



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/173644

PRELIMINARY RECITALS

Pursuant to a petition filed April 13, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the Racine County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on May 25, 2016, at Racine, Wisconsin.

The issue for determination is whether the agency correctly determined the petitioner's monthly cost share in the amount of \$209.03 effective April 1, 2016.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On March 18, 2016 the agency sent the petitioner a notice stating that her monthly cost share amount increased to \$209.03 effective April 1, 2016.
3. The petitioner's monthly gross income is \$1,154 from social security retirement.

4. The petitioner is responsible for \$348 in monthly rent. Although the petitioner's total rent is greater than \$348, the amount above \$348 is paid for by the [REDACTED]. The petitioner also pays monthly electricity in the amount of \$33.97. She also pays a phone bill each month.
5. On April 13, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized under Wisconsin Statute, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. See also *Medicaid Eligibility Handbook*, Chapter 28, available at www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm.

A person who receives both a Medical Assistance card and FCP, and is not on "regular MA" because of excess income, is classified as being in Group A, Group B, or Group B Plus. *MA Handbook*, §28.8. Group A is for person who receives SSI or certain other benefits that are not relevant here. *MA Handbook*, §28.8.2. The petitioner does not fit within Group A. Group B status is available to a person who has gross income below the Community Waivers MA income limit that currently is \$2,199. *MA Handbook*, §28.8.3. The petitioner is in Group B. Group B Plus is for a person whose income is above \$2,199.

A Group B recipient must pay a cost share based upon income and certain expenses. Wis. Admin. Code, §DHS 10.34(3)(b) provides that cost of care is determined by taking the institutionalized person's income, then making several deductions. The first deduction is a personal needs allowance as provided under 42 C.F.R. §435.726(c), if the person is an FCP recipient. That personal needs allowance currently is \$913, as set out in the *MA Handbook*, §28.8.3.1. Another deduction is special housing expenses. *MA Handbook*, App. 28.8.3.1. The special housing deduction is available when a person's shelter expenses including rent and utilities are greater than \$350. *Id.* Only the amount over \$350 is deducted. *Id.* A telephone is not an included utility expense. *Id.* A third deduction is for out-of-pocket medical/remedial expenses. *MA Handbook*, §28.8.3.5.

I have reviewed the agency's calculations. The agency has correctly calculated the petitioner's monthly cost share amount based on the information that the petitioner provided. The petitioner argued that the only reason she had a cost share amount was because she had begun receiving assistance through the [REDACTED] Authority. This reduced the amount of rent that the petitioner herself had to pay, which in turn increased her monthly cost share amount for the family care program. The petitioner does not think this is fair. She believes that assistance from one program should not offset assistance from another program. I have no equitable authority. The agency correctly followed regulations and policy when calculating the petitioner's monthly cost share liability.

CONCLUSIONS OF LAW

The agency correctly determined the petitioner's monthly cost share in the amount of \$209.03 effective April 1, 2016.

THEREFORE, it is

ORDERED

That the petition 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 6th day of June, 2016

\sCorinne Balter
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 6, 2016.

Racine County Department of Human Services
Office of Family Care Expansion
Health Care Access and Accountability