



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FCP/144997

PRELIMINARY RECITALS

Pursuant to a petition filed November 2, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Outagamie County Department of Human Services in regard to the Family Care (FC)/Partnership program, a hearing was held on November 29, 2012, at Neenah, Wisconsin.

The issue for determination is whether the agency correctly computed the petitioner's monthly cost share effective November 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
Madison, Wisconsin 53703

By: T. Korth, Lead ES Worker
Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. The petitioner is an ongoing participant in the FC/Partnership program. She began receiving a \$973 VA death pension benefit in July, which caused the program to transfer her from Group B to

Group C, due to increased income. On October 11, 2012, the Department issued written notice to the petitioner advising that her monthly cost share would be \$1,552.33 from November 1, 2012, onward. The petitioner received this notice.

3. The petitioner has total monthly gross income of \$2,574, consisting of a pension, Social Security, and the VA benefit. The VA benefit includes a \$410 “aid and attendance” portion.
4. The petitioner resides in a community-based residential facility (CBRF) . The CBRF’s monthly charge is \$3,256. In determining how much the petitioner and the program are respectively paying the CBRF, the agency counted the petitioner’s aid and attendance funds as available income. The agency apportioned the CBRF’s monthly charge as \$750.07 attributable to room and board, and the \$2,506 balance as attributable to services. Medicaid-related programs, such as FC/Partnership, never pay the room and board portion of a facility’s charges, so the \$750.07 cost must be borne by the petitioner every month, in addition to her cost share.

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 under Wisconsin Statutes, § 46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. See also, *Medicaid Eligibility Handbook* at §29.1 *et seq.*, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm> . Whenever the local Family Care program notifies a person that s/he is ineligible for the program, imposes or changes a cost share, or when the CMO discontinues an ongoing service in the service plan, the client is allowed to file a fair hearing request. The same rules regarding cost share are applicable in the Partnership program.

I. COST SHARE COMPUTATION.

In this case, the petitioner has been found eligible for FC/Partnership at the comprehensive level. An eligible person’s income is reviewed to determine if the recipient has enough income to be responsible for payment of a monthly “cost share.” See, *MEH*, § 29.3. There is no dispute that the petitioner’s income levels at all times relevant herein have caused her to be subject to a cost share liability. Also, it is clear that a recipient may request a hearing on the determination of the cost share amount. Wis. Stat. §46.287(2)(a)1b.

The petitioner asserts that the November cost share amount cannot be correct because her housing expenses are not being considered.

The Department calculated the cost share for the petitioner, a Group C participant, as follows:

Gross Income	\$2164.00
Minus unearned income disregard	- 20.00
Minus health insurance premium	-00.00
Minus “medically needy” income limit	<u>- 591.67</u>
Cost Share/monthly spend-down	\$1552.33

A person who receives both a Medical Assistance card and Family Care/Partnership, and is not on “regular MA” because of excess income, is classified as being in Group A, Group B, or Group C. Group A is for person who receives SSI or certain other benefits that are not relevant here. The petitioner does not fit within Group A. Group B status is available to a person who has gross income below the Community Waivers MA income limit of \$2,094. *MEH*, § 39.4.1. A Group B recipient may have health insurance premiums, certain medical/remedial expenses and a Personal Maintenance Allowance (possibly

including housing expenses) subtracted from her income before a cost share is computed. 42 C.F.R. §435.726; Wis. Admin. Code §DHS 103.07(1)(d). The petitioner's gross income places her over the income limit for Group B status. Therefore, the petitioner is relegated to Group C status.

A person in Group C status must expend income that exceeds the \$591.67 "medically needy income limit of \$591.67, minus the \$20 unearned income disregard and the health insurance premium expense. *MEH*, 39.4.1 – "EBD Medically Needy Limits." The agency did subtract the \$20 disregard, and the \$591.67 income limit from the petitioner's income here. There is no authority for subtraction of a Personal Maintenance Allowance or additional expenses from a Group C recipient's income.

In somewhat confusing fashion, the FCP allows for subtraction of medical/remedial expenses paid by the client as a deduction from her income to determine *eligibility* for the program. See the Department's form F-20919. However, the Department's instructions go on to direct the agency to *then* compute the *cost share/spend-down* amount by only subtracting the \$20 unearned income disregard, a health insurance premium, and the \$591.67 medically needy income limit from her income. That is what the agency did, as shown in the calculation above. I can find no authority for additional deductions for a Group C recipient, and I conclude that the cost share for November 2012 onward, was correctly computed here.

II. ROOM AND BOARD CHARGE.

The petitioner complains that the combination of the \$1,552.33 cost share plus the \$750.07 CBRF room and board charge leaves her with very little income to meet her other needs. These costs total \$2,302.40, and her gross income is \$2,574.

When asked about unmet needs, the petitioner complained that the food at the CBRF was not appropriate for her. She requires a soft diet. The program representative at hearing, Ms. Seffernick, indicated that this was the first that she had heard about this issue, and that she would contact the CBRF to assure that a soft diet is provided. It is the responsibility, under state code, of a CBRF to provide an appropriate diet to residents. The petitioner also complained about running out of Depends, and the representative advised her of a number she can call, which will result in next-day delivery of this item to the petitioner, paid for by the program. The testimony did not reveal an essential, unmet need daily living need of the petitioner at this time. Thus, there is no basis for a temporary waiver of a portion of the cost share amount. See, Wis. Admin. Code §DHS 10.34(3)(4)(a),(b) (2009).

Finally, there is no legal basis for relieving the petitioner of all or a portion of her \$750 monthly room and board charge. The federal government directs the State to not pay for "room and board" charges for a FC recipient. See, §1915(c) *Home & Community-Based Waiver Application*, § 6C, available at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/Waivers.html>. Therefore the portion of the CBRF's charge attributable to room and board should not be paid by the CMO. In this case, the facility's room and board charge was identified as being \$750.07. Therefore, the CMO declined to pay \$750.07 out of the monthly CBRF charge. The balance of the CBRF charges can be paid by FC. *FCP Contract*, Addendum XIII, A-14.

CONCLUSIONS OF LAW

1. The agency correctly computed the amount of the petitioner's FCP cost share for November 2012, onward.

THEREFORE, it is

ORDERED

That the petition 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 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 23rd day of January, 2013

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on January 23, 2013.

Outagamie County Department of Human Services
Office of Family Care Expansion