



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: October 9, 2020
MOAHR Docket No.: 20-004997
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 September 2, 2020. The Petitioner was represented by [REDACTED] Wife, and [REDACTED], Daughter, Guardian, and Conservator. The Department of Health and Human Services (Department) was represented by Eric Carlson, Assistance Payments Supervisor (AP Supervisor).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as marked, Exhibits A-E.

ISSUES

Did the Department properly determine Petitioner's eligibility for Medical Assistance (MA)?

Are there exceptional circumstances that would allow for a greater protected spousal 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. On April 15, 2020, Petitioner's wife called the Department to discuss Petitioner's patient pay amount (PPA) and stated that she had not received a dividend payment yet this year. (Hearing Summary)
2. The Department verified with the financial advisor that Petitioner's wife had not yet received a dividend payment this year but would expect a \$200.00 payment in May. (Hearing Summary; Exhibit A, p. 1)

3. The Department reviewed the available documentation for the PPA calculation for January 2020. (Exhibit C, pp. 1-11)
4. In February 2020, it was verified that Petitioner pays a guardianship fee. (Exhibit D, pp. 1-3)
5. In March 2020, verification of an increase in Petitioner's wife's health insurance premium was provided. (Exhibit E, p. 1)
6. On April 17, 2020, a benefit notice was issued, updating the patient pay amounts for January 2020 through May 2020. The PPA was changed to \$1,135.00 for January; \$1052.00 for February; \$1,017.00 for March and April; and \$1,217.00 for May. (Exhibit B, pp. 1-2)
7. On July 16, 2020, Petitioner requested a hearing, contesting the Department's determination. (Hearing Request)

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.

Long Term Care/Hospital (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. BEM 546, January 1, 2020, p. 4. There is a five-step process to compute the community spouse income allowance:

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 \$518.00.

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 \$634.25

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 \$2113.75. The result, up to the appropriate maximum, is the **total allowance**. The maximum allowance for a month is \$3216.00.

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.

4. Countable income.

Determine the community spouse's countable income; see COUNTABLE INCOME in this policy.

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.

BEM 546 pp. 4-6.

In an administrative hearing regarding the community spouse income allowance, policy states:

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.

If exceptional circumstances no longer exist before the case is due for the follow-up hearing, send the information to MOAHR. Be sure

to include the register number of the last D&O. MOAHR will then decide whether to reschedule that hearing.

BAM 600, January 1, 2020, pp. 40-42.

Following the five steps outlined above in the BEM 546 policy, the Department determined the protected spousal amount in Claimant's case would be \$1,259.54. (Exhibit C, pp. 1-2)

Petitioner's wife filed a Request for Hearing stating that she could not afford the monthly payments. (Hearing Request)

Petitioner's wife noted that the PPA jumps up and down. (Wife Testimony) However, the Department properly re-calculated the PPA as they received verification of allowable expense and income changes. For example, the Department reviewed the available documentation for the PPA calculation for January 2020. (Exhibit C, pp. 1-11) In February 2020, it was verified that Petitioner pays a guardianship fee. (Exhibit D, pp. 1-3) In March 2020, verification of an increase in Petitioner's wife's health insurance premium was provided. (Exhibit E, p. 1) In May, a dividend payment of \$200.00 was expected. (Exhibit A, p. 1) The changes to the PPA each month reflect that updated information was provided.

Petitioner's wife is requesting that the ALJ find that exceptional circumstances exist and grant a greater protected spousal amount. For example, there is a payment arrangement for attorney fees and there is a loan for her hearing aids. (Wife Testimony)

Petitioner's daughter testified that for 2019, she kept track of the finances. In the middle of the summer, Petitioner's wife started to go into the negative and drained the savings account. Petitioner's wife has just \$40.22 each month to pay for food, gas, etc. after the regular monthly bills are paid. This does not even consider the extra \$534.00 for the lawyer fees and hearing aids. Further, there are anticipated upcoming expenses such as roofing repairs and the rear end of Petitioner's car is starting to go. (Daughter Testimony)

Petitioner's daughter testified that the figures the Department used that are not standards seemed right. However, the utility expenses are greater than the standard the Department utilizes. (Daughter Testimony) Petitioner's wife testified the problem is the extra \$534.00 in payments each month for the attorney fees and hearing aids. (Wife Testimony)

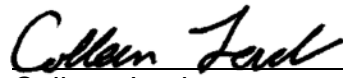
However, this ALJ must follow the above cited BAM 600 policy, which specifically states goods and services purchased for day-to-day living do **not** constitute exceptional circumstance. The types of expenses described this case cannot be considered as a basis for finding exceptional circumstances exist. For example, utility bills in excess of the Department standard, anticipated transportation/vehicle expenses, home repairs, and payments for hearing aids would all be considered goods and services purchased for day-to-day living under the BAM 600 policy.

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 determined Petitioner's eligibility for Medical Assistance (MA) and that exceptional circumstances have not been established that would allow for a greater protected spousal amount.

DECISION AND ORDER

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

CL/ml



Colleen Lack
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

Pamela Wells
Mason County DHHS – via electronic mail

BSC3 – via electronic mail

D. Smith – via electronic mail

EQAD – via electronic mail

Authorized Hearing Rep.

[REDACTED] – via first class mail
[REDACTED], MI [REDACTED]

Petitioner

[REDACTED] – via first class mail
[REDACTED] MI [REDACTED]