



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION ON REHEARING

MNP/143697

PRELIMINARY RECITALS

Pursuant to a petition filed September 8, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability (DHCAA or Division) in regard to Medical Assistance (MA), a hearing was scheduled (following several reschedules) for February 7, 2013. The petitioner was not available at the hearing time and date, and his appeal was dismissed. The petitioner then timely requested a rehearing, which was approved. The hearing was then held on March 20, 2013, by telephone.

The issue for determination is whether the Department correctly imposed a \$1,007 monthly patient liability amount for the petitioner's Institutional MA for June 1, 2012 through September 7, 2012.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By written submission of Margie Holzhuetter
Division of Health Care Access And Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Calumet County.

2. The petitioner was certified for IRIS, a community waiver program, from February 1, 2012 through May 30, 2012. He entered a nursing home on February 13, 2012, and remained there or at another institution until September 7, 2012.
3. The petitioner should have reported the change in his living arrangement to the agency by February 23 (10 days reporting requirement), which would have ended his IRIS eligibility by April 1, 2012. He then would have been switched over to Institutional MA coverage.
4. The admission to the nursing home was not reported until May 17, 2012. The agency then discontinued the petitioner's IRIS certification effective May 31, 2012. Medicare and Medicaid then paid the petitioner's nursing home bill for April and May 2012, without deducting a patient liability amount.
5. In July 2012, the county agency issued an overpayment notice to the petitioner, advising that he had been overpaid \$2,014 in MA benefits (\$1,007 patient liability for April, and \$1,007 patient liability for May 2012). The petitioner appealed, and a fair hearing on the overpayments was held. This Administrative Law Judge issued a decision (MOP/143390) in November 2012 that upheld the overpayment determination for April and May 2012.
6. When a person on Medicaid is in the nursing home, his income after a few specified deductions must be paid to the nursing home. This amount is his "patient liability." The unpaid nursing home bill above the patient liability amount is then paid for by Medicaid.
7. The petitioner has a \$708 verified monthly home mortgage payment. This expense was verified prior to April, 2012. On May 17, 2012, the county agency issued a request that the petitioner verify within 10 days his expectation that he would be returning to his home; that verification was not received. The county agency removed the \$708 mortgage expense as an income deduction in May.
8. The agency computed the monthly patient liability amount as follows: \$1,052 in gross unearned income, minus the \$45 statutory personal need allowance, equals \$1,007.

DISCUSSION

The petitioner had an IRIS certification that had to be changed to an Institutional/Long-Term Care Medicaid (MA) certification when he entered the nursing home in February 2012. As noted above, a patient liability amount is computed for nursing home residents on MA. The formula for calculating the patient liability amount is set out at *Medicaid Eligibility Handbook (MEH)*, §27.6 - .7, found online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

The petitioner does not contest the date of his nursing home admission or his gross income amount. He does question why his mortgage expense was not subtracted in the patient liability computation from June 1, 2012 through September 7, 2012, because the mortgage expense can be subtracted in certain circumstances:

15.7.1 Maintaining Home or Apartment

If an institutionalized person has a home or apartment, deduct an amount from his/her income to allow for maintaining the home or apartment that does not exceed the **SSI** payment level plus the E supplement for one person (See [39.4.1](#)). The amount is in addition to the personal needs allowance (See [39.4.2 EBD Deductions and Allowances](#)). It should be enough for mortgage, rent, property taxes (including special assessments),

home or renters insurance, utilities (heat, water, sewer, electricity), and other incidental costs.

Make the deduction only when the following conditions are met:

1. A physician certifies (verbally or in writing) that the person is likely to return to the home or apartment within six months, and
2. The person's **spouse** is not living in the home or apartment.

Deduct this amount for no more than six months. If the person is re-admitted to the institution, grant a six month continuance. A physician must again certify that s/he is likely to return to the home or apartment within six months.

The home maintenance allowance can be granted at any time as long as the person is institutionalized. It is not limited to the first six months of institutionalization.

MEH, §15.7.1.

Because the petitioner did not provide the agency with written confirmation that he was expected to return to his home within six months, the agency acted correctly in declining to subtract his home expense in the patient liability computation.

CONCLUSIONS OF LAW

1. The county agency correctly declined to subtract the petitioner's home expense in his patient liability computation for June 1 through September 7, 2012, because the petitioner did not supply certification of his likely return home within six months of institutionalization. (This certification was requested by the agency on May 17, 2012).

THEREFORE, it is

ORDERED

That the petition is dismissed.

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 25th day of March, 2013

\sNancy J. Gagnon
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 March 25, 2013.

Division of Health Care Access And Accountability