



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

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Date Mailed: June 28, 2024
MOAHR Docket No.: 24-004780
Agency No.: ██████████
Petitioner: ██████ ██████

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 May 30, 2024, from Lansing, Michigan. The Petitioner was represented by ██████ ██████ spouse. ██████ ██████ friend, appeared as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by Amber Gibson, Hearing Facilitator (HF).

During the hearing proceeding, the Department’s Hearing Summary packet was admitted as Exhibit A, pp. 1-35 and Petitioner’s additional documentation was admitted as Exhibit 1, pp. 1-38.

ISSUE

Did the Department properly determine the patient pay amount for Petitioner’s Medical Assistance (MA) benefits?

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 March ██████ 2024, a Redetermination was submitted for Petitioner’s MA case. (Exhibit A, pp. 8-15)
2. The Department reviewed verification of Petitioner’s income. (Exhibit A, pp. 16-23)

3. The Department determined that Petitioner's patient pay amount would be \$[REDACTED] and the community spouse income allowance would be \$[REDACTED] (Exhibit A, pp. 24-26)
4. On April [REDACTED] 2024, a Health Care Coverage Determination Notice was issued to Petitioner noting that the income had not been updated in four years. The Notice indicated the patient pay amount of \$[REDACTED] would be effective May 1, 2024. A Community Spouse's Monthly Budget was included indicating the community spouse income allowance would be \$[REDACTED]. A Community Spouse and Family Income Allowance Notice was included indicating the community spouse income allowance would be \$[REDACTED] (Exhibit A, pp. 27-35)
5. On April 15, 2024, a hearing request was filed on Petitioner's behalf contesting the Department's determination. (Exhibit A, pp. 3-7)

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 post-eligibility patient-pay amount is the long-term care/hospitalized (L/H) patient's share of the cost of long-term care (LTC) or hospital services. BEM 546, January 1, 2024, p. 1.

PATIENT-PAY AMOUNT

The post-eligibility patient-pay amount is total income minus total need.

Total income is the client's countable unearned income plus his remaining earned income; see Countable Income in this item.

Total need is the sum of the following when allowed by later sections of this item:

- Patient allowance.
- Home maintenance disregard.

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

BEM 546, January 1, 2024, p. 1.

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 \$680.00.

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 \$739.50.

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 \$2465.00. The result, up to the appropriate maximum, is the total allowance. The maximum allowance for a month is \$3853.50.

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 policy.

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, January 1, 2024, pp. 4-6.

**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.

BAM 600, February 1, 2024, pp. 40-41.

In the hearing request, Petitioner's spouse indicates that Petitioner's income should have been calculated monthly rather than averaging it from the 1099s. (Exhibit A, pp. 3- 7). However, the evidence indicates that the Department only received 1099s as verification of this income, which only shows the annual amount of income. (Exhibit A, pp. 18-23) Petitioner's spouse acknowledged that she had not been reporting when the income changes each month. (Spouse testimony). Accordingly, the only way that the income could be budgeted would be averaging the annual amount over 12 months.

Petitioner's spouse also requested that this administrative law judge increase the total allowance used to calculate the community spouse income allowance to an amount greater than provided for in BEM 546. Petitioner's spouse indicated there are so many debts, including medical bills, tax debts Petitioner was not paying, and personal debts of Petitioner's. Petitioner's spouse also described expenses including: multiple types of insurance, business expenses to keep the residual income going, personal care, groceries, and gas. (Exhibit A, pp. 3-7; Exhibit 1, pp. 1-38; Spouse Testimony). However, the BAM 600 policy indicates that these types of expenses do not constitute exceptional circumstances to support an increase in the total allowance used to calculate the community spouse income allowance.

However, upon review of all of the Department's exhibits, it appears that there are three different amounts for the community spouse income allowance determined by the Department on April 5, 2024. The Amount to Community Spouse budget for the benefit period starting May 1, 2024 shows the calculation for the community spouse income allowance of \$[REDACTED] (Exhibit A, p. 26). The Community Spouse's Monthly Budget shows the calculation for the community spouse income allowance of \$[REDACTED] (Exhibit A, p. 33). The Community Spouse and Family Income Allowance Notice states that the community spouse income allowance would be \$[REDACTED] (Exhibit A, p. 34). It is not clear why there are three different amounts for the community spouse income allowance. Accordingly, the Department's determination cannot be upheld.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined the patient pay amount for Petitioner's MA benefits because the evidence shows three different amounts for the community spouse income allowance.

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. Redetermine the patient pay amount for Petitioner's MA benefits effective May 1, 2024, which would include a community spouse income allowance, in accordance with Department policy.

CL/dm



Colleen Lack
Administrative Law Judge

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

Via-Electronic Mail :

DHHS
Amber Gibson
Ingham County DHHS
**MDHHS-Ingham-
Hearings@michigan.gov**

SchaeferM

EQADHearings

BSC2HearingDecisions

MOAHR

Via-First Class Mail :

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED]