[redacted]

Date Mailed: March 7, 2025
MOAHR Docket No.: 24-014089
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 February 10, 2025, from Detroit, Michigan. The Petitioner was represented by her legal guardian/Authorized Hearing Representative (AHR) [redacted] The Department of Health and Human Services (Department) was represented by Rosemary Molsbee-Smith, Eligibility Specialist.

ISSUE

Did the Department properly determine Petitioner's eligibility for 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. Petitioner is an ongoing recipient of MA benefits under the full coverage Ad-Care category and Medicare Savings Program (MSP) benefits under the Qualified Medicare Beneficiaries (QMB) category.

2. On or around November [redacted] 2024, Petitioner was admitted to a long-term care (LTC) rehabilitation facility where she remained as of the hearing date.

3. On or around December [redacted] 2024, the Department sent Petitioner a Health Care Coverage Determination Notice advising her that effective January 1, 2025, ongoing, she was approved for MA with a monthly patient pay amount of $[redacted] (Exhibit A, pp. 8-10)

4. On or around December 19, 2024, a hearing was requested on Petitioner's behalf disputing the Department's actions with respect to the MA program. (Exhibit A, pp. 4-6)

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, a hearing was requested on Petitioner's behalf disputing the Department's actions with respect to the MA program. After some discussion, it was determined that at issue, was the Department's determination that Petitioner was approved for MA with a patient pay amount (PPA). Petitioner's AHR asserted that if Petitioner is responsible for a PPA, she will not be able to maintain her housing and living expenses. At the hearing, the Department representative testified that it received information indicating that Petitioner was admitted to an LTC facility and as a result, her MA eligibility was reviewed. The Department determined that effective January 1, 2025, Petitioner's monthly PPA would be $[redacted]

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. The PPA is the L/H patient's share of the cost of LTC or hospital services. BPG, p. 50; see also BEM 546 (January 2025), p. 1. An L/H patient is a Medicaid client who was in the hospital and/or in LTC facility for an L/H month. An L/H month is a calendar month containing at least one day that is part of a period in which a person was (or is expected to be) in an LTC facility and/or hospital for at least 30 consecutive days, and no day that the person was a waiver patient. BPG, p. 39.

The Department is to first determine MA eligibility, then determine the PPA, as MA income eligibility and PPA determinations are not the same. BEM 546, p. 1. In this case, the Department determined that Petitioner was eligible for full coverage MA under the Ad-Care category and full coverage MSP benefits under the QMB category. 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. In support of the calculation of the PPA, the Department presented a PPA budget showing Petitioner's total income and total need. (Exhibit B).

Income

Total income is the countable unearned income plus remaining earned income. BEM 546, pp. 1-2. The budget shows total income for Petitioner of $[redacted] which the Department testified consisted of gross monthly Retirement, Survivors, and Disability Insurance (RSDI) benefits. Petitioner's AHR did not dispute that the gross amount of Petitioner's RSDI as relied upon by the Department was correct. Thus, the Department properly calculated Petitioner's total income. 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.

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. Because there was no evidence that Petitioner is a veteran, the Department properly used $60 as the patient allowance.

Home Maintenance Disregard

Medicaid beneficiaries who have been or are expected to remain in LTC for longer than six months do not meet the criteria for the home maintenance disregard. BEM 546, pp. 3-4. However, Medicaid beneficiaries who will be residents of an LTC facility for less than six L/H months may request a disregard to divert income for maintenance of their home for a maximum of six months. 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. BEM 546, pp. 3-4. The PPA will be reduced when all of the following are true:

- A physician has certified the beneficiary is medically likely to return home in less than six months from the date of admission.

- The request is being made for an individual who is a current Medicaid beneficiary and responsible for a patient pay amount.
- The beneficiary is a current resident of a long-term care facility.

- The beneficiary has a legal obligation to pay housing expenses and has provided verification of the expenses. The housing expenses must be in the beneficiary's name. A

foreclosure, eviction or bankruptcy proceedings must not have begun.

• The home is not occupied by a community spouse or children eligible for a family allowance income deduction.

• The written or verbal request is being made by the beneficiary or an individual authorized to act on behalf of the Medicaid beneficiary.

BEM 546, at pp. 3-4.

The budget showed no home maintenance disregard. The Department representative testified that Petitioner did not submit any verification of her eligibility for the home maintenance disregard criteria. Petitioner's AHR asserted that while Petitioner was admitted to the LTC facility in November 2024 and has experienced some complications since that time, she will hopefully be able to return to her home within six months. Additionally, Petitioner's AHR testified that Petitioner has monthly shelter expenses and other expenses at her home that she is still responsible for.

There was no evidence presented that the Department gave Petitioner the opportunity to verify that she met the criteria for the home maintenance disregard. Therefore, the Department failed to establish that Petitioner was not eligible for a home maintenance disregard as a total need, as there was no evidence that Petitioner's responsibility for monthly rent or other eligible expenses was considered.

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

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 there was no evidence that she had unmarried children in the home under age 18, she was not eligible for a children's allowance. 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.

Petitioner's AHR confirmed that Petitioner did not have a spouse, and thus, was ineligible for the community spouse income allowance. BEM 546, pp. 4-8. Therefore, the family

allowance, children's allowance, and community spouse income allowance are accurately reflected on the budget as $0.

Guardianship/Conservator Expenses

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. Petitioner's AHR is her court-appointed legal guardian and/or conservator. Although the Department asserted that Petitioner did not submit verification that she had a legal guardian, there was no evidence that the Department gave Petitioner an opportunity to submit such verification. Therefore, the Department failed to establish that Petitioner was ineligible for $83 per month guardianship allocation to the calculation of the PPA as a need item.

Health Insurance Premiums

The Department will include as a need item the cost of any health insurance premiums, vision and dental insurance, and including Medicare premiums a patient in LTC pays for herself or for another member of her 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 included and taken into consideration in calculating the community spouse income allowance. BEM 546, p. 8.

The Department asserted that Petitioner was approved for Medicare Savings Program benefits under the QMB category and thus, was not responsible for any Medicare premiums. There was no evidence presented by Petitioner's AHR that Petitioner is responsible for other health insurance premiums, and thus, she is not eligible for a health insurance premium need based deduction to the PPA.

Upon review, although the Department properly calculated Petitioner's total income of $[redacted] and considered the applicable need deduction for the $60 patient allowance, because there was no evidence that the Department properly considered Petitioner's eligibility for the home maintenance disregard or the guardianship/conservator expense, the Department failed to establish that it properly determined Petitioner's total need, and thus, the PPA.

As such, 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 determined that Petitioner was eligible for MA subject to a PPA of $[redacted] effective January 1, 2025.

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 January 1, 2025;

2. Provide Petitioner with any MA coverage under the most beneficial category that she was eligible to receive but did not from January 1, 2025, 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. Notify Petitioner and her AHR in writing of its decision.

Zainab Baydoun

ZB/dm

Zainab A. Baydoun
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
Yvonne Hill
Oakland County DHHS Madison Heights Dist.
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MOAHR

Via-First Class Mail :

Authorized Hearing Rep.
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