



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MAP/144002

PRELIMINARY RECITALS

Pursuant to a petition filed September 24, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a hearing was held on November 26, 2012. An Interim Decision was issued on December 5, 2012, and a subsequent hearing was held on January 23, 2013, at Madison, Wisconsin. A final Decision was issued on February 11, 2013, remanding the matter to the respondent. A rehearing request was filed by the petitioner on February 15, 2013, alleging mistake of law was made by the administrative law judge. In lieu of further hearings, the parties consented to and were provided an opportunity to brief the issues raised by petitioner. Petitioner subsequently timely submitted an initial brief, but respondent did not submit anything further. **This Decision replaces the Decision issued on February 11, 2013, in its entirety.**

The issue for determination is whether the respondent properly concluded that petitioner's net income exceeded the Medicaid Purchase Plan Program (MAPP) program limits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Linda Harfst
122 W Washington Ave Suite 900
Madison, WI 53703

Respondent:

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

By: Kara Ponti

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County. She was receiving Medicaid Purchase Plan (MAPP) benefits since at least August 1, 2012.
2. On July 16, 2012, the respondent wrote to petitioner informing her of her enrollment in MAPP effective August 1, 2012. The notice also indicated that petitioner would need to pay a premium of \$75.00 to continue receiving MAPP. Budget information included with this notice indicated that the respondent determined that petitioner's monthly Impairment Related Expenses totaled \$850.00. Exhibit 2.
3. On September 10, 2012, respondent wrote to petitioner informing her that her MAPP enrollment would terminate as of October 1, 2012, due to income in excess of program limits. Budget information included with this notice indicated that the respondent determined that petitioner's monthly Impairment Related Expenses totaled \$850.00. Exhibit 3.
4. On October 1, 2012, respondent wrote to petitioner informing her that she was enrolled in MAPP as of October 1, 2012, with a premium in the amount of \$50.00. Budget information included with this notice indicated that the respondent determined that petitioner's monthly Impairment Related Expenses totaled \$850.00. Exhibit 4.
5. At all times material hereto, Petitioner has been employed by the [REDACTED].
6. During the fall semester of the 2012-2013 school year, Petitioner was employed by the [REDACTED].
7. A November 26, 2012, MAPP Budget provided by the respondent indicates Impairment Related Work Expenses (IRWE's) budgeted in the amount of \$168.51. The respondent calculated the petitioner's eligibility for MAPP, counting her gross earned income as \$5748.82; after the '\$65 & ½ Disregard,' \$20 disregard, and IRWE's, her net income was determined to be \$2,653.40. Exhibit 1, p. 17
6. In the above-cited correspondence, the MAPP gross income limit was specified as \$2,327.08; the "premium" gross income limit for a premium under MAPP was \$1,396.25. Exhibit 1, p. 17.
7. On September 24, 2012, the petitioner timely filed an appeal with the Division of Hearings & Appeals contesting the respondent's determination that she exceeded MAPP income limits.

DISCUSSION

The MAPP program allows disabled individuals to work but to retain eligibility for MA. Wis. Stat. § 49.472; Medicaid Eligibility Handbook, § 26.1. If net income is below 250% of the federal poverty level, the person is eligible for the program. Wis. Adm. Code §DHS 103.03(8)(b); Handbook, § 26.4.2. 250% of the poverty level is \$2,327.08. Handbook, § 39.5. However, if the member's gross monthly income exceeds 150% of the Federal Poverty Level, then a monthly premium may be assessed. Handbook, § 26.5.1.

The subtractions from income are for special exempt income, a standard living allowance, IRWE's, medical remedial expenses (MRE), and a current cost of living adjustment. See, Handbook, § 26.5.1.

In a fair hearing concerning Medical Assistance benefits, like MAPP, the county agency has the burden of proof to demonstrate by the preponderance of the evidence in the record that the action(s) taken were

required by MAPP rules or policies. The petitioner may then rebut this determination with evidence that demonstrates she actually was eligible and the determination is incorrect for some reason.

In establishing a basis for its actions here, Respondent proffered at hearing that it had learned of unreported income, i.e. petitioner's employment at the [REDACTED], and had investigated certain IRWE's and MRE's claimed by petitioner. While initially approved, respondent subsequently decided that certain allowed IRWE's and MRE's were incorrectly credited to petitioner.

Petitioner objected, testifying that the identified IRWE's and MRE's, consisting of a health club membership, therapeutic massage, service animal cost, cost to drive to and from work, and therapeutic horseback riding, should be credited against her income. An IRWE is defined as an expense related to the person's impairment AND employment. See, Handbook, § 15.7.4. Medical remedial expenses are anticipated incurred expenses for services or goods that have been prescribed or provided by a professional medical practitioner (licensed in Wisconsin or another state). The expense is for diagnosis, cure, treatment, or prevention of disease or for treatment affecting any part of the body. These are expenses that are the responsibility of the member, and cannot be reimbursable by any other source, such as Medicaid, private insurance, or employer. See, Handbook, § 15.7.3.

In correspondence dated September 27, 2012, Petitioner's physician, Frank Kilpatrick, M.D., wrote:

... [Petitioner] needs to continue getting massages weekly and going to a health club for daily pool therapy to maintain muscle integrity and to promote circulation to prevent pressure sores and joint problems from her quadriplegic condition. She does therapeutic horseback riding to assist with balance in addition to promoting good circulation.

Exhibit 1, p. 10. Petitioner contends that these items constitute IRWE's because she would not be able to maintain her health and employment without them. In addition to these therapeutic items, petitioner argued that she should be entitled to a credit for the costs of driving to and from work, since she drives a specially modified vehicle which costs more to operate and maintain than the average vehicle.

After petitioner's testimony, respondent conceded that the determination of what constitutes an IRWE is somewhat subjective. In her letter brief dated April 30, 2013, petitioner argues that worker discretion in determining what constitutes IRWE's and MRE's is not the proper standard. Instead, the petitioner urges the adoption of a "higher standard of review." Petitioner's Initial Brief, p. 3. The petitioner, in effect, argues that the program standard is unfair and that the administrative law judge should grant her relief from the program requirements. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. The petitioner has presented arguments based upon the fairness (or lack thereof) of worker interpretation of MAPP guidelines, and proposes adherence (at least secondarily) to the more comprehensive Program Operations Manual System (POMS) put forth by the Social Security Administration. Notably, the petitioner acknowledges that while referring to POMS may be accepted practice, "...it is not a mandated Wisconsin standard to defer to POMS..." Petitioner's Initial Brief, p. 4. I am without any equitable powers to direct any remedy beyond the remedies available under law.

Respondent subsequently agreed at hearing that, having heard further testimony in this regard, the health club membership and therapeutic massage services could fall under the definition of an IRWE in this

case.¹ She further noted that vehicle costs in excess of those associated with an average vehicle would constitute an allowed deduction.

I find that the health club membership, therapeutic massage, service animal cost, cost to drive to and from work in excess of costs associated with an average vehicle, and therapeutic horseback riding are all properly deductible as IRWE's, except for any therapy paid for by a third party. I note that the respondent specifically questioned the horseback riding at hearing, but based upon petitioner's testimony and the letter from her physician, I am satisfied that, much like therapeutic massage, this form of therapy addresses petitioner's balance and circulation issues, and therefore would qualify as an IRWE. An issue was also raised regarding petitioner's special diet, but the record does not indicate that the respondent refused to credit this; in fact, respondent presented electronic correspondence between respondent and the DHS CARES Call Center which specifically states, "[i]f the physician has prescribed a special diet related to [petitioner's] disability it would be an allowable [MRE]." Exhibit 1, p. 11. I note that Dr. Kilpatrick references petitioner's costly "special diet needs." Exhibit 1, p. 10.

Based upon the record before me and the testimony received at hearing, I conclude that the respondent has not demonstrated that it has correctly calculated petitioner's net income, and this matter shall be remanded to the respondent to re-determine petitioner's net income, with appropriate credit for petitioner's IRWE items.

CONCLUSION OF LAW

1. The respondent failed to properly deduct certain IRWE's from petitioner's gross income, which led to an incorrect calculation of petitioner's net income.
2. Petitioner's health club membership, therapeutic massage, service animal cost, cost to drive to and from work in excess of costs associated with an average vehicle, costs related to petitioner's specialized diet, and therapeutic horseback riding, are all properly deductible as IRWE's, except for any therapy paid for by a third party, as said costs are related to a diagnosed medical impairment and petitioner's ability to maintain her employment as a teacher.

THEREFORE, it is

ORDERED

That this matter shall be remanded to the respondent to re-calculate petitioner's net income and to re-determine petitioner's MAPP eligibility and/or premium, specifically taking into account and properly crediting petitioner's IRWE expenses including any prescribed special diet, her health club membership, therapeutic massage, service animal cost, cost to drive to and from work in excess of costs associated with an average vehicle, and therapeutic horseback riding, but excepting those medical expenses that are paid or reimbursed by a third party. Respondent shall complete the recalculation and issue a written determination to petitioner, including appeal rights, within 10 days following issuance of this Decision.

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

¹ Respondent noted that at least one of petitioner's therapeutic services appears to be paid for by a third party, and therefore those costs would not be properly deducted.

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 26th day of June, 2013.

\sPeter McCombs
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 26, 2013.

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Division of Health Care Access and Accountability
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