



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FCP/142611

PRELIMINARY RECITALS

Pursuant to a petition filed July 26, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance/Family Care, a hearing was held on September 12, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's cost share for FC as \$184.75/month effective July 1, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Chris Sobczak

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The Petitioner has been enrolled in Family Care since June 1, 2007.

3. On July 5, 2012, the agency processed the Petitioner's renewal and determined, based on the information submitted that the Petitioner's cost share would increase to \$184.75 /month.
4. The Petitioner's gross monthly income is \$1,311. Petitioner has the following monthly expenses which the agency allowed as deductions in determining the Petitioner's cost share :

medical insurance premiums	\$248.25
electricity	\$ 30.15
phone	\$ 18.08
rent	\$277.00
homeowners/renters insurance	\$ 9.42
5. Petitioner and her case manager did not submit a Medical and Remedial Expense Checklist DHS Form DLTC, F-00295 or other verification of the Petitioner's monthly medical remedial ex penses with the renewal.
6. On July 26, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

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 in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

Wis. Stat., §46.286(2)(a), provides that an FCP recipient must pay a cost share based upon income and certain expenses. Wis. Adm. 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 is \$878, as set out in the Medicaid Eligibility Handbook § 39.4.2. Another deduction is special housing expenses. MEH § 28.8.3.1. A third deduction is for out-of-pocket medical/remedial expenses. MEH § 15.7.3. In order to use the medical/remedial expense as a need item and as an income deduction in the cost share calculation, the expense must meet the following criteria:

1. The institutionalized individual must be legally liable for payment of the incurred medical/remedial expense. Any portion that will be paid by a legally liable third party such as private health insurance, Medicare, Medicaid, etc. cannot be allowed as a deduction; and
2. The institutionalized individual must provide verification of the allowable expense.

MEH §§ 20.3.1. and 27.7.8.1.

There was no dispute at the hearing regarding the Petitioner's monthly income budgeted by the agency and no dispute regarding the deductions allowed by the agency for the Petitioner's housing/utilities and medical insurance premiums. The only dispute concerned Petitioner's medical remedial expenses. The Petitioner submitted medical bills and receipts with her renewal form but did not submit sufficiently detailed verification of her monthly medical expenses in order for the agency to determine if the bills and receipts were for allowable expenses and what the amount of her medical remedial expenses is. At the hearing, the Petitioner testified as to several medical expenses that she claims to have on a monthly basis.

Petitioner was given additional time post-hearing to provide evidence of her medical expenses. The Petitioner did submit copies of checks and copies of receipts but it is not possible to determine, from the evidence submitted, whether these are allowable expenses and the amount of the Petitioner's expenses. The evidence includes checks payable to Aurora Pharmacy and Walgreens and checks to a friend or relative to the Petitioner which the Petitioner indicates are reimbursement for medical expenses. Additional items include receipts for "prescriptions." The receipts submitted are not sufficient to determine whether these are one-time expenses or monthly expenses and the checks are not sufficient to verify that they are for allowable expenses.

If the Petitioner wishes to have medical remedial expenses considered in her cost share determination, she must present an itemized and detailed accounting of the medical expenses so that the agency can make a determination that they are allowable expenses and a determination with regard to the amount that the Petitioner is expending each month. It is the Petitioner's responsibility to provide such verification. To date, the Petitioner has not presented sufficiently detailed evidence to allow the agency or this ALJ to make a determination with regard to the type or amount of her medical remedial expenses. It is suggested that the Petitioner use the DHS F-00295 form or similar format to submit her expenses to the agency so that a proper determination can be made. When the agency has sufficient information to make that determination, the Petitioner will receive notice of the determination and have an opportunity to appeal the determination if she disagrees.

CONCLUSIONS OF LAW

The agency properly concluded based on the information submitted with the Petitioner's renewal application, that the Petitioner's cost share is \$184.75.

THEREFORE, it is ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 10th day of October, 2012

Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

c: Milwaukee Enrollment Services - email
Department of Health Services - email



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 10, 2012.

Milwaukee Enrollment Services
Office of Family Care Expansion