



FH
[REDACTED]

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

In the Matter of

[REDACTED]

FINAL DECISION

MAP/145897

PRELIMINARY RECITALS

Pursuant to a petition filed December 13, 2012, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance (MA), a hearing was held on January 15, 2013, at Kenosha, Wisconsin. At the hearing the parties agreed that the record be held open for 20 days for the issuance of this Interim Decision to provide the petitioner with time to provide additional self-employment information and for the agency to have the time to review all of the new information for review and re-determination of MAPP eligibility. Accordingly, the matter was remanded by way of an Interim Decision. The agency agreed to issue a statement of its review determination, with a copy to the petitioner, to be completed within 20 days of the date of this Interim Decision. The agency produced notices of decision dated December 31, 2012, January 18, 2013, and February 11, 2013, which were received.

The issue for determination is whether the agency has correctly determined petitioner's Medicaid Purchase Plan (MAPP) effective December 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: Lauren Fox

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On November 13, 2012 the agency issued a notice of decision to petitioner stating that effective December 1, 2012 he would not be eligible for MAPP because he did not meet the nonfinancial requirement for working in a paid position or participating in a Health and Employment Counseling (HEC) program.
3. On December 13, 2012, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the discontinuance of the MAPP.
4. At the fair hearing held on January 15, 2013, the petitioner submitted for the first time information regarding self-employment and a new work-in-kind agreement (a/k/a coffee cake for vehicle work).
5. At the request of the petitioner, the record was held open for 20 days for this issuance of an Interim Decision remanding the matter for review and re-determination of the discontinuance of MAPP. Accordingly, the agency produced MAPP budget screens and notices of decision dated December 31, 2012, January 18, 2013, and February 11, 2013, which found that petitioner and his wife were eligible for MAPP December 2012 – February 2013 with no premium, and that effective March 1, 2013 petitioner was eligible with a premium of \$1168, and that his wife had no premium.
6. Petitioner's monthly group size gross income effective March 1, 2013 is \$2900. Petitioner's monthly gross income effective March 1, 2013 is \$1981.

DISCUSSION

The Medicaid Purchase Plan (MAPP) is a subprogram of the Wisconsin Medicaid Program. It allows disabled people who are working or want to work to become or remain Medicaid eligible, even if employed, since there are higher income limits. See *Medicaid Eligibility Handbook (MEH)*, §26.1, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

In order to be nonfinancially eligible for MAPP, individuals must meet all of the following:

1. Meet general MA non-financial requirements.
2. Be at least 18-years-old.
3. Be determined disabled, presumptively disabled, or MAPP disabled by the Disability Determination Bureau, and
4. Be working in a paid position or participating in a Health and Employment Counseling (HEC) program.

Note: Individuals who are receiving MA through SSI's 1619 (b) program are non financially eligible for MAPP. Those persons who are SSI eligible under 1619 (b) can be on SSI Medicaid and MAPP at the same time. These individuals are not receiving an SSI cash benefit because they are working, but they meet certain specific SSI requirements that allow them to keep their categorical eligibility for Medicaid. Because this group is the most likely to move from SSI Medicaid to MAPP, DHS has decided to allow them to be eligible for both at the same time.

See *MEH*, §26.3.1.

To meet the work requirement, a member must engage in a work activity at least once per month, or be enrolled in a Health and Employment Counseling (HEC) program. Consider a member to be working whenever s/he receives something of value as compensation for his/her work activity.

This includes wages or in-kind payments. The exceptions are loans, gifts, awards, prizes, and reimbursement for expenses.

See *MEH*, §26.3.3.

If a member engages in a self-employment activity that generates some compensation, at least once in the calendar month, the individual is employed for purposes of MAPP.

A member does not need to realize a profit from self-employment for it to be defined as work.

See *MEH*, §26.3.3.1.

If there is a serious illness or hospitalization that causes the member to be unable to work, the work requirement can be suspended for up to six months. S/he can continue to be MAPP eligible. The member must contact the IM agency to request the exemption. Have the member complete the Medicaid Purchase Plan (MAPP) Work Requirement Exemption (F-10127). This provision is not available unless s/he:

1. Has been enrolled in MAPP for six months and has paid any applicable premiums prior to the request of an exemption.
2. Is expected to return to work in the next six months.
3. Provides an expected date of recovery.
4. Provides the reason that an exemption is needed (i.e., illness or hospitalization).
5. Has had no more than two exemptions (maximum of six months each) to the work requirement in a three-year time period. The two exemptions cannot be consecutive.

Based on criteria outlined above, the IM agency will approve or deny the request. If a work exemption request is denied, the member has appeal rights in accordance with the Medicaid program.

In the sixth month of an exemption, mail to the recipient a notice indicating the date the Medical Work Exemption will end as well as steps the member may take to continue MAPP eligibility.

See *MEH*, §26.3.4.

Health and Employment Counseling Program (HEC) is a program certified by the Department of Health and Family Services (DHS) to arrange services that help a member reach his/her employment goals. HEC participation can occur for up to nine months with a three-month extension, for a total of 12 months. After six months a member can re-enroll in HEC to meet the eligibility criteria for MAPP, as long as they have not already participated two times within a five-year period. HEC participation is limited to twice within a five-year period, and there must be six months between any two HEC participation periods.

Clients who are not working can meet the MAPP work requirement if participating in a HEC program. If an *applicant* is not currently working and wants to meet with a HEC screener, pend the case for up to 30 days beyond the application processing period. For an ongoing case, pend the case for up to 30 days after the change is reported or eligibility review is completed. This allows time for the screener to determine if the person qualifies for HEC.

If a determination has not been provided by the HEC screener within the thirty days, deny the case. The member is responsible for reporting HEC participation to the IM agency. The IM agency is not responsible for tracking HEC participation.

See *MEH*, §26.3.5.

Here, the agency concluded that the petitioner's 'work in-kind' agreement with his wife did not qualify for the work requirement. At the fair hearing held on January 15, 2013, the petitioner provided, for the first time, information regarding other self-employment as well as a new work in-kind agreement. The record was held open for review and re-determination of MAPP eligibility. The petitioner provided thereafter 2012's self-employment income forms to show that they were engaged in a business known as "██████████". The agency therefore redetermined the eligibility finding that they now met the nonfinancial requirements for work. The agency then redetermined their financial eligibility. It found them eligible for MAPP December 2012 – February 2013 with no premium, and that effective March 1, 2013 petitioner was eligible with a premium of \$1168, and that his wife had no premium. I will not disturb the determinations finding eligibility without a premium, and therefore will review that financial eligibility regarding the premium for petitioner effective March 1, 2013.

As stated above, the MAPP program allows disabled individuals to work but to retain eligibility for MA. Wis. Stat., §49.472; *MEH*, §26.1. The agency looks at income as follows:

The *spouse* and member's net income must not exceed 250% of the FPL (See 39.5 FPL) for appropriate fiscal test group size. To determine this, do the following:

1. Determine family earned income. Count the member and his/her spouse's income if residing together.
2. Deduct the \$65 and ½ of the earned income *disregard* from the spouse and member's earnings.
3. Deduct the member's IRWEs. The result is the adjusted earned income.
4. Determine unearned income. Count the member and his/her spouse's income if residing together.
5. Add the adjusted earned and unearned income together.
6. Deduct \$20 from the combined income.
7. Deduct special exempt income (15.7.2 Special Exempt Income).
8. If a MAPP member receives Social Security payments, subtract the current *COLA* disregard between January 1st and the date the FPL is effective in CARES for that year.

<p>Example 3: Ed's Social Security payment amounts were \$875 a month for the previous year and \$900 for the current year. Calculate the current COLA disregard by subtracting</p>
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the Ed's previous Social Security payment amounts from the current payments. Allow \$25 as the current COLA disregard.

9. Subtract the historical COLA *Disregard* Amount (39.6 COLA) for MAPP members who are also determined to be a 503 (25.1 503 Eligibility) or Disabled *Adult* Child (DAC) (25.2 DAC). Do not allow the historical COLA disregard amount (39.6 COLA) in the premium calculation for MAPP members who are also determined to be a 503 or a DAC.

10. Compare the result to 250% of the FPL (39.5 FPL Table). Include the member's *minor* dependent children (natural or adoptive) when determining fiscal test group size. Do not include the member's stepchildren in the fiscal test group size.

MEH §26.4.2.

According to this policy, the agency budgeted the couple's income at \$2900 and applied the \$20 disregard, bringing the net income to \$2880. They passed the 250% FPL test. In determining *premiums*, the agency calculates a premium using only the member's income, if the member's gross monthly amount exceeds 150% of FPL for the appropriate fiscal test group size. In this case, the group size is two (he and his spouse). 150% of the FPL for a group of two is \$1891.25. See MEH §39.5. The MEH directs the agency to follow these steps:

Steps to calculate monthly premium amount:

1. From gross monthly unearned income, subtract the following:
 - a. Special Exempt Income (15.7.2 Special Exempt Income).
 - b. Standard Living Allowance (39.4.2 EBD Deductions and Allowances).
 - c. Impairment Related Work Expenses (IRWE). For *MAPP*, use only anticipated incurred expenses, past medical expenses are not allowed. (15.7.4 Impairment Related Work Expenses (IRWE)).
 - d. Medical Remedial Expenses (MRE). For MAPP, use only anticipated incurred expenses, past medical expenses are not allowed. (15.7.3 Medical/Remedial Expenses (MRE))
 - e. Current *COLA Disregard* from January 1st through the date the FPL is effective in CARES for that year. 503, DAC, widow/widower disregards allowed in eligibility determinations cannot be allowed in premium calculations.

The balance is the Adjusted Countable Unearned Income. This number may be a negative number.

2. From gross monthly earned income, subtract any remaining deductions from #1. If the result from #1 is a negative amount, change it to a positive number. The balance is the Adjusted Earned Income.
3. Multiply the adjusted earned income by three percent (.03).
4. Add the results of #3 and #1 together.
5. Compare the result from #4 to the Premium Schedule (39.10 MAPP Premiums) to determine monthly premium amount.

MEH, §26.5.1.

According to the budget screen provided, the agency performed these calculations. The petitioner's income of \$1981 received the deduction for the standard living allowance of \$813, to get the \$1168 adjustable earned income. As there were no other deductions, the \$1168 remains as his premium because the policy provides that if the subtotal from the MAPP Premium Calculation Worksheet is more than \$1,025 a month, the premium is equal to the exact whole dollar amount of the subtotal. See MEH, §39.10.

Based on the evidence, the agency made the correct determination. Assuming petitioner finds the premium unfair, I must state that administrative law judges lack equitable powers. See Oneida County v. Converse, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993).

CONCLUSIONS OF LAW

The agency has correctly determined petitioner's Medicaid Purchase Plan (MAPP) benefits effective December 1, 2012 through March 1, 2013.

THEREFORE, it is

ORDERED

The petition for review herein 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 18th day of February, 2013

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on February 18, 2013.

Kenosha County Human Service Department
Division of Health Care Access and Accountability