



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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Date Mailed: October 14, 2022
MOAHR Docket No.: 22-004111
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 October 10, 2022, from Detroit, Michigan. Petitioner was represented by his wife/Authorized Hearing Representative, ██████████. The Department of Health and Human Services (Department) was represented by Erik Lewis, Assistance Payments Worker and Franklin Cabello, Eligibility Specialist.

ISSUE

Did the Department properly calculate Petitioner's Medical Assistance (MA) Patient Pay Amount (PPA)?

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 an ongoing MA recipient under the Extended Care (EC) program.
2. Petitioner was residing in a long-term care (LTC) facility.
3. Petitioner is married and his wife does not reside in a LTC facility.
4. Petitioner receives Retirement, Survivors and Disability Insurance (RSDI) income in the amount of \$██████████ per month (Exhibit A, pp. 31-33).
5. Petitioner receives a monthly pension in the gross amount of \$██████████ per month (Exhibit A, p. 30).

6. Petitioner pays a monthly Medicare part B premium in the gross amount of [REDACTED] per month. Petitioner also has supplemental insurance with a monthly cost of \$[REDACTED] (Exhibit A, p. 42).
7. Petitioner's wife also incurs a monthly guardianship fee (Exhibit A, p. 41).
8. Petitioner's wife receives RSDI income in the gross monthly amount of \$[REDACTED] a monthly pension in the gross amount of \$[REDACTED], and has income from employment.
9. On September 9, 2022, the Department sent Petitioner a Health Care Coverage Determination Notice (HCCDN) informing him that he was approved for MA benefits with a monthly PPA amount of [REDACTED] (Exhibit A, pp. 34-36).
10. On [REDACTED], 2022, Petitioner's AHR submitted a request for hearing disputing 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.

On September 9, 2022, the Department informed Petitioner that he was eligible for MA subject to a PPA of [REDACTED] effective October 1, 2022, ongoing. Petitioner's wife submitted a hearing request disputing the PPA. 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. BEM 546 (July 2022), p. 1. For a married individual who is in a LTC facility (the institutionalized spouse), the PPA is equal to the institutionalized spouse's total income minus her total need. BEM 546, p. 1.

Income

In support of the calculation of the PPA, the Department presented a PPA budget showing Petitioner's total income and total need (Exhibit A, p. 43). Total income is the countable unearned income plus remaining earned income of the institutionalized client.

BEM 546, pp. 1-2. The budget shows a total income amount for Petitioner of [REDACTED], which the Department testified consisted of \$[REDACTED] in gross RSDI benefits and Petitioner's gross monthly pension payment of \$[REDACTED]. The Department counts gross RSDI and pension benefits. BEM 503 (April 2022), p. 29 The Department provided the State On-Line Query (SOLQ) report to verify Petitioner's RSDI income (Exhibit A, pp. 31-33) and verification of Petitioner's pension payment (Exhibit A, p. 30). Petitioner's RSDI benefits and pension payment were his only source of income. Therefore, the Department properly calculated Petitioner's total income.

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.

The patient allowance for clients who are in, or are expected to be in, LTC for an entire month is [REDACTED] unless the patient is also a veteran in which case the patient allowance is [REDACTED] per month. BEM 546, p. 3. Because there was no evidence that Petitioner was a veteran, the Department properly used [REDACTED] as the patient allowance.

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 her own premium, it is taken into consideration in calculating the community spouse income allowance. BEM 546, p. 8. According to the SOLQ, Petitioner is responsible for a monthly \$[REDACTED] Medicare Part B premium. There was also evidence that Petitioner paid a supplemental insurance premium of \$[REDACTED]. Therefore, the Department properly concluded Petitioner was responsible for a \$[REDACTED] per month for health insurance premiums.

The budget showed that the Department did not consider a family allowance, children's allowance or a home maintenance disregard when determining Petitioner's 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. In this case, there was no evidence presented that Petitioner was eligible for a family allowance. Additionally, because Petitioner had a community spouse and there was no evidence that he had unmarried children in the home under age 18, he was not eligible for a children's allowance. BEM 546, p. 8. Medicaid beneficiaries who will be residents of a long-term care 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. 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. BEM 546, p. 3. There was no evidence that Petitioner was entitled to a home maintenance disregard. Therefore, the

Department properly followed policy when it did not include a home maintenance disregard. When a patient in LTC has a court-appointed guardian and/or conservator, [REDACTED] 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. There was evidence Petitioner had a guardian/conservator. Per the budget provided, Petitioner was given the [REDACTED] deduction for guardianship/conservator fees.

The final need the Department calculated was a \$[REDACTED] Community Spouse Income Allowance (CSIA). 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.

To calculate the total allowance, the Department must first calculate the excess shelter allowance. The excess shelter allowance is determined by subtracting the shelter standard of \$[REDACTED] from the sum of shelter expenses for the couple's principal residence, as long as the obligation to pay these expenses is either in the institutionalized spouse's or community spouse's name. BEM 546, pp. 4-6. Shelter expenses include monthly mortgage or rent, property taxes, homeowner insurance premiums, and a heat and utility allowance of \$[REDACTED] if there is an obligation to pay for heat and/or utilities. BEM 546, pp. 4-6.

In this case, the CSIA budget shows that the Department considered shelter expenses in the amount of \$[REDACTED] per month (Exhibit A, p. 38). The Department testified that Petitioner's wife verified that she has a monthly mortgage expense of \$[REDACTED] per month and that she had total yearly expenses for homeowner's insurance in the amount of \$[REDACTED] and property taxes in the amount of \$[REDACTED]. When dividing Petitioner's wife's yearly expenses by 12, and adding her monthly mortgage, it results in a standard monthly payment of \$[REDACTED]. Therefore, the Department properly determined the shelter expense. The Department also properly considered the heat and utility allowance of \$[REDACTED]. The Department also correctly deducted a shelter standard of \$[REDACTED], resulting in an excess shelter allowance of [REDACTED]. The Department adds the excess shelter allowance to the appropriate basic allowance. BEM 546, p. 5. The basic allowance for a month is \$[REDACTED]. BEM 546, p. 5. The current maximum allowance for a month is \$[REDACTED]. BEM 546, p. 5. Petitioner's basic allowance and excess shelter allowance together is \$[REDACTED].

The final step in calculating the CSIA is to subtract the total allowance from Petitioner's wife's monthly countable income. Per the budget provided, the Department determined Petitioner's wife had countable income in the amount of [REDACTED] (Exhibit A, p. 38). Petitioner's wife receives [REDACTED] in gross monthly RSDI benefits and [REDACTED] in monthly pension income. Because Petitioner's wife pays for her own [REDACTED] Part B Medicare premium from her RSDI income, this cost is excluded from countable income, bringing her countable RSDI income to [REDACTED]. BEM 546, p. 2. Additionally, Petitioner has income from employment. The Department testified that Petitioner submitted pay

stubs used to calculate her income from employment in the amount of [REDACTED] issued on November 5, 2021; \$[REDACTED] issued on November 19, 2021; and [REDACTED] issued on December 3, 2021. For MA benefits, the Department counts gross wages. BEM 501, p. 7. The Department testified that it utilized the November 5, 2021, and November 19, 2021 paychecks to determine Petitioner's wife earned income amount. However, when utilizing those figures, it results in a standard total monthly income of \$[REDACTED]. Although it is unclear how the Department obtained the [REDACTED] figure, the error was in Petitioner's favor, as the PPA is lower when utilizing the incorrect figure.

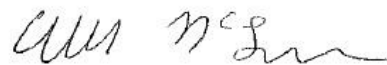
At the hearing, Petitioner argued that her income fluctuates, as she is employed by a school and does not work during the entirety of the year. Petitioner testified that her gross income in 2021 was a yearly total of [REDACTED], which averages to a monthly income of [REDACTED]. The Department included \$[REDACTED] in earned income in the calculation of Petitioner's wife's total countable income amount. When determining countable income in the calculation of a PPA, the Department is to use BEM 500, 501, 502, 503, 504 and 530. BEM 546, p. 2. None of the above-mentioned policies provide for the consideration of fluctuating and/or prospecting income. Therefore, the Department acted in accordance with policy when it did not consider that Petitioner's income fluctuates. Thus, the Department acted in accordance with policy when it determined Petitioner's wife's countable income.

Petitioner's husband's countable income of [REDACTED] reduced by the [REDACTED] guardianship expense, the [REDACTED] health insurance expense, the \$[REDACTED] patient allowance, and the [REDACTED] community spouse allowance, results in a PPA of \$[REDACTED]. Therefore, the Department acted in accordance with policy when it calculated Petitioner's PPA.

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 the Department acted in accordance with Department policy when it determined Petitioner's PPA. Accordingly, the Department's decision is **AFFIRMED**.

EM/tm



Ellen McLemore
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
Nathan Norman
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Interested Parties
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Petitioner

[REDACTED]
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