the determination of the community spouse resource allowance (as defined in subsection (f)(2) of this section);

such spouse is entitled to a fair hearing described in section 1396a (a)(3) of this title with respect to such determination if an application for benefits under this subchapter has been made on behalf of the institutionalized spouse. Any such hearing respecting the determination of the community spouse resource allowance shall be held within 30 days of the date of the request for the hearing.

(B) Revision of minimum monthly maintenance needs allowance

If either such spouse establishes that the community spouse needs income, above the level otherwise provided by the minimum monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, there shall be substituted, for the minimum monthly maintenance needs allowance in subsection (d)(2)(A) of this section, an amount adequate to provide such additional income as is necessary.

(C) Revision of community spouse resource allowance

If either such spouse establishes that the community spouse resource allowance (in relation to the amount of income generated by such an allowance) is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, there shall be substituted, for the community spouse resource allowance under subsection (f)(2) of this section, an amount adequate to provide such a minimum monthly maintenance needs allowance. 42 U.S. Code § 1396r-5(e)

(d) Protecting income for community spouse

(1) Allowances to be offset from income of institutionalized spouse

After an institutionalized spouse is determined or redetermined to be eligible for medical assistance, in determining the amount of the spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the spouse's monthly income the following amounts in the following order:

(A) A personal needs allowance (described in section 1396a(q)(1) of this title), in an amount not less than the amount specified in section 1396a(q)(2) of this title.

(B) A community spouse monthly income allowance (as defined in paragraph (2)), but only to the extent income of the institutionalized spouse is made available to (or for the benefit of) the community spouse.

(C) A family allowance, for each family member, equal to at least 1/3 of the amount by which the amount described in paragraph (3)(A)(i) exceeds the amount of the monthly income of that family member.

(D) Amounts for incurred expenses for medical or remedial care for the institutionalized spouse (as provided under section 1396a(r) of this title). 42 USC 1396r-5(d)(1)

In this case, the Department's position is that the reported change, the submission of the Probate Court Support Order on [REDACTED], was not a change in income and did not have an effect on Petitioner's eligibility for Medicaid and therefore did not need to be processed, for the purpose of determining Petitioner's patient pay amount, until the next yearly renewal which was scheduled for [REDACTED]. The Department argued that the statute 42 USC 1396r(5)(d)(1) supports their position because it states "After an institutionalized spouse is determined or redetermined to be eligible for medical assistance" the community spouse income allowance and patient pay amount should be calculate. The Department asserts that this portion of the statute anticipates that the community spouse income allowance and the patient pay amount calculations only take place at initial determination and at the yearly renewal or if there is a change in eligibility. The Department argued that the statute would override Department policy if the Department policy was unclear or inconsistent with the statute and cites 42 USC 1396r-5(1) in support of that contention. The Department witnesses could not point to any provisions in Department policy which supports the Department's position.

Petitioner's position is that Department policy is clear and that changes like Probate Court Spousal Support Orders are required to be processed within 15 days according to BAM 220 because it is a factor that is required to be consider when calculating the community spouse income allowance and patient pay amount pursuant to BEM 546. Petitioner points out that changes that result in a higher patient pay amounts, like increases in social security income, and other factors, are routinely processed in a timely manner and are not put off until the next yearly renewal. In fact, on [REDACTED], Petitioner's Social Security income cost of living increase in [REDACTED], was processed by the Department and his patient pay amount was increased from \$ [REDACTED] to \$ [REDACTED] effective [REDACTED]. Petitioner's eligibility for Medicaid was not affected by this reported change, but Petitioner's patient pay amount was recalculated. No explanation was given, and no policy was cited to explain why this reported change was handled differently than the change reported by Petitioner.

The statute USC 1396r(5)(d)(1) instructs that after an institutionalized spouse is "determined or redetermined to be eligible for medical assistance" the calculation should be performed. The statute does not state that the calculation should only be done at the annual renewal. Department policy makes a distinction between redetermination and renewal for Medicaid in BAM 210. That policy states that redeterminations are based on reported changes and renewals are a full reviews of eligibility factors completed annually. It is reasonable and logical to give the word "redetermined" in the statute the meaning explicitly delineated in BAM 210. The Department could have and should have conducted a redetermination based on the reported change of probate court ordered spousal support on October 24, 2017, within 15 days. BAM 220 BEM 546 If the Department believed that USC 1396r(5)(d)(1) required that the patient pay amount only

be calculated at the initial eligibility determination, at annual renewal, or when eligibility for MA changes then policy should have been implemented that reflects that position.

Petitioner argued that a change in the amount of community spouse allowance and the patient pay amount is a change in the amount of MA benefit that requires the Department to take action and process the changes as outlined in BEM 547. BEM 547 makes no distinction with regard to changes that are reported at renewal or between initial eligibility and yearly renewal and does not jibe with the Department's position that changes are only processed at those intervals.

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 process Petitioner's report of the [REDACTED], [REDACTED] Probate Court Order directing Petitioner to pay his spouse \$ [REDACTED] per month in support and failed to recalculate Petitioner'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. Increase Petitioner's community spouse income allowance to \$ [REDACTED], effective [REDACTED].
2. Recalculate Petitioner's patient pay amount effective [REDACTED].

AM/bb



Aaron McClintic
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

Counsel for Respondent

[REDACTED]

DHHS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Counsel for Petitioner

[REDACTED]

Petitioner

[REDACTED]