



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MGE/172172

PRELIMINARY RECITALS

Pursuant to a petition filed February 22, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on March 15, 2016, at Waukesha, Wisconsin. For the reasons stated below, a continued hearing date needed to be scheduled. The hearing was continued to and completed on June 7, 2016.

The issue for determination is whether Waukesha County Health and Human Services (the agency) correctly calculated the Petitioner's patient liability, effective January 1, 2016.

NOTE: The record was held open until March 18, 2016, to allow the parties to supplement the record.

Waukesha County provided sections 17.13 and 15.4 of the Medicaid Eligibility Handbook. They have not been marked as exhibits, because it is policy, not evidence.

Counsel for Petitioner provided copies of what was previously marked as Exhibits 11, 12 and 13. In addition, Petitioner's attorney provided the bank statements for Petitioner's trust spanning January 25, 2015 through December 27, 2015. They have been marked as Exhibit 14. Counsel also provided a property tax statement and insurance statement that have been marked collectively as Exhibit 15.

After reviewing the submitted documentation, it became apparent from Exhibit 12 that there was additional income and expenses generated by a farming operation that was not discussed at hearing. Consequently, a new hearing date was scheduled for June 7, 2016, to take additional evidence concerning that income.

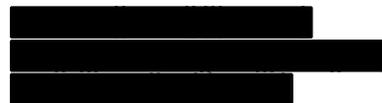
There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: [REDACTED], Economic Support Specialist
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner completed a renewal and on January 7, 2016, the agency sent the Petitioner a notice indicating that as of January 1, 2016, the Petitioner would be eligible for Nursing-Home Long Term Care Medicaid with a patient liability of \$2,344.75 per month. (Exhibit 2)
3. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 22, 2016. (Exhibit 1)
4. Petitioner receives \$1,566 per month in Social Security Income. (Stipulation of Parties)
5. Petitioner pays \$334.58 per month for private health insurance and \$104.90 per month for Medicare Part B premiums. (Stipulation of Parties)
6. The Petitioner is the beneficiary of a trust that was established on October 26, 1999 and amended on August 8, 2008 to create an irrevocable trust. It consists of two parts; the first is referred to, in part, as the “irrevocable trust”, the second is referred to as a “restatement”. (Exhibit 10)
7. The Petitioner is also the beneficiary of a revocable trust. (Testimony of [REDACTED] Petitioner’s son)
8. The Petitioner has no independent bank account. His expenses are either paid through an account held by the irrevocable trust (the “Washington Account”) or through a “Wisconsin Account” that is in the name of the revocable trust. (Testimony of [REDACTED]; Exhibit 12)

Regarding income from the Revocable Trust / rental income

9. Article 1, section 1.05 of the irrevocable trust document states that the principle of the trust is not available to the Petitioner, for any purpose, including Medicaid. (Exhibit 10)
10. Article 1, section 1.05 also states that the trust is to be funded with “agricultural real property and other real property located in the State of Washington.” (Exhibit 10)
11. Article I, section 1.06, indicates that while Petitioner is still living, he is the income beneficiary of the trust and his children are beneficiaries of the principle. (Exhibit 10)
12. The property in question consists of three parcels, totaling 162 acres. There is a house on the property. (Exhibit 15; testimony of [REDACTED])
13. Article 3-1, Section 3.01(a) of the irrevocable trust document, indicates that, “My Trustee shall pay, at least annually, all of the net income from the trust property, after deducting all expenses associated with the trust property, to or for my benefit.” (Exhibit 10)
14. In 2015, Petitioner received \$10,400 for rent on the farmland and \$3,500 for rent on the house. This works out to be: $(\$10,400 + \$3,500) \div 12 \text{ months} = \1158.33 per month. (Exhibits 9 and 14)

15. In 2015, the trust paid \$2,842.42 in property taxes. This works out to be: $\$2,842.42 \div 12 = \236.87 per month. (Exhibits 14 and 15)
16. In 2015, \$1,310 in "Farm Package" insurance was billed to the Petitioner, not the trust. That expense was paid out of the revocable trust account, because no separate account was established for the Petitioner. This works out to be $\$1,310 \div 12 = \109.17 per month. (Exhibits 14 and 15; Testimony of Petitioner's son)

Regarding the Revocable Trust / Farming Operation

17. The Petitioner owns cows that are housed on property owned by his daughter and located in Wisconsin. (Testimony of [REDACTED])
18. The cows are part of a farming operation. In 2015, this operation generated a net profit of \$57.00. This works out to be \$4.75 per month when averaged over 12 months. (Exhibit 19)
19. Petitioner's son bought \$1,150.00 worth of hay for Petitioner's cows in July 2015. Though Petitioner's son would like to be reimbursed, he has no expectation of repayment. (Exhibit 20; testimony of [REDACTED])

DISCUSSION

The Medicaid Eligibility Handbook (*MEH*) explains how a person's patient liability is determined in §27.7.1 ILTC :

After an institutionalized person has been determined eligible for Medicaid, his or her cost of care must be calculated. Cost of care is the amount he or she will pay each month to partially offset the cost of his/her Medicaid services. It is called the patient liability amount when applied to a resident of a medical institution and cost share when applied to a community waivers client, Pace/ Partnership, or Family Care client. The institutionalized member will be expected to pay their patient liability to the institution that they are residing in as of the first day of the month.....

For a Medicaid member in a medical institution who does not have a spouse living in the community, the following deductions from income are allowed:

1. \$65 and ½ earned income [disregard \(15.7.5 \\$65 and ½ Earned Income Deduction\)](#).
2. Monthly cost for health insurance ([27.6.4 Health Insurance](#)).
3. Support payments ([15.7.2.1 Support Payments](#)).
4. Personal needs allowance ([39.4 EBD Assets and Income Tables](#)).
5. Home maintenance costs, if applicable ([15.7.1 Maintaining Home or Apartment](#)).
6. Expenses for establishing and maintaining a court-ordered guardianship or protective placement, including court-ordered attorney and/or guardian fees ([27.6.6 Fees to Guardians or Attorneys](#)).
7. Medical Remedial Expenses. See [27.7.8 Payment for Non-Covered Services](#).

MEH §27.7.1 ILTC

In the case at hand, the parties dispute the calculation of Petitioner's income, in particular the distribution to which the Petitioner is entitled from the farm property held by the Irrevocable Trust in Washington. The agency contends that it must count the gross income received by the trust, as gross income for the Petitioner. Petitioner asserts that only net income from the farm property can be counted as the Petitioner's income.

As discussed in Finding of Fact #11, above, Article 3-1, Section 3.01(a) of the irrevocable trust document, indicates that the trust shall distribute the *net income* from trust property to the Petitioner or for his

benefit. (Exhibit 10) Thus, Petitioner is correct in his assertion that the agency erred by counting the gross income generated by the trust property.

The next question then, is what is the net income? The trust owns the property in question and the property taxes are in the name of the trust. Accounting for the property taxes, the net income works out to be:

\$1158.33 per month gross income from rent received by the trust.
- \$236.87 per month paid by the trust in property taxes

\$921.46 net income of the Irrevocable Trust

The property insurance cannot be deducted by the trust as a business expense of the Irrevocable Trust, because it is billed to the Petitioner, not the trust.

In addition to the net income of the Irrevocable Trust, Petitioner has income of \$4.75 per month from his cows. Counsel argues that the income from the cows should be zero, because Petitioner’s son purchased hay for the cows. However, there is no documentation showing that the purchase was a loan and Petitioner’s son testified that he had no expectation of being reimbursed. As such, the hay was a gift to Petitioner, not a loan, and cannot be used as business expense. Indeed, if it was a business expense, Petitioner should have included it on the 2015 Schedule F. He did not.

Petitioner’s total income is then:

\$1566.00 Social Security
\$921.46 per month from the Irrevocable Trust
\$4.75 per month from the cows / farming operation

\$2492.21 total monthly income

Having determined Petitioner’s income, the calculation of his patient liability works out as follows:

\$1566 total monthly income
(\$45.00) Less personal need allowance
(\$104.90) Less Medicare Part B premium
(\$334.58) Less Other Health Insurance Premiums

\$1081.52 Patient Liability

The agency calculated a patient liability of \$2,344.75 per month. As such, it did not correctly calculate the Petitioner’s patient liability.

CONCLUSIONS OF LAW

The agency incorrectly calculated the Petitioner’s patient liability, effective January 1, 2016.

THEREFORE, it is **ORDERED**

That the agency adjust Petitioner’s patient liability to \$1081.52 per month, effective January 1, 2016. The agency shall take all administrative steps necessary to complete this task within ten days of this decision.

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.

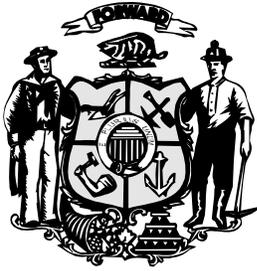
APPEAL TO COURT

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 8th day of June, 2016

\s\sMayumi M. Ishii
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 June 8, 2016.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability
Attorney [REDACTED]