



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
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[REDACTED]
[REDACTED]

Date Mailed: May 21, 2020
MOAHR Docket No.: 20-001157
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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, a telephone hearing was held on May 14, 2020, from Detroit, Michigan. Petitioner appeared for the hearing and was represented by her Authorized Hearing Representative (AHR), [REDACTED]. The Department of Health and Human Services (Department) was represented by Haysem Hosny, Hearing Facilitator.

ISSUE

Did the Department properly calculate Petitioner's Medical Assistance (MA) Patient Pay Amount (PPA)?

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 was an ongoing recipient of MA benefits under the Ad-Care category.
2. In or around [REDACTED] 2019, Petitioner began residing in a long-term-care (LTC) facility. (Exhibit A, pp. 7-8)
3. Petitioner is a widow and has no minor children.

4. On January 14, 2020, the Department sent Petitioner a Health Care Coverage Determination Notice notifying Petitioner that effective February 1, 2020, ongoing, she was approved for MA subject to a \$1,008 monthly patient pay. (Exhibit A, pp.5-6)
5. On or around January 31, 2020, Petitioner submitted a hearing request disputing the calculation of the PPA. (Exhibit A, pp. 3-4)

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.

On January 14, 2020, the Department notified Petitioner that she was eligible for MA subject to a \$1,008 PPA for February 1, 2020, ongoing. There was no evidence that any prior notice was issued to Petitioner regarding the imposition of the PPA or that any subsequent notice was issued removing the PPA. Petitioner's AHR submitted a timely hearing request disputing the Department's calculation of Petitioner's PPA. Petitioner's AHR presented a Hearing Summary that was uploaded to her Bridges online account which indicated that Petitioner was sent the above referenced Health Care Coverage Determination Notice in error and she was determined eligible for full coverage Medicaid under the Ad-Care category. (Exhibit 1) However, the Department representative present for the hearing presented evidence which as discussed below, sufficiently establishes that based on her status as an L/H patient, Petitioner was eligible for Ad-Care but also subject to a PPA.

The evidence established that prior to her admission to LTC, Petitioner had been approved for MA under the Ad-Care category, which is an SSI-related Group 1 MA category available to persons who among other factors, are aged, disabled and have net income below 100% of the federal poverty level. BEM 163 (July 2017), p. 1. Because Petitioner had not been admitted to LTC, she was not subject to a PPA. However, upon her admission to LTC, the Department determined that Petitioner was still eligible for Ad-Care but now subject to a PPA. The Department is to determine the post-eligibility PPA for any month in which eligibility for Ad-Care exists and that is

considered an L/H month. BEM 163, p. 1. An L/H month is a calendar month containing at least one day that is part of a period in which a person was or is expected to be in an LTC facility for at least 30 consecutive days, and no day that the person was a waiver patient. Bridges Policy Glossary (BPG) (January 2020), pp. 40.

A PPA is the monthly amount of a person's income which Medicaid considers available for meeting the cost of LTC services. Medicaid reduces its payment to the LTC facility by the PPA. BPG, p. 51; see also BEM 546 (January 2020), p. 1. The Department is to first determine MA eligibility, then determine the PPA. BEM 546, p. 1. In this case, the Department properly determined that first, Petitioner was eligible for Ad-Care MA. The calculation of the PPA follows and is discussed below. The PPA is equal to Petitioner's total income minus her total need. BEM 546, p. 1.

Income

In support of the calculation of the PPA, the Department presented a PPA budget showing Petitioner's total income and total need. (Exhibit A, p.9; Exhibit B). Total income is the countable unearned income plus remaining earned income of the institutionalized client. BEM 546, pp. 1-2. The budget shows total income for Petitioner of \$1,068, which the Department testified consisted of \$889 in gross monthly Retirement, Survivors, and Disability Insurance (RSDI) benefits and gross monthly pension income of \$179.83. Petitioner's AHR confirmed that the amounts relied upon at the time the budget was completed were correct. Although she testified that Petitioner's monthly pension fluctuates based on the exchange rate, Petitioner's AHR confirmed that it was not lower than \$179. Petitioner's AHR further asserted that a \$15 wire transfer fee is deducted from the monthly pension; however, Department policy provides that it is to consider the gross benefit amount as unearned income. BEM 503 (January 2020), pp.29-30. The sum of Petitioner's income is \$1,068, as shown on the budget. Therefore, the Department properly calculated Petitioner's total income.

Total Need:

Total need is the sum of the following when allowed: patient allowance; home maintenance disregard; community spouse income allowance (CSIA); family allowance; children's allowance; health insurance premiums; and guardianship/conservator expenses. BEM 546, p. 1.

Home Maintenance Disregard

The budget showed no home maintenance disregard. Petitioner's AHR argued that Petitioner was still responsible for monthly housing/utility expenses at her home. Medicaid beneficiaries who will be residents of an LTC facility for less than six L/H months may request a disregard to divert income for maintenance of their home for a maximum of six months. Medicaid beneficiaries who have been or are expected to remain in long-term care for longer than six months do not meet the criteria for this disregard. BEM 546, pp. 3-4. Although Petitioner's AHR asserted that Petitioner hopes

to return to her home, the evidence established that Petitioner had been in long-term care for more than six months and there was no evidence that Petitioner's physician certified that Petitioner was medically likely to return home in less than 6 months from the date of her admission. There was no expected or anticipated date for Petitioner's return home from LTC. Therefore, Petitioner is not eligible for the home maintenance disregard.

Family Allowance, Children's Allowance, and Community Spouse Income Allowance (CSIA)

The budget showed no family allowance, children's allowance or community spouse income allowance towards the calculation of Petitioner's total need. A family allowance is available when family members live with the spouse of the institutionalized patient (the community spouse) and are either spouse's (i) married and unmarried children under age 21 or (ii) married and unmarried children aged 21 and over if they are claimed as dependents on either spouse's federal tax return. BEM 546, pp.7-8. In this case, there was no evidence presented that Petitioner was eligible for a family allowance. Additionally, because there was no evidence that she had unmarried children in the home under age 18, she was not eligible for a children's allowance. BEM 546, p. 8. The CSIA is the maximum income an institutionalized patient can divert to meet the needs of the community spouse. BEM 546, p. 4. The CSIA is the difference between the community spouse's countable income and the total allowance. BEM 546, pp. 5-6. Petitioner's AHR confirmed that Petitioner did not have a spouse, and thus, was ineligible for the community spouse income allowance. BEM 546, pp. 4-8. Therefore, the Department properly determined that the family allowance, children's allowance, and community spouse income allowance were \$0.

Health Insurance Premium and Guardianship/Conservator Expenses

The budget showed no need-based deduction for health insurance premiums or guardianship/conservator expenses. The Department will include as a need item the cost of any health insurance premiums, including Medicare premiums a patient in LTC pays for himself or for another member of his fiscal group. BEM 546, p. 8. However, premiums paid by someone other than the patient are **not** a need item; if the community spouse pays her own premium, it is included taken into consideration in calculating the community spouse income allowance. BEM 546, p. 8. Petitioner's AHR confirmed that Petitioner was not responsible for any out of pocket health insurance premiums, which is accurate based on Petitioner's eligibility for Ad-Care MA. As such, the Department properly concluded that because Petitioner was not responsible any health insurance premiums, they were not considered as a need item.

When a patient in LTC has a court-appointed guardian and/or conservator, \$60 per month may be allocated as a need when expenses, including basic fee, mileage, and other costs of performing guardianship/conservator duties, are verified. BEM 546, p. 9. Petitioner's AHR also confirmed that Petitioner did not have a court appointed guardian

and/or conservator. Therefore, the Department properly concluded that Petitioner was ineligible for the \$60 guardianship/conservator fee to be included as a need.

Considered Need:

The budget shows the following in calculating Petitioner's total need: a patient allowance of \$60.

Patient Allowance

The patient allowance for clients who are in, or are expected to be in, LTC for an entire month is \$60 unless the patient is also a veteran in which case the patient allowance is \$90 per month. BEM 546, p. 3. Because there was no evidence that Petitioner was a veteran, the Department properly used \$60 as the patient allowance.

In this case the Department has established that, in determining Petitioner's PPA, it properly calculated Petitioner's income and properly calculated and considered the applicable need deduction for the patient allowance. Because Petitioner's total income of \$1,068 minus her total need of \$60 is \$1,008, the Department properly determined that Petitioner was eligible for MA subject to a PPA of \$1,008.

DECISION AND ORDER

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

ZB/tm



Zainab A. Baydoun
Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

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DHHS

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Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED]

cc: MA- Deanna Smith; EQADHShearings
AP Specialist Macomb County