

5. On [REDACTED] 2021, the Department received Petitioner's application and retroactive application for MA benefits. (Exhibit A, pp. 8-15)
6. On August 30, 2021, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner and her Authorized Hearings Representative (AHR)/Power of Attorney (POA) informing her that effective [REDACTED] 2021, she was eligible for MA benefits with a PPA of \$ [REDACTED] per month. (Exhibit 1, pp. 8-11)
7. On January 18, 2022, the Department issued a Benefit Notice to Petitioner, her attorney, and her POA informing her that she was not eligible for MA benefits in the months of [REDACTED], [REDACTED], and [REDACTED] of 2021 due to excess assets, and that a divestment penalty of 5 months and 29 days had been applied effective [REDACTED] 2021 based on a divestment total of \$ [REDACTED]. (Exhibit A, pp. 54-55)
8. On March 1, 2022, the Department received Petitioner's request for hearing signed by her POA and attorney disputing the Department's failure to correct her PPA.
9. Prior to the hearing, the parties agreed that the PPA should be \$ [REDACTED] and requested an order directing the Department to adjust the PPA to \$ [REDACTED].

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.

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. BPG (January 2021), p. 50; see also BEM 546 (July 2021), p. 1. The Department first determines MA eligibility, then determines the PPA. BEM 546, p. 1. The Department's initial determination of eligibility indicated that Petitioner had a PPA of \$ [REDACTED]. After much discussion, the parties have agreed that the PPA should be corrected to \$ [REDACTED]. The calculation of the PPA follows and is discussed below. The PPA is equal to Petitioner's total income minus her total need. BEM 546, p. 1.

Income

Total income is the countable unearned income plus remaining earned income of the institutionalized client. BEM 546, pp. 1-2. Petitioner has three sources of income, RSDI of \$██████, State of Michigan pension of \$██████, and Ford Motor Company pension of \$██████. Petitioner's total income is \$██████. BEM 546, p. 2.

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.

Home Maintenance Disregard

A budget (Budget) calculating Petitioner's PPA, presented by Petitioner, showed no home maintenance disregard and neither party presented any evidence of a home maintenance. Medicaid beneficiaries who will be residents of an LTC 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. Medicaid 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. *Id.* All evidence presented at the hearing suggests that Petitioner has been in LTC for more than six months. Therefore, Petitioner is not eligible for the home maintenance disregard.

Family Allowance, Children's Allowance, and Community Spouse Income Allowance (CSIA)

The Budget again showed no family allowance, children's allowance, or community spouse income allowance towards the calculation of Petitioner's total 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. The Children's Allowance is available when there are unmarried children at home who are under age 18 and do not receive Family Independence Program (FIP) or Supplemental Security Income (SSI). BEM 546, p. 8. 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. Neither party presented any evidence that Petitioner was married or had any minor children. Therefore, the family allowance, children's allowance, and community spouse income allowance were properly budgeted as \$0.

Guardianship/Conservator Expenses

The Budget did not show a deduction for guardianship/conservator expenses and neither party presented any evidence that a guardianship or conservatorship expense existed. When a patient in LTC has a court-appointed guardian and/or conservator, \$83 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.

Considered Need

The Budget shows the following in calculating Petitioner's total need: a \$[REDACTED] health insurance premium and a patient allowance of \$[REDACTED]

Health Insurance Premiums

The Budget showed a Medicare premium of \$[REDACTED] and supplemental premiums of \$[REDACTED]. 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 their own premium, it is included and taken into consideration in calculating the community spouse income allowance. BEM 546, p. 8. The State Online Query (SOLQ) shows that Petitioner has a Medicare premium of \$[REDACTED]. The older Social Security Administration (SSA) documentation from 2020 shows a Medicare premium of \$[REDACTED]. Since the SOLQ shows the more recent premium, this is the amount that should be considered in determining the PPA. No evidence was presented of any other insurance premiums.

Patient Allowance

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. Since there was no evidence that Petitioner was a veteran, the Budget properly used \$[REDACTED] as the patient allowance.

After a review of all of the evidence, the Department has not established that it properly calculated Petitioner's PPA as \$[REDACTED].

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 did not act in accordance with Department policy when it calculated Petitioner's PPA.

DECISION AND ORDER

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. Recalculate Petitioner's PPA effective [REDACTED] 2021;
2. Provide Petitioner with any MA coverage that she was eligible to receive but did not from [REDACTED] 2021 ongoing;

3. If Petitioner is eligible for a decreased PPA, pay the LTC facility for additional LTC benefits Petitioner was eligible to receive as a result of the recalculated PPA or reimburse Petitioner for any payments she made to the LTC facility in excess of the recalculated PPA, as applicable; and
4. Process any allowable medical expenses submitted and apply them in accordance with Department policy; and
5. Notify Petitioner and her AHR in writing of its decision.



Amanda M. T. Marler
Administrative Law Judge

AM/mp

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

Email Recipients:

MDHHS-Wayne-82-Hearings
AG-HEFS-MAHS
EQAD Hearings
C. George
MOAHR
BSC4

First-Class Mail Recipients:

Erin E. Mortenson
33632 Five Mile Rd
Livonia, MI 48154

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

[REDACTED]
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