



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FCP/145474

PRELIMINARY RECITALS

Pursuant to a petition filed November 26, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a telephonic hearing was held on January 16, 2013, at Milwaukee, Wisconsin. At the request of the parties, the record was held open for three weeks for the submission of closing arguments to DHA.

The issues for determination are: a) whether Milwaukee Enrollment Services (MES) correctly calculated the petitioner's Family Care Program's (FCP) cost share to be \$5 79.57 effective October 1, 2012; and b) whether the Family Care Program (FCP) correctly denied the petitioner's request for payment of out of pocket private caregivers due to petitioner's failure to obtain prior authorization or approval for FCP payments to those private caregivers.

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: Amber Bauer, Family Care Program manager
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

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 is disabled and is a quadriplegic.
2. The petitioner is in and out of hospitalizations at the VA hospital. After discharges from the VA, petitioner would arrange for his daily personal care needs.
3. On October 1, 2012, petitioner began his enrollment in the Milwaukee County Family Care Program with its agent, Curative Family Care, with a monthly cost share of \$579.57. The cost share is based upon the member's income and allowable deductions.
4. The petitioner is enrolled in Family Care program as a Group B Waiver member because he has an income at or below the nursing home categorically needy income limit of \$2,094.00.
5. The petitioner's monthly income was Social Security Disability Income (SDDI) of \$1,532, and a monthly building trade pension of \$143.57 for a total monthly income of \$1,675.57.
6. The petitioner's monthly deductible expenses are: a) rent at [REDACTED] of \$481; and b) electric bill of \$65 for total expenses of \$546.00. He also receives a \$196 special housing amount calculated by \$546 - \$350 per MEH 28.8.3.1. He also receives a basic needs allowance of \$890 per MEH 39.4.2.
7. The petitioner did not timely submit any medical remedials to the county agency or the Family Care Program prior to January 1, 2013.
8. Milwaukee Enrollment Services (MES0 sent a September, 2012 notice to the petitioner stating that his Family Care Program (FCP) cost share was \$579.57 as of October, 2012.
9. On about October 30, 2012, Curative Care sent paperwork to the petitioner to be completed by his four caregivers if he wanted them approved and paid by the Family Care program. During a December 4, 2012 conversation with petitioner, the Family Care staff learned petitioner was paying out-of-pocket for his four supportive home care caregivers for the period of October, 2012 through December, 2012 that he selected and hired privately from his disability payments or charged to his credit cards. See Exhibit 1.
10. The petitioner hired the four private caregivers without the supervision or assistance of a home care agency or the involvement of the Family Care program. No background check or "hiring process" was conducted about those four caregivers even by the end of December, 2012 to be approved for FCP payments.
11. Due to his out-of-pocket payments, petitioner did not have the funds to pay his monthly cost share to the Family Care Program. Petitioner's payments to those caregivers are not "medical remedial expenses" because supportive home care services (caregivers) are part of the serviced provided by the Family Care program.
12. On or about December 20, 2012, the petitioner filed applications for FC approval for his four private caregivers. The FC program approved those applications as of January 1, 2013.

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 in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

Wis. Adm. Code, §DHS 103.075(6)(c) details the determination of the cost share for someone “institutionalized” for spousal impoverishment purposes. I note that an “institutionalized spouse” includes a person eligible to receive community waiver services including FCP. Wis. Adm. Code, §DHS 103.075(3)(e). §DHS 103.075(6)(c) provides that cost of care is determined by taking the institutionalized person’s income, then making several deductions.

A person who receives both a Medical Assistance card and Family Care, and is not on a “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 of \$1, 675.57 places him in the income limit for Group B status. Therefore, the petitioner is relegated to **Group B 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 would subtract a \$20 disregard, the health insurance premium, and the \$591.67 income limit from the petitioner’s income here. There is no authority for subtraction of a Personal Maintenance Allowance from a Group C recipient’s income.

During the January 16, 2013 hearing, the petitioner was unable to refute that the Milwaukee county agency correctly calculated his monthly income to be \$1,675.57. The petitioner also was unable to refute his relevant expenses for cost share determinations. See Finding of Fact #6. The petitioner was unable to refute that Milwaukee Enrollment services correctly included his basic needs allowance of \$890, and \$196 in special housing allowance. Furthermore, petitioner was also unable to provide any evidence to establish that he did submit any allowable medical remedial expenses to MES or the Milwaukee Department of Family Care prior to January 1, 2013.

The petitioner explained that used his own funds to pay for four privately hired caregivers that he selected and hired. He explained that he was unable to pay those caregivers and also pay his FCP cost share. However, petitioner failed to timely file any applications for those four caregivers or follow any proper procedure to obtain the prior approval or background checks necessary for FCP payments. The situation was further complicated by petitioner pursuing possible enrollment in the IRIS program and indicating that he might “disenroll” from the Family Care Program. He ultimately decided not to enroll in the IRIS program. While it is unfortunate that petitioner paid those caregivers with his own funds, the FCP does provide for supportive home and personal care workers as part of the Family Care package of services, and thus will not pay for privately selected and unapproved caregivers. See Findings of Fact #9 - #12 above.

In regard to cost share, petitioner was unable to establish any error or inaccuracy in the calculation of his FCP cost share to have been \$579.57 effective October 1, 2012. Accordingly, based upon the above, I conclude that the Milwaukee Department of Family Care correctly calculated the petitioner’s cost share to be \$579.57 effective October 1, 2012.

CONCLUSIONS OF LAW

1. The Milwaukee Enrollment Services correctly calculated the petitioner’s Family Care Program cost share to be \$579.57 effective October 1, 2012.

2. The Milwaukee Department of Family Care correctly denied the petitioner's request for FCP payments to his four private caregivers because those caregivers were hired by petitioner without any prior approval or applications approved for payments by the Family care program.

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 11th day of March, 2013

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on March 11, 2013.

Milwaukee Enrollment Services
Office of Family Care Expansion