



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: November 9, 2017
MAHS Docket No.: 17-012691
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 November 2, 2017, from Detroit, Michigan. The Petitioner was represented by his wife, [REDACTED]. The Department of Health and Human Services (Department) was represented by Amber Gibson, Hearing Facilitator, and Krystal Lowe, Long Term Care Eligibility Specialist.

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 MA recipient.
2. Petitioner began residing in a long-term care (LTC) facility on June 16, 2017.
3. Petitioner is married and his wife is not in a LTC facility.
4. Petitioner received Retirement, Survivors, and Disability Insurance (RSDI) benefits in the amount of \$1,475 per month (Exhibit B).
5. Petitioner paid monthly Medicare Part B premiums in the amount of \$110 (Exhibit B).

6. Petitioner's wife had earned income from employment with the State of Michigan (Exhibit C).
7. On July 18, 2017, the Department sent Petitioner a Health Care Coverage Determination Notice informing Petitioner that he was approved for MA subject to a \$1,305 PPA effective August 1, 2017, ongoing.
8. On September 15, 2017, Petitioner's AHR submitted a request for hearing disputing the PPA.

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 July 18, 2017, the Department informed Petitioner that he was eligible for MA subject to a PPA of \$1,305 effective August 1, 2017, ongoing. Petitioner's wife submitted a hearing request disputing the PPA. Specifically, Petitioner's wife argued that they should receive a home maintenance disregard, as Petitioner and Petitioner's wife took out a loan to make improvements to their home in 2016 (Exhibit 2). The improvements were made to make their home wheelchair accessible, because Petitioner was living in the home at the time.

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. BEM 546 (July 2017), p. 1. For a married individual who is in a LTC facility (the institutionalized spouse), the PPA is equal to the institutionalized spouse's total income minus his 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 D). 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 \$1,475, which the Department testified consisted of \$1,475 in gross RSDI benefits. The Department provided the State On-Line Query (SOLQ) report to verify Petitioner's income (Exhibit B). Petitioner's RSDI benefits were his only source of income. 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.

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.

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 taken into consideration in calculating the community spouse income allowance. BEM 546, p. 8. According to the SOLQ, Petitioner is responsible for a monthly \$110 Medicare Part B premium. There was no evidence Petitioner was responsible for any other health insurance premiums. Therefore, the Department properly concluded Petitioner was responsible for a \$110 health insurance premium.

The budget showed that the Department did not consider a family allowance, children's allowance or guardianship/conservator fees when determining Petitioner's 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 Petitioner had a community spouse and there was no evidence that he had unmarried children in the home under age 18, he was not eligible for a children's allowance. BEM 546, p. 8. 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. There was no evidence Petitioner had a guardian/conservator. Therefore, the Department properly determined that the family, children's allowance and guardian/conservator fees were \$0.

The budget also did not include a home maintenance disregard. Petitioner's wife argued that they should receive the home maintenance disregard, as they had an outstanding loan for improvements made to their home. Medicaid beneficiaries who will be residents of a long term care facility for less than six months may request a disregard to divert income for maintenance of their home for a maximum of six months. BEM 546, p. 3. 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, p. 3. Petitioner's wife confirmed that she did not anticipate that Petitioner would be discharged from the LTC facility in less than six months. Petitioner's wife stated Petitioner would be in the LTC for the foreseeable future. Therefore, the Department properly concluded that Petitioner was not entitled to a home maintenance disregard.

The final need the Department calculated was a \$0 Community Spouse Income Allowance (CSIA). 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.

To calculate the total allowance, the Department must first calculate the excess shelter allowance. The excess shelter allowance is determined by subtracting the shelter standard of \$609 from the sum of shelter expenses for the couple's principal residence, as long as the obligation to pay these expenses is either in the institutionalized spouse's or community spouse's name. BEM 546, pp. 4-6. Shelter expenses include monthly mortgage or rent, property taxes, homeowner insurance premiums, and a heat and utility allowance of \$575 if there is an obligation to pay for heat and/or utilities. BEM 546, pp. 4-6.

In this case, the CSIA budget shows that the Department considered shelter expenses in the amount of \$644.77. Petitioner confirmed that figure was correct at the time the budget was calculated. The Department also properly considered the heat and utility allowance of \$575. The Department deducted a shelter standard of \$601. However, effective July 1, 2017, the shelter standard for a month is \$609. BEM 546, p. 5. As the Health Care Coverage Determination Notice was issued on July 18, 2017, for a PPA effective date of August 1, 2017, ongoing, the Department should have used the \$609 figure. Therefore, the Department did not properly calculate the excess shelter allowance and the \$618.77 excess shelter allowance figure reflected on the budget is incorrect.

The total allowance is the sum of the excess shelter allowance and the basic allowance, which is \$2,003. BEM 546, p. 5. The Department calculated the total allowance to be \$2,621.77. However, the maximum allowance for a month is \$2,030. BEM 546, p. 5. In the budget provided, the Department indicated the maximum allowance was \$2,981,

which is an outdated figure and, as a result, determined the total allowance was \$2,621.77. The correct total allowance should have been the maximum of \$2,030.

As the Department failed to use the correct total allowance, it failed to establish that it properly calculated the CSIA. Therefore, the Department failed to establish that it followed policy when determining Petitioner's MA PPA. Although an administrative law judge may increase the total allowance to divert more income for the community spouse if one of the exceptions in BAM 600 (April 2017) is satisfied, because the Department failed to properly calculate the total allowance, a discussion of whether the total allowance may be increased or whether one of the exceptions in BAM 600 is satisfied in this case will not be addressed with this Hearing Decision. BEM 546, p. 5; BAM 600, pp. 39-40.

DECISION AND ORDER

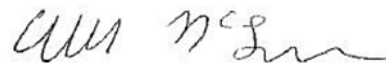
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's MA PPA amount.

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. Redetermine Petitioner's PPA as of August 1, 2017, ongoing;
2. If Petitioner is eligible for a reduced PPA, issue supplements to the LTC facility for the additional MA benefits Petitioner was eligible to receive for August 1, 2017, ongoing or refund Petitioner any payments he made to the LTC facility in excess of the recalculated PPA, as applicable.
3. Notify Petitioner of its decision in writing.

EM/



Ellen McLemore

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

MDHHS-Ingham-Hearings

Authorized Hearing Rep.

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Petitioner

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