



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: December 1, 2017
MAHS Docket No.: 17-012699
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, a telephone hearing was held on November 2, 2017, from [REDACTED] Michigan. Petitioner was represented by Attorney [REDACTED] who appeared and testified. The Department of Health and Human Services (Department) was represented by Assistant Attorney General [REDACTED], [REDACTED], FIM, and [REDACTED] ES, appeared and 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 determine Petitioner's community spousal resource allowance and community spousal allowance?

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] [REDACTED] [REDACTED] Petitioner applied for Medicaid.
2. On August 1, 2017, the Department determined that Petitioner was eligible for Medicaid effective June 1, 2017, with a patient pay amount of \$ [REDACTED]

3. On [REDACTED] [REDACTED] Petitioner requested hearing to increase the patient contribution to the minimum spousal allowance of \$2030; and to increase the community spousal income allowance. (Ex. 1, p.2)
4. The Department determined that Petitioner's spouse was not entitled to a community spousal allowance beginning in July 2017 due to her income.

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.

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 MAHS. Be sure to include the register number of the last D&O. MAHS will then decide whether to reschedule that hearing. BAM 600 pp.41-42(October 2016)

COMMUNITY SPOUSE INCOME ALLOWANCE

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. However, L/H patients can choose to contribute less. Divert the **lower** of:

- The community spouse income allowance.
- The L/H patient's intended contribution; see Intent to Contribute in this item.

Compute the community spouse income allowance using steps one through five below. An L/H client can transfer income to the spouse remaining in the home even if that spouse no longer meets the definition of a community spouse because they are in a MA waiver program such as PACE, MIChoice, or others listed in the BEM manual.

That is because without the transfer of income the spouse would not be able to remain in the home and avoid also becoming an L/H client.

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 \$575.

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 \$609.

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 \$2003. The result, up to the appropriate maximum, is the **total allowance**. The maximum allowance for a month is \$2030.

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 item.

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 (October 2016)

Community Spouse Resource Allowance

SSI-Related MA Only

Federal law requires that the client and community spouse be told how much the community spouse resource allowance is and how it was calculated. Do this only when an applicant is MA eligible for the processing month or a recipient's eligibility continues.

Exception: Do **not** compute the allowance, notify the client or community spouse of the allowance or send the asset transfer notice when the SPECIAL EXCEPTION POLICY in this item applies.

The allowance is:

- The PROTECTED SPOUSAL AMOUNT. (**MINUS** the value of the community spouse's current countable assets).

Note: Do **not** count cash value assets owned jointly by the client and community spouse in this calculation.

- **EQUALS** the community spouse resource allowance.

However, the value of assets fluctuates constantly. Therefore, what the couple really needs to know is: when the rules in BEM 402 no longer apply, the client's countable assets must **not** exceed the appropriate asset limit (currently \$2000 for the AD-Care and Extended Care categories). All of the above information is in the Asset Transfer Notice. BEM 402 (October 2016)

In this case, Petitioner's Attorney argued at hearing that several factors created exceptional circumstances for Petitioner's spouse that should compel the undersigned Administrative Law Judge to either raise either the community spousal resource allowance or the community spouse income allowance pursuant to BAM 600. Petitioner's spouse retired earlier than she anticipated in August 2016 at the age of 63 so that she could provide care for her husband. Petitioner's attorney asserted that Petitioner's spouse gave up potential further contribution to her 403(b) retirement account and also was forced to use retirement income prior to her anticipated retirement date. Petitioner's spouse also elected to draw her social security retirement benefit at age 63 and received a lesser amount than she would have received had she been able to work until full retirement age. Petitioner's spouse is also 8 years younger than the Petitioner and Petitioner's attorney argued that this age difference was not typical. Petitioner's attorney argued that these factors created exceptional circumstances and financial duress.

Petitioner's attorney asserted that expenses that have arisen at the marital home since Petitioner entered nursing home care which have been extraordinary and not "day to day". Specifically, the hot water heater had to be replaced, the front door and window had to be replaced, and the furnace had to be converted from a wood burning furnace to propane which also caused an increase in monthly heating expense.

The Department's attorney points out that the intent of impoverishment prevention portion of the statute 42 USC 1396(r)(5) was to allow for a minimal monthly maintenance allowance to prevent the community spouse from falling below the federal poverty level and that Department policy mirrors that statute. The Department argued that there was nothing exceptional or extraordinary about Petitioner's or Petitioner's spouse's circumstances.

None of the circumstances that have befallen Petitioner's spouse are found to be exceptional or extraordinary. Petitioner's spouse being 8 years younger than her husband and her having to retire a few years before her full retirement age is not exceptional or extraordinary. In addition, there was insufficient proof that Petitioner's spouse will be in "significant financial duress" after Department policy is implemented, according to the Department definition of that phrase. BAM 600 There was insufficient evidence presented that Petitioner's spouse currently could not meet her expenses using their assets. The evidence presented that Petitioner's spouse has incurred one time expenses related to replacing a hot water heater, a window and a door are the types of sporadic costly expenses that every home owner occasionally incurs and are not exceptional circumstances. The conversion to propane heat and an increase in

winter heating expense is also not found to be an exceptional circumstance. The illustrative example given in Department policy BAM 600, "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." is more dire and compelling than the circumstances of Petitioner's spouse. Therefore, there is an insufficient basis to increase either the community spousal resource allowance or the community spouse income allowance. BAM 600 BEM 546 BEM 402

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 Petitioner's community spousal resource allowance and community spouse income allowance.

DECISION AND ORDER

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

AM/md



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

DHHS

[REDACTED]

Counsel for Respondent

[REDACTED]

Counsel for Petitioner

[REDACTED]

Petitioner

[REDACTED]