



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: April 11, 2019
MAHS Docket No.: 19-000785
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 March 14, 2019, from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Mark Logan, Family Independence Manager.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. A Medical Needs Form completed by Petitioner's doctor was received and marked into evidence as Exhibit E; a letter from [REDACTED], Executive Director of the assisted living facility where Petitioner resides, and was marked into evidence as Exhibit F. The record closed on March 29, 2019.

ISSUE

1. Did the Department properly calculate Petitioner's Community Spouse allowance?
2. Has the Petitioner demonstrated that she has exceptional circumstances resulting in severe financial distress such that her Community Spouse Total Allowances should be increased?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Petitioner, who is [REDACTED] years of age, is a resident of assisted living and pays monthly rent of \$[REDACTED] monthly which includes support services, including one meal per day, weekly housekeeping, all utilities except for cable and telephone (Exhibit F).
2. Petitioner's spouse, [REDACTED], is in a long term care facility.
3. On January 29, 2019, the Petitioner's spouse, [REDACTED], completed an Intent to Contribute Income advising the Department that he intended to make the entire amount of the Community Spouse Income Allowance available to his spouse ([REDACTED]).
4. The Petitioner's doctor, [REDACTED], completed a Medical Needs Form on March 21, 2019. The doctor indicated that Petitioner had a medical need for assistance with meal preparation, shopping, laundry and housework (Exhibit E).
5. The Petitioner did not dispute the calculation of her spouse's patient pay amount of \$[REDACTED] a month.
6. Petitioner has monthly income from the Social Security Administration (SSA) of \$[REDACTED]. Petitioner pays a Medicare Part B premium of \$[REDACTED] (Exhibit A). Petitioner also has a pension which provides monthly gross income of \$[REDACTED] and net income of \$[REDACTED] after deduction of health insurance of \$[REDACTED] and Dental/Vision Insurance of \$[REDACTED].
7. Petitioner's spouse has monthly Retirement, Survivors and Disability Insurance (RSDI) income from SSA of \$[REDACTED]. In 2018, Petitioner's spouse received \$[REDACTED] in RSDI. The Petitioner's spouse pays a Medicare Part B premium of \$[REDACTED] (Exhibit B).
8. The Petitioner is eligible for Medicaid, and no ineligibility due to excess assets was presented.
9. The Petitioner's spouse's Patient Pay Amount (PPA) increased in 2019 to \$[REDACTED] monthly. The prior PPA was \$[REDACTED] for 2018. The increase in the PPA was due to an increase in the spouse's unearned income (Exhibit D).
10. The Petitioner's total countable unearned income in 2018 was \$[REDACTED] and the 2019 total unearned income increased to \$[REDACTED].
11. The Petitioner's Community Spouse Allowance for 2019 is \$[REDACTED] (Exhibit D).
12. Petitioner requested a timely hearing on January 25, 2019, protesting the Department's actions.

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.

In this case, the Petitioner's spouse is in long term care (L/H) and receives Medicaid assistance. The Petitioner's spouse has a PPA of \$■■■■ monthly which is his L/H share of the cost of long term care (LTC). Medical expenses are not used to determine a post-eligibility PPA. The post-eligibility PPA is total income minus total need. Total income is the client's countable unearned income plus his remaining earned income. Total need is the sum of the following when allowed by later section in BEM 546: Patient allowance \$■■■ home maintenance disregard, community spouse income allowance, family allowance, Children's allowance, Health insurance premiums Medicare Part B Premium \$■■■■ and guardianship and conservator expenses as applicable. BEM 546 (January 2019), p. 1. In this case, the Petitioner's spouse only has unearned income for RSDI, based upon disability which is income he receives from the SSA. Petitioner is also disabled and receives RSDI and a pension. The Petitioner is referred to in this case as the community spouse, which is a client's spouse when the spouse such as (Petitioner) is not currently in, and is **not** expected to be, in a hospital and/or LTC facility for 30 or more consecutive days or approved for a waiver or Freedom to Work; BEM 402, January 2019), p. 2.

In this case the Department demonstrated that based upon the policy requirements for calculating the PPA as found in BEM 546 that the Petitioner's spouse's PPA for 2019 increased \$■■■■ a \$■■■■ increase in the PPA from the prior year. This increase was due in part due to RSDI increases for both Petitioner and her spouse. See findings of fact paragraphs 6, 7 and 10. The Petitioner does not challenge the Department's determination of her spouse's PPA. The PPA was reviewed at the hearing and is also determined to be correct.

At the hearing, the Petitioner requested that the undersigned review her community spouse income allowance because it was decreased; and she needed additional funds for expenses.

An L/H patient such as Petitioner's spouse can divert income to meet the needs of the community spouse. The community spouse income allowance is the **maximum** amount a spouse can divert. In this case, the Petitioner's community spouse income allowance is \$1,120.45. The reason the transfer is allowed is so that a spouse (Petitioner) can remain in the home, or in this case assisted living and avoid also becoming an L/H client. BEM 546, p. 4. There are five steps to be considered when determining the community spouse income allowance. In this case, the Petitioner's rent minus a shelter standard resulted in an excess shelter allowance of \$882.75. The Department also added to the excess shelter a standard basis allowance of \$2,057.50 which is a standard amount given to all community spouses. These two amounts added together are the **total allowance**. BEM 546, p. 5.

In calculating the total allowance for the Petitioner, the Department determined the Petitioner's Potential Total Allowance to be \$2,940.25, which is the sum of the Petitioner's excess shelter allowance of \$882.75 and a basic allowance of \$2,057. This **total allowance** may be increased to divert more income to an L/H patient's community spouse, such as Petitioner in accordance with policy found in BAM 600. The maximum total allowance limit is \$3,160.

In determining the community spouse income allowance, the Petitioner's income is subtracted from the total allowance ($\$ \blacksquare - \$ \blacksquare = \$ \blacksquare$). Because the Petitioner's spouse opted to make the entire amount of the Community Spouse Income Allowance available to the Petitioner, she is receiving $\$ \blacksquare$ from her spouse's unearned income in addition to her own income from RSDI and pension. This Community Spouse Income Allowance is deducted from Petitioner's spouse's income when determining what he must pay towards the cost of his L/H LTC facility.

BEM 546 provides for an exception to a total allowance determination and provides that the total allowance as determined by the Department can be increased by the undersigned Administrative Law Judge to divert more income to an L/H patient's community spouse. The analysis and guidelines to be followed by the Administrative Law Judge are set forth in BAM 600

BAM 600 provides:

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 the 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 allowances.
- 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, sent 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 (October 2018), pp. 40-42.

In this case, Petitioner's treating doctor, who is familiar with her needs and medical conditions, completed a DHS-54A Medical Needs Form which certified that Petitioner has a medical need for assistance with meal preparation, shopping, laundry and housework. In addition, the doctor indicated that Petitioner has special transportation needs, stating "Not confident with driving, uses walker".

The Petitioner's current assisted living apartment includes as part of her services included in her rent, one meal daily and housekeeping. Exhibit F. The remaining items contained in the Medical Needs Form noted Petitioner also needs assistance with shopping, laundry and transportation. It is not clear if laundry service is included as a housekeeping service which is a service received as part of the monthly rent. It is also unclear what the cost of assistance with shopping for groceries would be or if that service is otherwise provided for in Petitioner's rent. Finally, it is unclear what the cost of transportation services would be. The Doctor completing the Medical Needs Form did not list any other special services which he would consider necessary to remain in the current living situation which would help her avoid further nursing home care (Exhibit E).

In addition, the Petitioner's monthly income from her own RSDI and pension totals \$[REDACTED] and she also receives additional income of \$[REDACTED] as her community spouse income allowance, and thus, has total monthly income of \$[REDACTED]. Given the remaining income over and above rent of \$[REDACTED] Petitioner has not demonstrated exceptional circumstances resulting in significant financial distress to demonstrate that she cannot meet expenses to receive services for assistance with laundry or shopping if not included in the services she receives included in her rent, and the costs of transportation. The Petitioner may request another hearing at any time if she can demonstrate exception financial circumstances that are causing severe financial distress due to the costs of her medical needs for assistance.

The Department did not present any information as to whether the Petitioner has any protected spousal amount she received as part of the assets her she and her husband had; thus, this determination does not consider if there are protected assets which could be used by Petitioner to cover any additional expenses. If such protected assets exist, the Petitioner must use those assets to assist her. BEM 402.

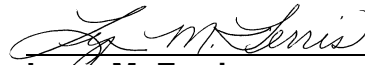
Therefore, it is concluded that the Petitioner has not shown exceptional circumstances exist which result in significant financial duress which would support an increase in the Petitioner's total community spouse income allowance.

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 calculated the Petitioner's Community Spouse income allowance. In addition, no relief can be granted by the undersigned Administrative Law Judge to Petitioner to increase the Petitioner's Total Allowance to divert more income from her spouse's income to Petitioner as no exceptional circumstances resulting in severe financial duress were demonstrated.

DECISION AND ORDER

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

LMF/jaf



Lynn M. Ferris
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 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) 763-0155; 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

Kimberly Kornoelje
MDHHS-Kent-Hearings

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

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