FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FCP/145194

PRELIMINARY RECITALS

Pursuant to a petition filed November 09, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on January 08, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly determined Petitioner's cost share.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Chris Sobczak, HSPC
Denise Copeland, Income Maintenance Worker - Advanced
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

Rosaida Schrank, Quality Insurance Co-ordinator
Milwaukee Department of Family Care
Milwaukee County Courthouse
901 N. 9th Street, Room 307A
Milwaukee, WI 53223

Michelle Martinez
Jewish Family Services

Stacey Ehlers
Jewish Family Services

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

NOTE: The record was held open to give the Milwaukee Department of Family Care to submit a copy of the current policy concerning medical remedial expenses. On January 8, 2012, Ms. Schrank submitted a copy of the Milwaukee County Department of Family Care Policy – Revision dated 10/13/11. It has been marked as Exhibit 18. In the interim, ALJ Ishii found on the state network, the second page of Form F-00295, which also reflects current policy. A copy of this form was completed by Jewish Family Services and Petitioner. (Page 1 of the form completed by Jewish Family Services and Petitioner has been marked as Exhibit 9) A blank copy of Form F-00295 has been marked as Exhibit 17 and entered into the record.

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County and a participant in the Family Care Program.
2. Petitioner's Care Maintenance Organization (CMO) is Milwaukee County Department of Family Care, which contracts with Jewish Family Services.
3. Petitioner completed a renewal in August 2012. Jewish Family Services did not submit to the agency a list of remedial medical expenses on Petitioner's behalf. (Exhibits 7 and 11)
4. On September 12, 2012, the agency sent Petitioner a notice indicating that effective October 1, 2012, her monthly cost share would increase from $104.00 per month to $293.00 per month. The cost share increased because no medical remedial expenses were reported to the agency. (Exhibits 4 and 11; testimony of Chris Sobczak)
5. On October 23, 2012, Jewish Family Services submitted to the agency a Medical Remedial Expense form showing monthly expenses totaling $71.75, from $24.75 in deductible and co-payments on Medicaid, Medicare or Private Insurance services, $40.00 for landline telephone service and $7.00 for Fluoride Mouth Rinse. (Exhibit 9; Petitioner's testimony; T estimony of Chris Sobczek)
6. On October 31, 2012, the agency sent Petitioner a notice indicating that her cost share would be reduced to $221.25 effective December 1, 2012. (Exhibit 5)
7. Petitioner filed a request for Fair Hearing that was received by the Division of Hearings and Appeals on November 9, 2012. (Exhibit 1)
8. On November 28, 2012, the agency sent Petitioner a notice indicating that her cost share was $221.25 effective November 1, 2012 through December 31, 2012. (Exhibit 6)
9. Petitioner was previously allowed to include in her Medical Remedial Expenses, amounts she paid for various over the counter drugs and nutritional supplements. She was also previously allowed to use the cost of her prescription for pantoprazole, which Medicaid did not cover. (Exhibit 15 – Remedial Medical Expense form dated September 22, 2011)
10. Jewish Family Services was aware of those continuing expenses, but did not include them in the Medical Remedial Expense form submitted by Jewish Family Services in October 2012, because of changing policies concerning over the counter drugs. (Exhibit 9; Testimony of Stacey Ehlers)
11. Petitioner's sole source of income is from Social Security Retirement Income. During 2011, her gross income was $1270.90 per month, but she paid $99.90 for Medicare part-A premiums. (Exhibit 14; Petitioner's testimony)

DISCUSSION

People eligible for Family Care Medicaid fall into one of the following categories:

Group A eligibility

1. People 18 and over who meet full benefit EBD Medicaid financial and non-financial requirements and who are also functionally eligible for FC at either the nursing home or non-nursing home level of care.

2. People 18 and over who meet BC+ Standard Plan, Well Woman Medicaid, Medicaid through Adoption Assistance or Foster Care financial and non-financial requirements and who are functionally eligible for FC at either the nursing home or non-nursing home level of care.

Group B eligibility

People 18 and over who meet full benefit EBD Medicaid non-financial and financial requirements except for income, who are functionally eligible for FC at the nursing home level of care, and whose income is at or below the special income limit (See the Community Waivers Special Income Limit in 39.4.1)

Group C eligibility

People 18 and over who meet full benefit EBD Medicaid non-financial and financial requirements except for income, who are functionally eligible for FC at the nursing home level of care, and whose income is above the special income limit (see the Community Waivers Special Income Limit in 39.4.1), but whose allowable monthly expenses are sufficient to reduce their income to the medically needy limit (See EBD Medically Needy Limits in 39.4.1.)
Medicaid Eligibility Handbook (MEH), §29.3.1.

The elderly, blind and disabled (EBD) medically needy income limit is $591.67 and the Community Waivers Special Income Limit is $2094.00. *MEH, §39.4.1.* As Petitioner's gross income during the time in question was $1,270.90, she falls into the group B category of Family Care eligibility.

Cost sharing is the monthly amount a waivers participant has to contribute toward the cost of his/her waiver services. *MEH, § 28.5.1.* Payment of the cost share is a condition of eligibility. *Id.*

The cost share for a Group B member is calculated by deducting allowable deductions from income using the following formula:

Income
-Personal Maintenance Allowance
-Family Maintenance Allowance
-Special Exempt Income
-Health Insurance Premiums
-Out of pocket Medical/Remedial Expense
_____
Cost Share amount

MEH §28.8.3.1; *Form F-20919*

The agency calculated Petitioner's cost share, effective October 1, 2012, as follows:

$1270.90 Income
-$878.00 Personal Maintenance Allowance
-$99.90 Health Insurance Premiums

$293.00 Cost Share

The agency calculated Petitioner's cost share effective November 1, 2012 as follows:

$1270.90 Income
-$878.00 Personal Maintenance Allowance
-$99.90 Health Insurance Premium
-$71.75 Medical Remedial Expenses

$221.25 Cost Share

It is undisputed that Petitioner's total gross income is $1,270.90 and that her Personal Maintenance allowance is $878.00.

There is no indication in the record that Petitioner is a custodial parent of a child, as such the Family Maintenance allowance does not apply to her.

Per *MEH, §15.7.2* Special exempt income includes:

1. Income used for supporting others
2. Court ordered attorney fees
3. Court ordered guardian and guardian ad litem fees
4. Expenses associate with establishing and maintaining a guardianship
5. Expenses associated with an approved Self-Support Plan for blind or disabled individuals
6. Impairment Related Work Expenses
7. The cost to an institutionalized person to maintain their home or apartment while they are institutionalized
8. Costs associated with real property that is for sale.

There is no indication in the record that Petitioner has any of the expenses described above. As such, she does not have any special exempt income.

It is undisputed that Petitioner pays a monthly premium of $99.90 for Medicare Part-A. However, Petitioner takes issue with the agency's determination o f her out-of-pocket medical remedial expenses, because they do not include the $188.49 in over the counter medications and nutritional supplements that were included in her list as of September 22, 2011 (See Exhibit 15).

The Department of Health Services changed its policies concerning over the counter medications and nutritional supplements and in March 2012, developed a new Updated Medical and Remedial Expense Check List, form F-00295, to reflect these changes. (Exhibit 17) According to current policy, over the counter medications and nutritional supplements are not allowable as Medical Remedial Expenses because they should be paid for by Family Care, if they are necessary to meet the member's desired outcomes. (See Exhibit 17, pg. 2)

There is no indication in the record that Jewish Family Services used the RAD to determine whether various medications and nutritional supplements were necessary to meet Petitioner' s desired outcomes at the time of her renewal in August/September 2012. So, Petitioner might wish ask her interdisciplinary team from Jewish Family Services to conduct such an evaluation to see if Family Care will cover the cost of her over the counter medications and nutritional supplements. If Petitioner disagrees with those findings, she can file an appeal of Jewish Family Services's determination.

I also note that in Exhibit 15, it appears that Petitioner had a prescription for pantoprazole, for which she paid $102.99 per month, because it was not covered by Medicaid. A receipt from CVS pharmacy attached to Exhibit 15 reflects this information. Petitioner testified that she still takes that medication, but for reasons not clear in the record, it was not included in the current Medical Remedial Expense list. If Petitioner was still being prescribed the pantoprazole and was still required to pay for it out of pocket, it should have been included in the Medical Remedial Expense list.

Jewish Family Services will need to re-evaluate Petitio ner's Medical Remedial Expenses by verifying Petitioner's prescription for pantoprazole to see if it should still be included in the line entitled, "Prescription drugs, if denied by Medicaid" .

The agency will then need to apply any changes in the Medical Remedial Expenses to Petitioner's budget effective October 1, 2012.

If after all this, Petitioner is still dissatisfied with her cost share amount, she must file a NEW request for fair hearing.

At the hearing, Petitioner expressed some concerns regarding her FoodShare benefits, because they increased when her cost share increased. Petitioner should note that if her cost share is reduced, her FoodShare benefit might also be reduced and that there might be a resulting FoodShare overpayment.

CONCLUSIONS OF LAW

There is insufficient information in the record concerning Petitioner's Medical Remedial Expenses to determine whether the agency correctly calculated Petitioner's monthly cost share.

THEREFORE, it is **ORDERED**

That the matter is remanded to Jewish Family Services with instructions to: immediately send Petitioner a request for verification of her prescription for pantaprazole, giving her ten days to provide the requested verification. Within ten days of timely receipt of the verification, Jewish Family Services must then submit a new Medical Remedial Expense form to the Department's agent (Milwaukee Enrollment Services). Milwaukee Enrollment Services shall thereafter apply the expenses to the budget, and re-determine the Petitioner's cost share retroactive to October 1, 2012, with written notice. These actions are to be completed within 20 days of the date of this Decision.

IT IS FURTHER ORDERED, in the alternative form, that *if* the petitioner fails to provide timely verification, *then* the appeal is dismissed in its entirety.

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 Milwaukee,
Wisconsin, this 11th day of January, 2013.

_____

\sMayumi M. Ishii
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 January 11, 2013.

Milwaukee Enrollment Services
Office of Family Care Expansion