



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

Date Mailed: May 4, 2018
MAHS Docket No.: 17-016737
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 April 3, 2018, from Charlotte, Michigan. Petitioner was represented by Attorneys [REDACTED], and [REDACTED]. The Department of Health and Human Services (Department) was represented by Assistant Attorney General, [REDACTED], [REDACTED], Eligibility Specialist (ES), and [REDACTED], Department Analyst, testified for the Department. Department Exhibit 1, pp. 1-35 was received and admitted. Petitioner Exhibit A, pp. 1-4 was received and admitted.

ISSUE

Did the Department properly process Petitioner's report of a Probate Court spousal support order and did they properly determine Petitioner's patient pay amount?

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 [REDACTED] years old and a patient at the [REDACTED].
2. On [REDACTED] 016, Petitioner applied for Medical Assistance - Long Term Care (MA-LTC).

3. On [REDACTED], Medicaid was approved, and a Health Care Coverage Determination letter was sent to Petitioner informing him that he had a patient pay amount of \$ [REDACTED] (Ex. 1, pp. 5-10)
4. On [REDACTED], the [REDACTED] Probate Court issued an order directing [REDACTED] to pay his spouse \$ [REDACTED] per month. (Ex. 1, p. 11)
5. On [REDACTED], an [REDACTED] Probate Court Protective Order was submitted by the Petitioner to the Department. (Ex. 1, p. 11)
6. On [REDACTED], Petitioner's attorney requested a hearing. (Ex. 1, pp. 14-16)
7. On [REDACTED], an Order Granting Petitioner's Motion for Summary Disposition was issued by Michigan Administrative Hearing System (MAHS). (Ex. 1, pp. 17-21)
8. On [REDACTED], Petitioner submitted a DHS 4574 pursuant to a redetermination.
9. On [REDACTED], redetermination was completed, and the Probate Court Protective Order was processed. Petitioner's patient pay amount was determined to be \$ [REDACTED] effective [REDACTED].
10. On [REDACTED], a Order Denying Motion to Vacate Reconsideration was issued by MAHS.
11. On [REDACTED], a Benefit Notice was issued that states "As required by the MAHS Decision and Order of Reconsideration dated [REDACTED], the protective order issued by the [REDACTED] Probate Court on [REDACTED] has been processed. Because the court order was not a deduction from Mr. Bocke's income, the court order did not constitute affecting the client's eligibility. Therefore, no change in the PPA for the period [REDACTED]. Protective Order taken into consideration at redetermination and PPA was reduced to \$ [REDACTED] effective [REDACTED], as stated in the Benefit Notice issued 8/18/2017." (Ex. 1, pp. 30-31)
12. Petitioner's attorney filed an Emergency Motion for Clarification of Decision and Order of Reconsideration which was denied on [REDACTED]. (Ex. 1, p. 32)
13. On [REDACTED], [REDACTED], Petitioner requested hearing disputing the [REDACTED], Benefit Notice and the Department's refusal to process and take into consideration the [REDACTED], [REDACTED] Probate Court Protective Order when calculating Petitioner's patient pay amount.
14. On September 7, 2017, Michigan Department of Health and Human Services Director, Nick Lyon, issued a Policy Hearing Directive Regarding Medicaid Eligibility Redeterminations Involving Court Order of Spousal Support that reads as follows: "By authority granted to the Policy Hearing Authority under the Michigan Department of Human Services (DHS) Delegation of Hearing Authority dated July 10, 2013, and the Michigan Department of Community Health (MDCH) Delegation of Authority dated February 22, 2013, I issue this directive which is

binding on the administrative law judges of the Michigan Administrative Hearing System as to the applicability of federal law and Department policy to the treatment of court orders of spousal support in cases involving long-term care Medicaid assistance. Court orders of spousal support do not constitute a change affecting the determination of Medicaid eligibility because they are not deductions from a Medicaid beneficiary's income. Therefore, court orders of spousal support do not require action within 15 workdays as required in BAM 220. In accordance with 42 USC 1396r-5 and Department policy at BEM 546, court orders of spousal support shall only be considered by the Department when calculating the post-eligibility patient pay amount after an institutionalized spouse is determined at application or redetermination to be eligible for medical assistance”

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 p. 1 (July 2016)

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(July 2016)

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 (October 2016)

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 (October 2016)

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 p.11 (October 2016)

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.5 (July 2016)

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)

Policy Hearing Directive Regarding Medicaid Eligibility Redeterminations Involving Court Order of Spousal Support

“By authority granted to the Policy Hearing Authority under the Michigan Department of Human Services (DHS) Delegation of Hearing Authority dated July 10, 2013, and the Michigan Department of Community Health (MDCH) Delegation of Authority dated February 22, 2013, I issue this directive which is binding on the administrative law judges of the Michigan Administrative Hearing System as to the

applicability of federal law and Department policy to the treatment of court orders of spousal support in cases involving long-term care Medicaid assistance. Court orders of spousal support do not constitute a change affecting the determination of Medicaid eligibility because they are not deductions from a Medicaid beneficiary's income. Therefore, court orders of spousal support do not require action within 15 workdays as required in BAM 220. In accordance with 42 USC 1396r-5 and Department policy at BEM 546, court orders of spousal support shall only be considered by the Department when calculating the post-eligibility patient pay amount after an institutionalized spouse is determined at application or redetermination to be eligible for medical assistance."

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 until the next yearly renewal, which was scheduled for [REDACTED]. The Department argued that the statute 42 USC 1936r(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 calculated. 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 the initial MA eligibility determination and at the yearly renewal when MA eligibility is redetermined, or if there is a change in MA eligibility. The Department argues that since the Probate Court Support Order was not a deduction from Petitioner's income it does not affect his MA eligibility and therefore no recalculation of the patient pay amount is required. 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 1396r5(1) in support of that contention.

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 considered 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. The Department witness testified that changes in health insurance premiums, guardianship fees, and shelter expenses would all be processed. How these other changes would be processed and whether those changes effect the patient pay amount are not issues that have a bearing on the issues related to this hearing.

The statute, USC 1936r(5)(d)(1) instructs that after an institutionalized spouse is “determined or redetermined to be eligible for medical assistance” the calculation should be performed.

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. The Department processed the change reported in the sense that they reviewed it and considered its effect, but pursuant to the statute, the Department correctly made the determination that the Probate Court Spousal Support Order would be included in the patient pay calculation at the next MA eligibility determination in August 2017 pursuant to 42 USC 1396r-5 and BEM 546.

On September 7, 2017, the Michigan Department of Health and Human Services Director, Nick Lyon, issued a Policy Hearing Directive which is directly relevant to the issues raised in this hearing request. That directive requires that the undersigned Administrative Law Judge to conclude that “court orders of spousal support do not require actions within 15 workdays as required by BAM 220.” The directive further requires that “court orders of spousal support shall only be considered by the Department when calculating the post-eligibility patient pay amount after an institutionalized spouse is determined at application or redetermination to be eligible for medical assistance.” This directive is binding on the undersigned Administrative Law Judge.

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 that Petitioner’s report of the [REDACTED], [REDACTED] Probate Court Spousal Support Order, directing Petitioner to pay his spouse \$ [REDACTED] per month in support would be processed at the next MA eligibility determination, at the MA yearly renewal in [REDACTED].

DECISION AND ORDER

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

IT IS SO ORDERED.

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]

Counsel for Petitioner

[REDACTED]

Petitioner

[REDACTED]