



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/173673

PRELIMINARY RECITALS

Pursuant to a petition filed April 14, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), a hearing was held on May 12, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely as to a January 2016 cost share obligation calculation.

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]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. Petitioner is a participant in the Family Care Program (FCP).
2. Petitioner was sent a notice dated September 4, 2015 that informed him that he had a cost share for FCP participation in the amount of \$396.51 effective October 1, 2015. It contains appeal instructions and notes an appeal deadline of October 20, 2015.

3. Petitioner was sent a notice dated December 3, 2015 that informed him that he had a cost share for FCP participation in the amount of \$580.00 effective January 1, 2016. It contains appeal instructions and notes an appeal deadline of February 16, 2016.
4. Petitioner was sent a notice dated January 22, 2016 that informed him that he had a cost share for FCP participation in the amount of \$555.00 effective January 1, 2016. This downward adjustment was made as Petitioner had medical remedial expenses of \$25.00. The notice does contain appeal instructions and notes an appeal deadline of March 8, 2016.
5. Petitioner filed this appeal on April 14, 2016 to contest his Family Care cost share.

DISCUSSION

The first question here is whether this appeal is timely as to any of the determinations of cost share noted in the Findings.

The Division of Hearings and Appeals cannot make a decision on the merits of a matter unless it has jurisdiction or authority to do so. The Division of Hearings and Appeals loses authority to make a decision where an appeal is not submitted within time limits. In order to be timely a hearing request concerning Medical Assistance matters must be filed within 45 days of the notice of the county agency decision:

(5) Appeal.

(a) Any person whose application for medical assistance is denied or is not acted upon promptly or who believes that the payments made in the person's behalf have not been properly determined or that his or her eligibility has not been properly determined may file an appeal with the department pursuant to par. (b). Review is unavailable if the decision or failure to act arose more than 45 days before submission of the petition for a hearing.

§49.45(5)(a), Wis. Stats.; also see §HA 3.03(3), Wisconsin Administrative Code.

Petitioner stated that he tried to request a hearing in February 2016 but sent the appeal to the wrong fax number. Nonetheless, as this appeal was filed with the Division of Hearings and Appeals on April 14, 2016, after the March 8, 2016 appeal deadline for the last of the cost share notices, the Division of Hearings and Appeals does not have authority to make a determination on the merits of the cost share determinations.

For Petitioner’s benefit I will, however, describe the cost share calculation in some detail here.

People eligible for Family Care Medicaid fall into one of the following categories:

28.8.2 Group A

Group A members are waiver functionally eligible and Medicaid eligible via SSI (including SSI-E Supplement and 1619A and B) or a full-benefit Medicaid subprogram (see Section 21.2 Full-Benefit Medicaid). This does not include someone solely eligible for any of the limited benefit Medicaid subprograms (see Section 21.3 Limited Benefit Medicaid).

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28.8.3 Group B and B Plus

Group B members are defined as those not in Group A, but who have gross income at or below the nursing home institutions categorically needy income limit (see Section 39.4 Elderly, Blind, or Disabled Assets and Income Tables).

Group B Plus members are defined as those not in Group A, who have gross income above the nursing home institutions categorically needy income limit, but whose income does not exceed the

cost of the appropriate institutional care by more than the medically needy income limit (see Section 39.4 Elderly, Blind, or Disabled Assets and Income Tables).

For Group B and B Plus, calculate a cost share based on the member's income and allowable deductions. Count only the income of each individual when you calculate that individual's cost share.

Medicaid Eligibility Handbook (MEH), §28.8.2 and .3.

The elderly, blind and disabled (EBD) financial income limit is \$591.67 and the nursing home institutions categorically needy income limit is \$2199, effective January 1, 2015. *MEH, §39.4.1.* As Petitioner's gross income is \$1640.00 (Social Security of \$1436 (after a \$104.90 is taken out for Medicaid part A & B premiums) plus a pension of \$204.00), it is apparent that he falls into the group B category of Family Care eligibility. Group B FCP members must make a cost share payment. *Id., §28.8.3.*

Cost sharing is the monthly amount a waivers participant has to contribute toward the cost of his/her waiver services. *MEH, § 28.5.1.* Payment of the cost share is a condition of eligibility. *Id.* The allowable deductions from income are the personal maintenance allowance, a family maintenance allowance where the FCP member is the custodial parent, health insurance premiums, medical/remedial expenses and special exempt income. *MEH, §§28.8.3.1; 28.8.3.2 and 28.8.3.3.* Health insurance premium information comes from the benefit recipient and the medical/remedial expenses amount comes from the Family Care case manager. *See MEH, §28.8.3.5.* Relevant here is the personal maintenance allowance and it is calculated as follows:

28.8.3.1 Personal Maintenance Allowance

The personal maintenance allowance is an income deduction used when calculating a cost share for a Group B or B Plus waiver member.

The personal maintenance allowance (Line 6 and Page 2 of the worksheet) is for room, board, and personal expenses. It is the total of the following:

1. Community Waivers Basic Needs Allowance (see Section 39.4.2 Elderly, Blind, or Disabled Deductions and Allowances).
2. Sixty-five dollars and ½ earned income deduction (see Section 15.7.5 \$65 and ½ Earned Income Deduction).
3. Special housing amount. This is an amount of the person's income set aside to help pay housing costs. If the waiver applicant's housing costs are over \$350, add together the following costs:
 - a. Rent.
 - b. Home or renters insurance.
 - c. Mortgage.
 - d. Property tax (including special assessments).
 - e. Utilities (heat, water, sewer, electricity).
 - f. "Room" amount for members in a CBRF, Residential Care Apartment Complex, or an Adult Family/Foster Allowance Home. The case manager determines and provides this amount.

The total, minus \$350, equals the special housing amount. The person can set this amount aside from his or her income.

...

MEH, §28.8.3.1.

Petitioner has rent of \$497 making his special housing allowance \$147.00. Petitioner also has medical remedial expenses of \$25.00. With these deductions and the standard deduction of \$913.00 subtracted from his income of \$1640.00 the cost share is \$555.00.

The above is rather detailed but provides an explanation of the calculation. The Division of Hearings and Appeals does not make or change law and policy. It can only decide whether or not the parties in cases over which it has authority have followed and/or correctly applied the law and policy. Finally, Petitioner did note that he has expenses, e.g., for specially tinted eye glass lenses that should be considered and a

Medicare Part D premium. Documentation of these expenses may be submitted to his family care case worker and to the agency. He may certainly file another hearing request if documented and acceptable expenses do not change cost share.

CONCLUSIONS OF LAW

That Petitioner’s April 14, 2016 appeal of his January 1, 2016 cost share obligation is not timely.

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 29th day of June, 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 June 29, 2016.

Milwaukee Enrollment Services
Office of Family Care Expansion
Health Care Access and Accountability