



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of



DECISION
Case #: MRA - 174282

PRELIMINARY RECITALS

Pursuant to a petition filed on May 12, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Waukesha County Health and Human Services regarding Medical Assistance (MA). The hearing was held on June 14, 2016, by telephone.

The issue for determination is whether the agency correctly determined the petitioner's monthly cost share amount.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI53703

By: 
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # ) is a resident of Waukesha County.

2. The petitioner resides in an institutional care facility. His spouse remains in the community.
3. On January 29, 2016 the petitioner applied for institutional MA coverage with a back date of January 1, 2016.
4. Although the petitioner requested a backdate of his institutional MA coverage to January 1, 2016, he resided at his institutional care facility, [REDACTED] since December 10, 2015. The petitioner owed \$7,832 for December 10, 2015 through December 31, 2015.
5. In March 2016 the petitioner paid the \$7,832 due to the nursing home for the December 10, 2015 to December 31, 2015 dates of service.
6. On April 11, 2016 the agency sent the petitioner a notice stating that they approved his application for institutional MA coverage effective January 1, 2016. The notice further stated that the petitioner's monthly cost share amount was \$2,038.38 for the period beginning January 1, 2016.
7. On April 19, 2016 the agency sent the petitioner a notice stating that his monthly cost share amount was \$1,928.71 effective April 2016.
8. The agency did not deduct \$7,832 as a medical remedial expense when determining the petitioner's monthly cost share in any of the months.
9. On May 12, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

Medical assistance rules require nursing home residents to "apply their available income toward the cost of their care." Wis. Admin. Code § DHS 103.07(1)(d). Those rules allow some exemptions, including a \$45 personal needs allowance, the cost of health insurance, and necessary health or remedial care not covered by medical assistance, and court ordered attorney and guardian fees paid directly from a person's monthly income. Wis. Admin. Code § DHS 103.07(1)(d)1, 3, and 4, see also *Medicaid Eligibility Handbook (MEH)*, § 27.7.1. The remaining amount after these deductions is the patient liability or monthly cost share amount. *Id.*

The only issue in this case is whether the \$7,832 payment to the petitioner's nursing home should be deducted when determining the petitioner's monthly cost share or patient liability amount. The agency argues that this payment was made before the approval of his institutional MA application, and therefore is not deducted. The petitioner contends that his application took 73 days for the agency to approve, that he has MA institutional care eligibility effective January 1, 2016, and that his March 2016 payment to the nursing home for the petitioner's care in December 2015 should be credited.

Wis. Admin. Code § DHS 103.07(1)(d)3 provides that the agency should deduct from a recipient's income payments for "necessary medical or remedial care recognized under state law but not covered by MA." The *MEH* states the following:

27.7.7 Medical or Remedial Expenses and Payments for Noncovered Services

27.7.7.1 Introduction

Medicaid members in nursing homes are allowed to pay for some medically necessary noncovered services out of their patient liability. They are not required to use their personal needs allowance for these services.

Effective January 4, 2008, medical or remedial expenses an institutionalized applicant or member has incurred, is actually paying, and is legally obligated to pay are allowable expenses and are used as a need item when determining his or her eligibility for Medicaid. These actual payments are also allowed as an income deduction to reduce the cost share or patient liability amount. This includes payments for medical or remedial expenses that the institutionalized applicant or member is currently incurring as well as payments for certain previously incurred medical or remedial expenses.

Note: This does not include any medical or remedial expenses that another person has incurred.

In order to use the medical or remedial expense as a need item and as an income deduction in the cost share calculation, the expense must meet both the following criteria:

- The institutionalized person must be legally liable for payment of the incurred medical or remedial expense. Any portion that will be paid by a legally liable third party, such as private health insurance, Medicare, or Medicaid, cannot be allowed as a deduction.
- The institutionalized person must provide verification of the allowable expense (see [Section 27.7.7.2 Disallowed Expenses](#)).

27.7.7.2 Disallowed Expenses

Do not allow payments that an institutionalized person is making, or requests to make, as a need item or as a cost share adjustment if the medical or remedial expense meets any of the following exception reasons:

- Remains unpaid but was previously used to meet a Medicaid deductible.
- Was incurred as the result of imposition of a divestment penalty period.
- A patient liability or cost share from a previous budget period, whether paid or unpaid, cannot be used as an incurred medical or remedial care expense in a subsequent budget period.
- Incurred medical and remedial care expenses deducted from income to determine patient liability or cost share in a month cannot be used to determine patient liability or cost share in a subsequent month.

[]

- The expense is unverified

I disagree with the agency's position that "since at the time of eligibility determination, [the petitioner] was no longer legally obligated to pay this bill (it was already paid), it cannot be used as an income deviation." The petitioner's institutional care coverage begins effective January 1, 2016. He applied on January 29, 2016. His application was not approved until April 2016. Even though his application was approved in April 2016, he has a cost share amount for January 2016 and forward. This medical bill was paid in March 2016. This was more than a month after the petitioner's application for MA Institutionalized care, and more than two months after the effective date for his MA eligibility. The bill was for nursing home coverage in December 2015.

Given that the petitioner has institutional MA coverage effective January 1, 2016, and that this bill was paid in March 2016, after the petitioner's January 2016 application for institutional MA coverage, this bill should be included as a medical remedial expense. The policy allows for the deduction of a payment for medical or remedial expenses that the institutionalized applicant or member is currently incurring as well as *payments for certain previously incurred medical or remedial expenses*. MEH § 27.7.7.1 (emphasize added). Here, this bill was incurred prior to the petitioner's institutional MA eligibility, but paid after his application, and during his eligibility period, and thus it should be deducted. The petitioner's nursing home care is now covered by MA. This most likely will not be an issue going forward.

CONCLUSIONS OF LAW

The agency incorrectly determined the petitioner's monthly cost share amount effective January 1, 2016 and forward.

THEREFORE, it is

ORDERED

That this case is remanded back to the agency to re-determine the petitioner's monthly cost share obligation effective January 1, 2016. The agency shall use the \$7,832 payment made in March 2016 to the petitioner's nursing home as a medical remedial expense. The agency has 10 days from the date of decision to comply with this order.

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, **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 26th day of July, 2016

\s _____
Corinne 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 July 26, 2016.

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