



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MGE/170202

PRELIMINARY RECITALS

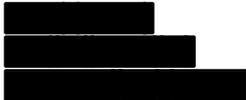
Pursuant to a petition filed November 19, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Fond Du Lac County Department of Social Services in regard to Medical Assistance, a hearing was held on December 22, 2015, at Fond Du Lac, Wisconsin.

The issues for determination are whether the agency correctly included the income of Petitioner's spouse from whom she is legally separated in determining her financial eligibility for Medicaid and, if so, whether Petitioner's Medicaid eligibility is correctly subject to meeting a deductible.

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: Deborah Bohlman
Fond Du Lac County Department of Social Services
50 N Portland St
Fond Du Lac, WI 54935

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Fond Du Lac County.
2. Petitioner applied for Medicaid benefits in early September 2015.

3. Petitioner's application was approved subject to meeting a Medicaid deductible in the amount of \$9244.98.
4. Petitioner is 72 years of age. She lives with her husband though the couple is legally separated.
5. The agency included the income of both Petitioner and her spouse in determining the amount of Petitioner's deductible. That included Petitioner's Social Security retirement of \$323 and his \$1311 from Social Security and earned income of \$1102. This totals \$2736. After a \$20.00 disregard and an earned income deduction countable income was determined to be \$2132.50.
6. The medically needy income limit for a group of 1 or 2 is the same - \$591.67. *See Medicaid Eligibility Handbook (MEH), §39.4.1.* Subtracting this from countable income and multiplying by 6 months yields the \$9244.98 deductible.

DISCUSSION

To be eligible for Medical Assistance an individual must meet nonfinancial eligibility criteria that include the threshold requirement that a person be elderly, blind, or disabled. *See Medicaid Eligibility Handbook, § 4.1.* Elderly is defined as one who is over age 65. *Id., §5.1.*

While the elderly and disabled are typically nonfinancial eligible for MA those individuals must still meet financial requirements. *See generally §49.47, Wis. Stats.* When a person's income is over the MA income limit an MA deductible, also known as a spenddown, must be met before eligibility begins, *See Wis. Stats. § 49.47(4)(c) 2; Wis. Admin. Code §DHS § 103.08(2)(a) and Medicaid Eligibility Handbook (MEH), §§24.1 & 24.2.* The MA income limit for a one or two person household is \$591.67. *See MEH, §39.4.1.* MA deductibles are calculated for six-month periods. *See Wis. Admin. Code DHS § 103.08(2)(c), and MEH, § 20.2.0.* The deductible is met by incurring medical expenses that equal the dollar amount of the deductible. *MEH, §24.2.*

Petitioner argues that because she and her husband are legally separated his income should not be counted. I understand the argument but do not have a legal basis to find that it is correct. Petitioner and her spouse still live together, are not divorced and there is no documentation of a court support order to demonstrate that their incomes are not to be combined. I have not found, nor has any been pointed out to me, any law or policy that supports Petitioner's argument. Finally, I have reviewed the agency's deductible calculations and do not find any errors in the deductible determination.

CONCLUSIONS OF LAW

That the agency correctly included the income of Petitioner's spouse in determining her financial eligibility for Medicaid and correctly determined that Petitioner is required to meet a Medical Assistance deductible in order to be certified eligible for Medicaid.

THEREFORE, it is

ORDERED

That this 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 5th day of February, 2016

\sDavid D. Fleming
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 February 5, 2016.

Fond Du Lac County Department of Social Services
Division of Health Care Access and Accountability