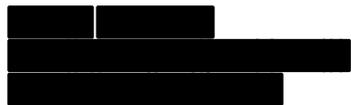




STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

MGE/171043

**PRELIMINARY RECITALS**

Pursuant to a petition filed December 31, 2015, under Wis. Stat., §49.45(5), to review a decision by Milwaukee Enrollment Services in regard to Medical Assistance (MA), a hearing was held on February 3, 2016, by telephone.

The issue for determination is whether the agency correctly determined MA eligibility when petitioner began to receive social security.

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

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

By:   
Milwaukee Enrollment Services  
1220 W. Vliet Street  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. Petitioner is 65 years old; she is not disabled. She resides with her husband. Her husband is disabled and is eligible for MA under a Community Waiver Program and the Medicaid Purchase Plan (MAPP). His monthly income is \$885 social security.

3. Petitioner was eligible for MA under the elderly, disabled, blind (EDB) category because household income was below the program's income limit. In November, 2015, petitioner began to receive \$483 monthly social security spousal benefit.
4. By a notice dated November 30, 2015, the agency informed petitioner that MA would end January 1, 2016. A notice dated December 11, 2015 informed petitioner that she could regain eligibility if she met a \$4,537.98 deductible. MA was continued pending this decision.

### DISCUSSION

To determine EDB MA eligibility, the agency must look at gross income and compare it to state-mandated limits. The income limit consists of a combination of a set income amount plus a shelter expense. Wis. Admin. Code, §DHS 103.04(1). For a two-person household the income limit is \$865.38 plus actual shelter expenses up to \$366.67. MA Handbook, Appendix 39.4.1. Since petitioner's shelter expense is more than \$366.67, her income limit is \$1,232.05.

When the only household income was petitioner's husband's social security, it was under that limit. However, since petitioner began to receive her own social security, the monthly gross household income rose to \$1,368.

When a person's income is over the MA limit, an MA deductible, also known as a spend-down, must be met before eligibility begins. Wis. Stat., §49.47(4)(c)2; Wis. Admin. Code, §DHS 103.08(2)(a); MA Handbook, App. 24.2. The current income limit for deductible purposes for a two-person household is \$591.67. MA Handbook, App. 39.4.1. The deductible is determined by subtracting the MA limit from the person's net income, and then multiplying the result by six.

An MA deductible is calculated for a six-month period. When that period ends, a new deductible is then established for the next six months. Wis. Admin. Code, §DHS 103.08(2)(c); MA Handbook, App. 24.3. To obtain MA during the deductible period, the client must submit to the economic support worker copies of medical bills incurred. MA eligibility begins as of the date that the incurred bills meet the deductible amount.

That explains why petitioner received the second notice explaining the deductible. Because net household income is \$756.83 over the \$591.67 limit (after the \$20 disregard), that amount is multiplied by six to get the six-month deductible.

Petitioner's son testified at the hearing that petitioner's social security has been reduced by a Medicare Part B premium. It appears that the agency requested verification of the premium. A question that arose during the hearing is whether the income to be compared against the limit would be reduced by the amount of the Medicare Part B premium. The agency workers suggested that it would be. They were correct.

The MA Handbook, App. 32.11. states with regard to Medicare Premium Assistance:

When the State pays a person's Part B premium, his or her Social Security (SS) check will increase by the same amount as the premium. This increase in the SS check may result in the person either losing Medicaid eligibility, or being reduced from categorically needy to medically needy.

When a person would be adversely affected in this way, he or she is allowed to choose between either losing his or her Medicaid current benefits and keeping free Medicare

enrollment, or giving up the free Medicare enrollment and keeping his or her MA benefits. All but 503, DAC's and widow/widowers can opt out of the QMB buy-in through CARES.

Petitioner and her husband are not within the limited, special categories of 503, DAC (disabled adult child), or widow/widower). Thus the clear implication is that for MA purposes the agency budgets only the social security actually received, not the gross amount. Therefore, if petitioner's husband and petitioner both paid the Medicare Part B premiums, their income would fall below the categorically-needy MA limit.

Petitioner has a choice. Both she and her husband could opt out of Medicare premium assistance and petitioner's MA would start up again. On the other hand, petitioner could request Special Low-Income Beneficiary (SLMB) eligibility so that her Medicare Part B premiums be paid by the state (the SLMB income limit for a two-person household is \$1,593, so petitioner should be eligible unless the couple has assets of which I am unaware). That way the couple would actually receive the full \$1,368 monthly social security. Most of petitioner's medical costs would be covered by Medicare, but any costs not covered could be reported to the agency and at very least be budgeted as excess medical expenses for FoodShare purposes (see the concurrent FoodShare decision for details on excess medical expenses). In addition, if petitioner had a large medical expense such as an extended hospitalization, she likely would meet the deductible and have most of the cost paid by MA.

At this point I will dismiss petitioner's appeal. The agency correctly determined MA eligibility after petitioner began to receive her own social security. It is up to petitioner and her husband how they want to handle MA, as suggested above. They should do so with Milwaukee Enrollment Services personnel.

### **CONCLUSIONS OF LAW**

The agency correctly closed petitioner's MA after she began to receive social security because household income rose above the EDB MA income limit.

**THEREFORE, it is**

**ORDERED**

That the petition for review is hereby 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 Madison,  
Wisconsin, this 8th day of February, 2016

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 8, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability