



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: December 11, 2017
MAHS Docket No.: 17-013753
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 three-way telephone hearing was held on November 27, 2017, from Lansing, Michigan. The Petitioner was represented by the Authorized Hearing Representative (AHR), Elizabeth Wilfong, from sb2, Inc. The Department of Health and Human Services (Department) was represented by Assistant Attorney General (AAG) Tonya Celeste Jeter from the Michigan Department of Attorney General. Tamara Zander, Assistant Payment Worker; and Rene Colvin, Assistant Payment Supervisor, testified as a witness for the Department.

ISSUE

Did the Department properly calculate Petitioner's Medical Assistance (MA) 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. On or about August 14, 2017, Petitioner was admitted into a Nursing Facility. [Exhibit A, p. 42.]
2. On August 15, 2017, Petitioner's mother submitted a DHS-4574, Medicaid Application for Nursing Facility Patient, Long Term Care, on behalf of Petitioner. [Exhibit A, pp. 3-6.]

3. Petitioner receives a monthly gross income of \$1,085 in Retirement, Survivors, and Disability Insurance (RSDI) benefits. [Exhibit A, pp. 7-9.]
4. Petitioner owes child support in the amount of \$414.50 each month. [Exhibit A, pp. 10-11, 58-59, and 61-64.]
5. The Social Security Administration withholds the \$414.50 child support obligation each month from Petitioner's RSDI income. [Exhibit A, pp. 10-11, 58-59, and 61-64.]
6. The Department included the amount of his child support obligation withheld from his RSDI income in the calculation of his gross income when determining his patient-pay amount. [Exhibit A, p. 12-15.]
7. On September 11, 2017, the Department sent Petitioner a Health Care Coverage Determination Notice (determination notice) notifying him that he is eligible for MA benefits from August 1, 2017 to August 31, 2017, with a patient-pay amount of \$585, and that he is eligible for MA benefits effective September 1, 2017, ongoing, with a patient-pay amount of \$900. [Exhibit A, pp. 16-18.]
8. From October 1, 2017 to October 31, 2017, Petitioner's patient-pay amount was recalculated to \$1,025. [Exhibit A, p. 14.]
9. On October 5, 2017, the Department sent Petitioner a determination notice notifying him that he is eligible for MA benefits effective November 1, 2017, ongoing, with a patient-pay amount of \$1,025. [Exhibit A, pp. 19-21.]
10. On October 24, 2017, Petitioner's AHR filed a hearing request, protesting the calculation of the patient-pay amount. [Exhibit A, pp. 42-49.]
11. On November 15, 2017, the Michigan Administrative Hearing System (MAHS) sent both parties a Notice of Hearing scheduling a hearing for November 27, 2017.
12. On November 20, 2017, Petitioner's AHR filed a Request to Attend Hearing by Telephone, which the undersigned Administrative Law Judge (ALJ) granted.
13. On November 21, 2017, AAG Jeter filed her Appearance of Counsel.
14. On November 27, 2017, both parties were present for the hearing and the hearing proceeding accordingly.

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.

Preliminary Matter

As a preliminary matter, the Department's representative, AAG Jeter, moved for dismissal of this matter based on a lack of jurisdiction because there was no authorization by Petitioner authorizing Ms. Wilfong, from sb2, to represent Petitioner as the Authorized Hearing Representative (AHR). However, the undersigned disagrees. Shortly after commencement of the hearing, the AHR provided an updated authorization by Petitioner, which gave Ms. Wilfong, from sb2, authorization to represent Petitioner as the AHR. [Exhibit 1, p. 1 and Exhibit A, p. 49.] And furthermore, it was discovered that the Department received this updated authorization prior to the commencement of the hearing. Also, the undersigned reviewed the authorization and found it sufficient to show that Ms. Wilfong is authorized to represent the Petitioner. Therefore, the undersigned DENIED the Department's request for dismissal of this matter because the AHR has proper authorization to represent Petitioner in the hearing process. See BAM 600 (October 2017), pp. 1-6.

Patient-Pay Amount

In this case, the Department determined Petitioner's patient-pay amount to be \$585 for August 2017; \$900 for September 2017; and \$1,025 for October and November 2017. [Exhibit A, pp. 12-15.]

BEM 546 refers to post-eligibility patient-pay amounts. A post-eligibility patient-pay amount is the long-term care/hospital (L/H) patient's share of the cost of the care of LTC or hospital services. BEM 546 (July 2017 and October 2017), p. 1. MA income eligibility and post-eligibility patient-pay amount determinations are not the same. BEM 546, p. 1. Countable income and deductions from income often differ. BEM 546, p. 1. Medical expenses, such as the cost of LTC, are never used to determine a post-eligibility patient-pay amount. BEM 546, p. 1. Do not recalculate a patient-pay amount for the month of death. BEM 546, p. 1.

The post-eligibility patient-pay amount is total income minus total need. BEM 546, p. 1. **Total income** is the client's countable unearned income plus his remaining earned income. BEM 546, p. 1.

Total need is the sum of the following when allowed by later sections of this item (BEM 546):

- Patient allowance.
- Home maintenance disregard.
- Community spouse income allowance.
- Family allowance.
- Children's allowance.
- Health insurance premiums.
- Guardianship/conservator expenses.

BEM 546, p. 1.

In regards to countable income, the Department will determine countable income from RSDI. BEM 546, p. 2. The Department uses countable income per BEM 500, 501, 502, 503, 504 and 530. BEM 546, p. 2. The Department deducts Medicare premiums actually withheld by:

- Including the L/H patient's premium along with other health insurance premiums, and
- Subtracting the premium for others (example, the community spouse) from the unearned income.

BEM 546, p. 2.

The patient allowance is \$60 for clients who are in, or are expected to be in, LTC and/or a hospital the entire L/H month. BEM 546, p. 3. The home maintenance disregard is for Medicaid beneficiaries who will be residents of a long-term care facility for less than six L/H months who may request a disregard to divert income for maintenance of their home for a maximum of six months. BEM 546, pp. 3-4. The community spouse income allowance is for L/H patients who can divert income to meet the needs of the community spouse. BEM 546, p. 4. The family allowance need is for L/H patient's income that is diverted to meet the needs of certain family members. BEM 546, p. 7. The children's allowance is for L/H patients without a community spouse who can divert income to their unmarried children at home. BEM 546, p. 8. The health insurance premium is a need item that includes the cost of Medicare premiums that a client pays. BEM 546, p. 8. Finally, guardianship/conservator expenses are also a "need" item. BEM 546, p. 9.

In this case, the Department presented the August 2017 to November 2017 Patient-Pay Budgets for review. [Exhibit A, pp. 12-15.] However, the AHR did not dispute any of the calculations in the budgets, other than that the child support obligation should not be included in the calculation of his patient liability. The AHR argued that the calculation of Petitioner's gross unearned income of \$1,085, which consisted of his RSDI income, should not include the \$414.50 that is withheld from his payments for his child support obligations. As such, the only issue faced with the undersigned is whether the amount of Petitioner's child support obligations that are withheld from his RSDI income are included in the calculation of his patient-pay amount.

The Department argued that policy states that the child support income withheld from Petitioner's RSDI payment is included in the calculation of the gross income, citing BEM 500.

Gross income is the amount of income before any deductions such as taxes or garnishments. BEM 500 (July 2017), p. 4. This may be more than the actual amount an individual receives. BEM 500, p. 4. Gross income includes amounts withheld from income which are any of the following:

- Voluntary.
- To repay a debt.
- To meet a legal obligation.

BEM 500, p. 4. Some examples of amounts which may be withheld, but are still considered part of gross income are:

- Income taxes.
- Health or life insurance premiums.
- Medicare premiums.
- Union dues.
- Loan payments.
- Garnishments.
- Court-ordered or voluntary child support payments.

BEM 500, p. 5.

Additionally, the Department presented Social Security Administration (SSA) policy from the Program Operations Manual System (POMS), SI 00830.115, Garnishment or Other Withholding, effective November 21, 2013, which stated: "[u]nearned income includes amounts withheld from unearned income because of a garnishment or to make certain other payments (such as payment of Medicare premiums)." [Exhibit A, pp. 34-35; and see 20 CFR § 416.1123(b)(2).]

Pursuant to the above citations, the Department argued Petitioner's child support obligations that are withheld from his RSDI income are included in the calculation of his gross income.

In response, the AHR argued that Petitioner's child support should not be included in the calculation of his patient-pay amount because this amount is unavailable to him. Included with the hearing request, the AHR provided a brief of her arguments and citations as to why the child support should not be included. [Exhibit A, pp. 42-45.] The AHR cited 42 USC § 1396a(a)(17)(B), which stated that federal law mandates that a:

state plan for medical assistance must...include reasonable standards...for determining eligibility for and the extent of medical assistance under the plan which...provide for taking into account only

such income and resources as are, as described in accordance with standards prescribed by the Secretary, *available* to the applicant or recipient.

[Exhibit A, pp. 42-45 and 42 USC § 1396a(a)(17)(B) (emphasis added).]

The AHR further stated that amounts garnished as child support as part of Petitioner's patient liability is pre-empted by Federal Medicaid regulations and only income that is "available" to an applicant may be included in the calculation. [Exhibit A, p. 43.] The AHR cited 20 CFR § 416.1201(a)(1) and a California 9th Circuit ruling to support this argument. See *Dept. of Health and Human Svcs. v. Secretary of HHS*, 823 F.2d 323, 327 (9th Cir. 1987). [Exhibit A, pp. 43-44.] In that case, the 9th Circuit held that "the state of California should treat mandatory spousal and child support payments as unavailable to Medicaid recipients for purposes of Medicaid benefit eligibility determinations." [Exhibit A, p. 43 and *Dept. of Health and Human Svcs.*, at 327.]

Additionally, the AHR argued that federal law defines the availability of a resource by its liquidity and that an applicant's resources are not available when he does not have the power to liquidate the asset. [Exhibit A, p. 44 and 20 CFR § 416.1201(a)(1).] Here, the AHR claimed that Petitioner is unable to change or terminate the mandatory child support deductions, thus, resulting in his resources being unavailable. [Exhibit A, p. 44.]

In sum, the AHR argued that the \$414.50 amount that is garnished from his RSDI payments is never actually received by Petitioner and could never be used for his own support and maintenance and, therefore, should not be counted towards his patient liability. [Exhibit A, p. 44.]

Based on the foregoing information and evidence, the Department properly determined that the amount of Petitioner's child support obligations that are withheld from his RSDI income are included in the calculation of his gross income when determining his patient-pay amount. As stated above, the AHR argued that Petitioner's child support should not be included in the calculation of his patient-pay amount because this amount is unavailable to him. The AHR emphasized that patient liability is pre-empted by Federal Medicaid regulations and only income that is "available" to an applicant may be included in the calculation. [Exhibit A, pp. 42-44.] However, the undersigned disagrees. As stated in policy, MA income eligibility and post-eligibility patient-pay amount determinations are not the same, meaning, child support income might be included in certain MA income calculations, but in regard to patient-pay amounts, it is not included. BEM 546, p. 1.

Moreover, the AHR cited United States Code, Code of Federal Regulations, and 9th Circuit court cases, to support her claim that child support income is unavailable to Petitioner and therefore, should not be counted towards his patient liability. Again though, the undersigned disagrees. First off, the 9th Circuit court cases are not the controlling jurisdiction in this matter, but obviously, can be used as a persuasive argument. Also, the citations the AHR cited are not the controlling law in this matter and

instead, the undersigned determined the proper legal basis to use when determining patient-pay amounts are 42 CFR §§ 435.725, 726, and 832. A review of these citations found that the Department will look at the total income received by the individual when determining income and nowhere in these citations does it state to exclude or deduct child support income when determining income. See 42 CFR §§ 435.725(e)(1)-(3); 726, and 832(e)(1)-(3).

Finally, the undersigned reviews Department policy to determine if it acted in accordance with policy when calculating Petitioner's patient-pay amount. Pursuant to BEM 546 patient-pay amounts, when determining countable income for RSDI, policy directs the Department to also review BEM 500 and other policy sections when calculating the income. See BEM 546, p. 2. When the undersigned reviews BEM 500, it clearly states that gross income includes amounts withheld from income which include meeting a legal obligation, such as court-ordered or voluntary child support payments. BEM 500, pp. 4-5. Pursuant to the above policy, the Department properly acted in accordance with Department policy when it included Petitioner's child support obligations in the calculation of his gross income. Furthermore, neither Department policy nor the controlling legal authority in this matter will allow the Department to exclude or deduct Petitioner's child support income from the calculation of Petitioner's patient-pay amount.

Accordingly, the undersigned finds that the Department properly determined that the amount of Petitioner's child support obligations that are withheld from his RSDI income are included in the calculation of his gross income when determining his patient-pay amount. Therefore, the Department acted in accordance with Department policy when it properly calculated Petitioner's patient-pay amount effective August 1, 2017, ongoing.


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 (i) the Department acted in accordance with Department policy when it included Petitioner's child support obligations in the calculation of his gross income; and (ii) the Department acted in accordance with Department policy when it properly calculated Petitioner's patient-pay amount for August 1, 2017, ongoing.

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

IT IS FURTHER ORDERED that the Department's request for dismissal of this matter is **DENIED**.

EF/nr


Eric J. Feldman
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

Christine Steen
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