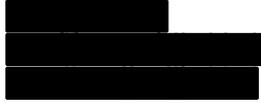




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MAP/169616

PRELIMINARY RECITALS

Pursuant to a petition filed October 23, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Winnebago County Department of Human Services in regard to Medical Assistance, a hearing was held on November 24, 2015, at Oshkosh, Wisconsin.

The issue for determination is whether the agency properly discontinued the Petitioner's MAPP benefit effective November 1, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jeanie Ortiz

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Winnebago County.
2. On September 8, 2015, the Petitioner completed a renewal for MAPP. She reported that she works for [redacted]. Petitioner also receives Social Security income of \$1,250/month.

3. On September 18, 2015, the agency received an employer verification reporting that the Petitioner works 7 hours/week at \$11/hour and that her rent of \$495 is provided to her.
4. On September 25, 2015, the agency issued a Notice of Decision to the Petitioner on [REDACTED] [REDACTED] informing her that she was enrolled in MAPP with a premium of \$400/month effective October 1, 2015. The notice informed her that this was based on gross monthly household income that included her SS income and earned income. The due date for the premium was October 10, 2015.
5. On September 29, 2015, the Petitioner contacted the agency to update her address and expenses. The September 25, 2015 notice was not returned to the agency as undeliverable.
6. On October 19, 2015, the agency issued a Notice of Decision to the Petitioner on [REDACTED] [REDACTED] informing her that MAPP would be discontinued effective November 1, 2015 due to failure to pay the October premium.
7. On October 23, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The petitioner receives benefits under the Medical Assistance Purchase Plan, which allows disabled persons to work and receive medical assistance if their income falls below 250% of the federal poverty level after excluding those amounts found in 42 USC 1382a (b). Wis. Stat. § 49.472(3)(a). Individuals whose income exceeds 150% of the federal poverty level, whether earned or unearned, must pay a premium. Wis. Stat. § 49.472(4)(b). That premium may not exceed the sum of 3½% of all earned income after specific disregards and 100% of unearned income remaining after allowable deductions. Wis. Stat. § 49.472(4)(a)1; Medicaid Eligibility Handbook, § 39.4.2.

The federal poverty level is determined by the number of persons in the recipient's fiscal test group. Wis. Admin. Code, § DHS 103.04(9). The petitioner lives alone, so there is one person in her fiscal test group. For a one-person household, 150% of the federal poverty level is \$1,471.25 and 250% of that level is \$2,452.08. Medicaid Eligibility Handbook, § 39.5.

The Petitioner has Social Security income of \$1,250/month. The agency budgeted \$308.90/month in earned income based on the Petitioner's employer's verification and Petitioner's pay statements. The Petitioner testified at the hearing that her work hours vary significantly and that she has worked less lately. For the period of August 1, 2015 – October 31, 2015, the information submitted by the Petitioner's employer on October 28, 2015 shows that Petitioner earned actual wages of \$264 for September, 2015 and \$401.50 for October, 2015. The agency used the employer verification which reported Petitioner works 7 hours/week at \$11/hour to calculate her monthly earned income. Based on actual wages earned, I conclude the agency's calculation of \$308.50 was a reasonable average. If the Petitioner's income has decreased significantly, she would need to submit additional verification of actual wages to the agency.

Agency workers are instructed to determine an individual's premium in the following manner:

1. From gross monthly unearned income, subtract the following:
 - a. Special Exempt Income (15.7.2 Special Exempt Income).
 - b. Standard Living Allowance (39.4.2 EBD Deductions and Allowances).
 - c. Impairment Related Work Expenses (IRWE). For MAPP , use only anticipated incurred expenses, past medical expenses are not allowed. (15.7.4 Impairment Related Work Expenses (IRWE)).

- d. Medical Remedial Expenses (MRE). For MAPP, use only anticipated incurred expenses, past medical expenses are not allowed. (15.7.3 Medical/Remedial Expenses (MRE))
- e. Current COLA Disregard from January 1st through the date the FPL is effective in CARES for that year. 503, DAC, widow/widower disregards allowed in eligibility determinations can not be allowed in premium calculations.

The balance is the Adjusted Countable Unearned Income. This number may be a negative number.

- 2. From gross monthly earned income, subtract any remaining deductions from #1. If the result from #1 is a negative amount, change it to a positive number. The balance is the Adjusted Earned Income.
- 3. Multiply the adjusted earned income by three percent (.03).
- 4. Add the results of #3 and #1 together.
- 5. Compare the result from #4 to the Premium Schedule (39.10 MAPP Premiums) to determine monthly premium amount.

Medicaid Eligibility Handbook, § 26.5.

Workers are instructed to round the premium off to the amount found in Medicaid Eligibility Handbook, § 39.10.

Once an individual's income exceeds 150% of the federal-poverty-level threshold, an immediate large premium can result, especially if much of the income is unearned; the premiums are not incurred gradually. The first part of the petitioner's premium is determined by subtracting the \$836 standard living allowance from her \$1,250 social security payment. This equals \$414. Then her \$308.90 in earned income is multiplied by .03. This equals \$9.27. Adding the two together gives \$423.27. This is rounded down to \$400. Medicaid Eligibility Handbook, § 39.10. I conclude the agency properly determined the Petitioner's premium effective October 1, 2015.

The other issue is whether the agency provided proper notice to the Petitioner that she had a monthly premium due October 1, 2015. The agency issued a notice to the Petitioner on September 25, 2015 to the Petitioner's last known mailing address. Four days later, the Petitioner contacted the agency to update her address. It is unknown whether the Petitioner made a request to the post office to forward her mail to her new address. The Petitioner testified that she did not receive the September 25 notice and the agency testified that it properly mailed the notice to the Petitioner's address on that date and the notice was not returned to the agency.

Service of a notice is complete upon mailing and mailing creates a rebuttable presumption of delivery. *Mullen v. Braatz*, 179 Wis. 2d 749 (1993). The Petitioner testified that she did not receive the notice and therefore was unaware that a premium was due in October, 2015. If the notice had been returned to the agency, the evidence would rebut the presumption of delivery. However, there is no evidence other than Petitioner's bare assertion that she did not receive the notice. I conclude this is insufficient to rebut the presumption of delivery of the notice. I note that the burden is on the Petitioner to provide timely notice of address changes to the Petitioner. By the time the Petitioner contacted the agency on September 29 of her address change, the notice should have already been delivered. It is unclear what date the Petitioner actually moved.

Because the agency properly and timely issued the notice of September 25, 2015 to the Petitioner, I conclude the agency properly discontinued the Petitioner's MAPP benefit on November 1, 2015 when the October premium was not paid.

CONCLUSIONS OF LAW

The agency properly discontinued the Petitioner's MAPP benefit effective November 1, 2015.

THEREFORE, it is ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

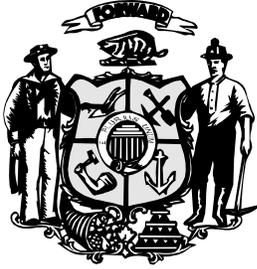
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of January, 2016

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 20, 2016.

Winnebago County Department of Human Services
Division of Health Care Access and Accountability