



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FCP/145597

PRELIMINARY RECITALS

Pursuant to a petition filed November 29, 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 29, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to make a determination where a person has not yet enrolled in Family Care and, if so, whether there is any error noted in the calculation of Petitioner's Family Care 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: Chris Sobczak

Milwaukee Enrollment Services
1220 W. Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner filed this appeal to contest the determination of the cost share amount that had been determined for him before deciding whether or not to enroll in the Family Care program.

3. Petitioner applied for Family Care in late October 2012. A cost share of \$400.34 was determined for November 2012. Petitioner chose not to enroll in Family Care for November apparently because of the cost share amount so a new determination of the cost share was made for December 2012; that amount was \$388.34. Petitioner again chose not to enroll and filed this appeal on November 29, 2012.
4. The agency determined a cost amount for January in the amount of \$346.24. And, again, Petitioner chose not to enroll. He presented a new health insurance premium amount at the hearing and, post hearing; the agency determined a cost share of \$311.61.
5. Petitioner has income of \$1838 per month. The agency has credited Petitioner with the following expenses: a personal needs allowance of \$878 which increased to \$890 as of January 1, 2013 (*Operations Memo 12-63; issued November 28, 2012*) ; health insurance premiums which were \$235 but increased to \$277 and a shelter expense deduction of \$324.32 which was based on rent of \$620, utilities averaging \$46.20 and renter's insurance of \$8.12 per month .

DISCUSSION

The Family Care Long Term Care program (FCP) is a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. *Medicaid Eligibility Handbook (MEH), §29.1*. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code at Chapter DHS 10. Also see *Medicaid Eligibility Handbook (MEH), §29.1*.

Petitioner filed this appeal to contest the cost share determination. There is a threshold issue as to whether the Division of Hearings and Appeals has jurisdiction, i.e., legal authority to make a decision here as Petitioner is not actually enrolled in the FCP.

The general Medicaid hearing right is described in the Wisconsin Statutes:

(5) APPEAL. (a) Any person whose application for medical assistance is denied or is not acted upon promptly or who believes that the payments made in the person's behalf have not been properly determined or that his or her eligibility has not been properly determined may file an appeal with the department pursuant to par. (b). Review is unavailable if the decision or failure to act arose more than 45 days before submission of the petition for a hearing.
Wis. Stats. §49.45(5)

More specifically, as to the Family Care program the right is described as follows:

DHS 10.55 Fair hearing. (1) RIGHT TO FAIR HEARING.

Except as limited in subs. (1m), (2) and (3) and s. DHS 10.62 (4), a client has a right to a fair hearing under s. 46.287, Stats. The contested matter may be a decision or action by the department, a resource center, county agency or CMO, or the failure of the department, a resource center, county agency or CMO to act on the contested matter within timeframes specified in this chapter or in the contract with the department. The following matters may be contested through a fair hearing:

- (a) Denial of eligibility under s. DHS 10.31 (6) or 10.32 (4).
- (b) Determination of cost sharing requirements under s. DHS 10.34.
- (c) Determination of entitlement under s. DHS 10.36.
- (d) Failure of a CMO to provide timely services and support items that are included in the plan of care.
- (e) Reduction of services or support items in the enrollee's individualized service plan, except in accordance with a change agreed to by the enrollee.
- (f) An individualized service plan that is unacceptable to the enrollee because any of the following apply:

1. The plan is contrary to an enrollee's wishes insofar as it requires the enrollee to live in a place that is unacceptable to the enrollee.
2. The plan does not provide sufficient care, treatment or support to meet the enrollee's needs and identified family care outcomes.
3. The plan requires the enrollee to accept care, treatment or support items that are unnecessarily restrictive or unwanted by the enrollee.

Wis. Adm. Code, §DCF 10.55(1).

The Administrative Code also defines 'client' as the term is used in the FCP:

...
(9) "Client" means a person applying for eligibility for the family care benefit, an eligible person or an enrollee.

...
Wis. Adm. Code, §DCF 10.13(9).

Given that a person applying is a client and client has a hearing right as to cost share I am concluding that the Division of Hearings and Appeals has jurisdiction and turn to the cost share determination.

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) financial income limit is \$591.67 and the Community Waivers Special Income Limit was \$2094.00 through the end of 2012 and went up to \$2130 effective January 1, 2013. *MEH, §39.4.1 and Operations Memo12-63; issued November 28, 2012.* As Petitioner's gross income is \$1838.00, it is apparent that he 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

allowable deductions from income are the personal maintenance allowance and, where the FCP member is the custodial parent, a family maintenance allowance. *MEH*, §§28.8.3.1 and 28.8.3.2. Petitioner is a widower and not a custodial parent thus the personal maintenance allowance is calculated as follows:

28.8.3.1 Personal Maintenance Allowance

The Personal Maintenance Allowance is an income deduction used primarily when calculating a cost share for a Group B waiver member. However, it is also used in the cost share calculation of a Group C waiver member when completing Section C of the *Spousal Impoverishment* Income Allocation Worksheet (18.6.4).

The personal maintenance allowance (Line 6 and Page 2 of the worksheet) is for room, board, and personal expenses. It is the total of:

1. Community Waivers Basic Needs Allowance (See 39.4.2 EBD Deductions and Allowances)
2. \$65 and ½ earned income deduction (See 15.7.5 \$65 and ½ Earned Income Deduction).
3. Special housing amount. This is an amount of the person's income set aside to help pay housing costs. If the waiver applicant's housing costs are over \$350, add together the following costs:
 - a. Rent.
 - b. Home or renters insurance.
 - c. Mortgage.
 - d. Property tax (including special assessments).
 - e. Utilities (heat, water, sewer, electricity).
 - f. "Room" amount for members in a Community Based Residential Facility (CBRF), Residential Care Apartment Complex (RCAC) or an Adult Family/Foster Allowance.) Home (AFH). The case manager determines and provides this amount.

The total, minus \$350, equals the special housing amount. The person can set this amount aside from his/her income.

...

MEH, §28.8.3.1.

Finally, I note that individuals enrolled in any Medicaid program are required to report to the Income Maintenance agency, within 10 days of the occurrence, a change in address, income, assets, need, medical expenses or living arrangements which may affect eligibility. *See MEH*, §12.1.

Clearly, the amount of a person's cost share is an amount that is going to change with any change in the variables that are part of the cost share formula. Thus, Petitioner should note that he cannot freeze the cost share by timing his enrollment for a moment when the cost share is at a figure he finds acceptable. It will change with income changes, program changes and changes in his expenses. Finally, those expenses are limited to those permitted as noted above; thus, some expenses Petitioner would like to have deducted, such as telephone, are not allowed. In the end here, changes in the cost share calculations for Petitioner have been the result of changes to the variables and not because of an agency error.

CONCLUSIONS OF LAW

1. That the Division of Hearings and Appeals does have jurisdiction to make a determination on the merits of a cost share issue prior to enrollment in the Family Care program.
2. That the available evidence indicates that the agency has correctly determined a cost share for Petitioner.

THEREFORE, it is

ORDERED

That this appeal 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 Milwaukee,
Wisconsin, this 15th day of February, 2013

\sDavid D. Fleming
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 February 15, 2013.

Milwaukee Enrollment Services
Office of Family Care Expansion