



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

CWA/145334

PRELIMINARY RECITALS

Pursuant to a petition filed November 19, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a telephonic hearing was held on January 16, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services correctly discontinued the petitioner's Community Waiver's program eligibility effective November 1, 2012, due to failure to timely pay her cost share.

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: Andrea Loasby, IRIS
Bureau of Long-Term Support
1 West Wilson
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who received benefits through the Community Waivers program.

2. During June, 2012, petitioner received Social Security Disability (SSDI) of \$653 and a pension of \$241.25. Petitioner's SSDI increased from \$653 to \$853 as of July, 2012 and her pension remained the same.
3. The petitioner gross income increased from \$894.24 for June, 2012 to \$1,094.25 for July, 2012.
4. Milwaukee Enrollment Services sent a May 4, 2012 notice to the petitioner at her correct address of record stating that effective June 1, 2012 her Community Waivers cost share was \$70.
5. Milwaukee Enrollment Services sent a June 5, 2012 notice to the petitioner at her correct address of record stating that effective July 1, 2012 her Community Waivers cost share would increase from \$70 to \$211.25.
6. The petitioner has not submitted any medical remedial expenses to Milwaukee Enrollment Services.
7. The petitioner's monthly rent of \$346 was below the special housing all ocation which is granted for housing costs above \$350.
8. The IRIS program sent a July 27, 2012 notice to the petitioner confirming that her cost share increased to \$211.25 as of July 1, 2012.
9. Milwaukee Enrollment Services sent a September 21, 2012 Notice to the petitioner stating that her Community Waivers program eligibility would discontinue effective November 1, 2012, due to petitioner's failure to timely pay her cost share.
10. The petitioner did not timely pay her owed cost share for the months of July and August, 2012.
11. On September 14, 2012, petitioner contacted Milwaukee Enrollment Services for the first time that she wanted to disenroll from the IRIS program which was set to begin on October 1, 2012.
12. The petitioner did not file her appeal until November 19, 2012 with the Division of Hearings and Appeals (DHA).

DISCUSSION

The Medicaid Eligibility Handbook (MEH) describes the IRIS program:

37.1.1 Introduction

The Include, Respect I Self-Direct (IRIS) program is a fee for service alternative to Family Care, PACE or Partnership for individuals requesting a long-term care support program in Family Care counties.

Under IRIS, the participant will be able to access services comparable to those provided under the Home- and Community-Based Waivers (HCBW) while managing an individual budget to meet their service needs. In the instant case, the petitioner contacted Milwaukee Enrollment Services on September 14, 2012 to disenroll from the IRIS program before her IRIS program eligibility had even begun on October 1, 2012.

During the January 16, 2013 hearing, petitioner admitted that she received the July 27, 2012 notice confirming that her cost share had increased to \$211. Furthermore, the petitioner did not contest that Milwaukee Enrollment Services sent to her a June 5, 2012 notice stating that her Community Waivers cost share was increased from \$70 to \$211.25 effective July 1, 2012. Petitioner did not present any evidence to refute that she received that June 5, 2012 notice.

The Department presented evidence that petitioner did not timely submit her required cost share payments to MES for the months of July and August, 2012. Petitioner also did not present any testimony or

evidence to refute that she did not contact MES until September 14, 2012 to indicate that she wanted to disenroll from the IRIS program. Thus, she still owed her full cost share for the months of July and August, 2012.

The *Medicaid Eligibility Handbook* states:

Individuals who wish to participate in IRIS must meet the following criteria in order to qualify:

- Reside in a county operating Family Care,
- Have a nursing home level of care as determined by the LTC Functional Screen, **and**
- All Medicaid Home- and Community-Based waiver financial and non-financial eligibility criteria

Medicaid Eligibility Handbook, § 37.1.3.

The *Medicaid Eligibility Handbook*, § 28.5 provides for cost sharing of such Home and Community Based waiver participants as stated below, and clearly states the requirement for payment of those cost shares:

28.5.1 HCBWLTC Cost Sharing Introduction

Cost sharing is the monthly amount a waivers participant may have to contribute toward the cost of his/her waiver services. Count only the income of the member when you calculate the cost share.

Payment of the cost share is a condition of eligibility. See 28.8.3.1 Personal Maintenance Allowance for instructions about how to calculate a cost share.

(Emphasis added).

Medicaid Eligibility Handbook, § 28.5.1.

Similarly, a person who is eligible for the Family Care Program must pay a monthly amount toward their cost of care. This is known as the FCP *cost share*. See, Wis. Stat. § 46.286(2)(a) (2009-10); Wis. Admin. Code § DHS 10.34(2) (November 2009); *Medicaid Eligibility Handbook* ["MEH"] 29.3.1. A person who is required to pay an FCP cost share but fails to make the required payments is ineligible for FCP. Wis. Stat. § 46.286(2)(c) (2009-10); Wis. Admin. Code § DHS 10.34(4)(a).

During the hearing, petitioner was unable to present any reliable evidence to refute that she failed to timely pay her required cost share for the months of July and August, 2012. Accordingly, based upon the above, I conclude that Milwaukee Enrollment Services correctly discontinued the petitioner's Community Waiver's program eligibility effective November 1, 2012, due to failure to time ly pay her cost share.

CONCLUSIONS OF LAW

Milwaukee Enrollment Services correctly discontinued the petitioner's Community Waiver's program eligibility effective November 1, 2012, due to failure to timely pay her cost share.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby 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 30th day of January, 2013

\sGary M. Wolkstein
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 30, 2013.

Bureau of Long-Term Support