



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

MAP/144205

PRELIMINARY RECITALS

Pursuant to a petition filed September 28, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Wood County Human Services - WI Rapids in regard to Medical Assistance, a hearing was held on November 05, 2012, at Wisconsin Rapids, Wisconsin.

The issue for determination is whether the Department erred in counting petitioner's alimony payment to her former spouse, which is deducted from her social security payments, as petitioner's income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Irene Lehman

Wood County Human Services - WI Rapids
320 West Grand Avenue
PO Box 8095
Wisconsin Rapids, WI 54495-8095

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Wood County.
2. Petitioner had been enrolled in the MAPP program since September 2009.

3. In September 2012, the Department determined that she paid \$594.50 to her former spouse as alimony. The payment is deducted automatically from her social security payments and disbursed to her former spouse.
4. The Department determined that this sum should be counted as part of gross income for purposes of premium calculation.
5. On September 24, 2012, the Department sent petitioner notice indicating that a \$450 premium would be required as of November 1, 2012.
6. Petitioner filed a timely appeal.

DISCUSSION

The petitioner receives benefits under the Medicaid Purchase Plan (“MAPP”), which allows disabled persons to work and receive medical assistance if their income falls below 250% of the federal poverty level after excluding those amounts found in 42 USC 1382a (b). Wis. Stat. § 49.472(3)(a). Those whose income exceeds 150% of the federal poverty level, whether earned or unearned, must pay a premium. Wis. Stat. § 49.472(4)(b).

Petitioner has an alimony liability to her former spouse. Petitioner also receives social security unearned income. The alimony payment is automatically deducted from the SS payment. Petitioner never receives the money and does not disburse the funds to her former spouse. Petitioner receives the net SS payment with the sum already deducted. Petitioner argues that because the funds are deducted before she gets the SS payment, and because the funds are an expense, the funds are not income.

The alimony payments are considered Special Exempt Income according to the *Medicaid Eligibility Handbook* at § 15.7.2:

15.7.2 Special Exempt Income

Special exempt income includes:

1. Income used for supporting others (15.7.2.1 Support Payments).

15.7.2.1 Support Payments

Support payments are payments which a Medicaid *member* makes to another person outside of the *FTG* for the purpose of supporting and maintaining that person. Support payments are either court-ordered (15.7.2.1.1 Court-Ordered or non-court-ordered (15.7.2.1.2 Non-court-Ordered).

The Department argues that the Special Exempt Income is deducted from the gross income to determine eligibility for the MAPP program, but that it is not deducted when determining whether a premium is due or the proper amount of a premium. In its exhibit H (part of exhibit #1), the Department representative wrote to the petitioner “MAPP DOES allow it to be used as a deduction, but only for determining your eligibility, not in determining whether or not you will have to pay a premium, or the amount of the premium.” The Department does not cite to any code or rule provision to support this position. My reading of the rules of the program conflict with this argument from the Department. According to the *Medicaid Eligibility Handbook* Special Exempt Income is to be subtracted from gross income as part of the determination of eligibility for the program (see § 26.4.2) **AND ALSO** in the calculation of the premium:

26.4.2 Income

The *spouse* and member's net income must not exceed 250% of the FPL (See 39.5 FPL) for appropriate fiscal test group size. To determine this, do the following:

1. Determine family earned income. Count the member and his/her spouse's income if residing together.
2. Deduct the \$65 and ½ of the earned income *disregard* from the spouse and member's earnings (15.7.5 \$65 and ½ Earned Income Deduction).
3. Deduct the member's IRWEs (15.7.4 Impairment Related Work Expenses (IRWE)). The result is the adjusted earned income.
4. Determine unearned income. Count the member and his/her spouse's income if residing together.
5. Add the adjusted earned and unearned income together.
6. Deduct \$20 from the combined income.
- 7. Deduct special exempt income (15.7.2 Special Exempt Income).**
8. If a MAPP member receives Social Security payments, subtract the current *COLA* disregard between January 1st and the date the FPL is effective in CARES for that year.

Example 3: Ed's Social Security payment amounts were \$875 a month for the previous year and \$900 for the current year. Calculate the current COLA disregard by subtracting the Ed's previous Social Security payment amounts from the current payments. Allow \$25 as the current COLA disregard.

9. Subtract the historical COLA *Disregard* Amount (39.6 COLA) for MAPP members who are also determined to be a 503 (25.1 503 Eligibility) or Disabled *Adult* Child (DAC) (25.2 DAC). Do not allow the historical COLA disregard amount (39.6 COLA) in the premium calculation for MAPP members who are also determined to be a 503 or a DAC.
10. Compare the result to 250% of the FPL (39.5 FPL Table). Include the member's *minor* dependent children (natural or adoptive) when determining fiscal test group size. Do not include the member's stepchildren in the fiscal test group size.

* * *

26.5.1 Calculation

Calculate premiums using only the *member's* income. Calculate a premium if the member's gross monthly amount exceeds 150% of FPL (39.5 FPL Table) for the appropriate fiscal test group size.

Steps to calculate monthly premium amount:

- 1. From gross monthly unearned income, subtract the following:**
 - a. **Special Exempt Income (15.7.2 Special Exempt Income).**
 - b. Standard Living Allowance (39.4.2 EBD Deductions and Allowances).
 - c. Impairment Related Work Expenses (IRWE). For *MAPP* , use only anticipated incurred expenses, past medical expenses are not allowed. (15.7.4 Impairment Related Work Expenses (IRWE)).

- d. Medical Remedial Expenses (MRE). For MAPP, use only anticipated incurred expenses, past medical expenses are not allowed. (15.7.3 Medical/Remedial Expenses (MRE))
 - e. Current COLA Disregard from January 1st through the date the FPL is effective in CARES for that year. 503, DAC, widow/widower disregards allowed in eligibility determinations can not be allowed in premium calculations.
The balance is the Adjusted Countable Unearned Income. This number may be a negative number.
2. From gross monthly earned income, subtract any remaining deductions from #1. If the result from #1 is a negative amount, change it to a positive number. The balance is the Adjusted Earned Income.
 3. Multiply the adjusted earned income by three percent (.03).
 4. Add the results of #3 and #1 together.
 5. Compare the result from #4 to the Premium Schedule (39.10 MAPP Premiums) to determine monthly premium amount.

Medicaid Eligibility Handbook §§ 26.4.2 & 26.5.1 (emphasis added).

Under these rules, the alimony/support payment should be subtracted from the gross income when determining eligibility, and also when calculating the premium.

CONCLUSIONS OF LAW

The Department erred in its calculation of the premium for the MAPP program.

THEREFORE, it is

ORDERED

The case is remanded to the Department and its county agent to redetermine whether a premium is necessary, and the amount of the premium, if any. The determination and calculation should be executed by subtracting from gross income the support payment amount in conformance with the rules in the MEH and consistent with this Decision. New notice, with appeal rights, shall be sent to petitioner indicating the newly calculated premium. These actions shall be completed within 10 days.

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 served and 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, 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 Madison,
Wisconsin, this 7th day of November, 2012

John P. Tedesco
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 November 7, 2012.

Wood County Human Services - WI Rapids
Division of Health Care Access and Accountability