



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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██████████, MI ██████████

Date Mailed: August 2, 2021  
MOAHR Docket No.: 21-002562  
Agency No.: ██████████  
Petitioner: ██████ ██████

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

### **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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, telephone hearing was held on June 23, 2021. Petitioner was represented by Gerard Lenhart. ██████████ ██████████ and ██████████ ██████████ testified on behalf of Petitioner. The Department was represented by Mark Logan and Kerrie Scott.

### **ISSUE**

Did the Department of Health and Human Services (Department) properly determine the community spouse resource allowance that was applied to his spouse's patient pay amount (PPA) for her long-term care?

### **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 admitted into long term care on April 28, 2021. Exhibit A, p 11-13.
2. Petitioner and her spouse are responsible for a mortgage payment on their home in the monthly amount of \$1,529.09. Exhibit A, p 17.
3. On May 3, 2021, the Department notified Petitioner that she was eligible for Medical Assistance (MA) with a \$1,323 monthly Patient Pay Amount (PPA). Exhibit A, pp 19-22.
4. Petitioner receives monthly unearned income in the gross monthly amount of \$██████████ Exhibit A, p 14.
5. Petitioner's spouse received monthly earned income in the gross monthly amount of \$██████████ Exhibit A, p 15.

6. On May 3, 2021, the Department notified Petitioner that community spouse income allowance was \$[REDACTED] Exhibit A, p 24.
7. On May 20, 2021, the Department received Petitioner's request for a hearing protesting the Department's determination of the amount of her Patient Pay Amount (PPA). Exhibit A, pp 4-10.

### **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 through 42 USC 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 through 42 CFR 420.25. The Department administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.103 through MCL 400.112k of the Social Welfare Act, MCL 400.1 *et seq.*

A Medicaid client who is hospitalized and/or a long-term care facility (LTC) is a L/H patient. A post-eligibility patient-pay amount is the L/H patient's share of the cost of LTC or hospital services. The post-eligibility patient-pay amount is total income minus total need. Department of Health and Human Services Bridges Eligibility Manual (BEM) 546 (July 1, 2021), p 1.

The L/H patient can divert income to meet the needs of the community spouse. The community spouse income allowance is the maximum amount they can divert, but they can choose to contribute less. BEM 546, p 4.

Petitioner and her spouse are responsible for a \$1,529.09 monthly mortgage payment and are responsible for heat and utility expenses making them eligible for a standard \$537 heat and utility expense. The Department determined that Petitioner is entitled to a \$1,419.59 excess shelter allowance by reducing their expenses by the \$646.50 shelter standard as directed by BAM 546.

The Department determined Petitioner's spouse is entitled to a \$[REDACTED] monthly community spouse allowance by reducing the maximum monthly maintenance needs allowance by the spouses gross monthly earned income from employment. This allowance is then applied towards Petitioner's gross monthly income and insurance premiums leaving her with a \$1,323 patient pay amount.

These calculations were not in dispute during the hearing, although they were determined based on income that was not the most recent, and it may change in the future as the earned income of Petitioner's spouse has changed.

Petitioner's spouse testified that the community spouse allowance is insufficient to meet his living expenses and that he will be unable to maintain their home without significant financial duress. Petitioner's spouse credibly testified that the home has been specifically constructed to meet the needs of Petitioner, and that the cost of maintaining this home is an exceptional circumstance. Petitioner's spouse credibly testified that it is Petitioner's intention to return to the home when adequate home care that meets her needs can be obtained, and that if he is unable to maintain the home while Petitioner is receiving long term care, that she will never be able to return home.

An administrative law judge 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. Department of Health and Human Services Bridges Administrative Manual (BAM) 600 (March 1, 2021), p 40.

For an individual with only a spouse at home, an additional amount for the maintenance needs of the spouse. This amount must be based on a reasonable assessment of need but must not exceed the highest of

(i) The amount of the income standard used to determine eligibility for SSI for an individual living in his own home, if the agency provides Medicaid only to individuals receiving SSI.

(ii) The amount of the highest income standard, in the appropriate category of age, blindness, or disability, used to determine eligibility for an optional State supplement for an individual in his own home, if the agency provides Medicaid to optional State supplement beneficiaries under § 435.230; or

(iii) The amount of the medically needy income standard for one person established under § 435.811. If the agency provides Medicaid under the medically needy coverage option.

42 CFR 435.725(c)(2)

Exceptional expenses, justifying an increase in the spousal support allowance do not include usual household monthly expenses such as mortgage payments, utilities, food, and credit card bill, even when these expenses are unusually high by reasonable standards. The fact that Petitioner's spouse must pay a high mortgage payment to maintain their home to allow Petitioner to one day return to the home does not rise to

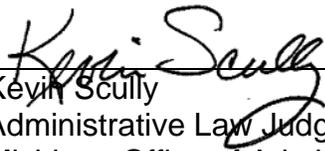
the level of an exceptional circumstance. The spousal allowance is intended to prevent the impoverishment of a community spouse while the other spouse requires long term care. The spousal allowance is not intended to allow the community spouse to maintain the standard of living that would be preferred.

The Department credibly demonstrated that it properly applied the maximum monthly maintenance and the countable earned income of Petitioner's spouse to determine the community spouse 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 determined the community spouses resource allowance, which was properly applied towards its determination of the patient pay amount.

**DECISION AND ORDER**

Accordingly, the Department's decision is AFFIRMED.

KS/nr

  
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Kevin Scully  
Administrative Law Judge  
Michigan Office of Administrative Hearings and  
Rules (MOAHR)

**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**

Kimberly Kornoelje  
121 Franklin SE  
Grand Rapids, MI 49507

Kent County DHHS- via electronic mail

BSC3- via electronic mail

C. George- via electronic mail

EQAD- via electronic mail

**Petitioner**

██████████ - via first class mail

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