



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FCP/145923

PRELIMINARY RECITALS

Pursuant to a petition filed December 15, 2012, under Wis. Admin. Code, §DHS 10.55, to review a decision by the Portage County Dept. of Human Services in regard to the Family Care Program (FCP), a hearing was held on January 17, 2013, by telephone.

The issue for determination is the calculation of petitioner's monthly cost share.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Tammy Porter
Portage County Dept. of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Portage County who is enrolled in FCP.
2. Petitioner received several letters regarding her January, 2013 cost share amount. The letters resulted from a number of changes that impacted petitioner's case. First, the system automatically updated petitioner's monthly income to account for a \$20 social security cost of living increase that occurred effective January 2, 2013. Second, petitioner reported a change in her utility payments. Third, the FCP agency reported a decrease in petitioner's monthly cost of prescriptions and over-the-counter medical supplies.

3. In the end, the result was that petitioner's cost share for January was \$221.55, an increase from \$148.07.
4. Petitioner filed this appeal, and the agency was ordered to continue benefits as they were in December, 2012. The county worker then changed the cost share back to \$148.07, which is the amount that petitioner finally owed for January.

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. Stat., §46.286(2)(a), provides that an FCP recipient must pay a cost share based upon income and certain expenses. Wis. Adm. Code, §DHS 10.34(3)(b) provides that cost of care is determined by taking the institutionalized person's income, then making several deductions. The first deduction is a personal needs allowance as provided under 42 C.F.R. §435.726(c). That personal needs allowance is \$890, as set out in the MA Handbook, App. 39.4.2. Another deduction is special housing expenses for costs above \$350 per month. MA Handbook, App. 28.8.3.1. A third deduction is for out-of-pocket medical/remedial expenses. Handbook, App. 15.7.3.

As can be seen, there were changes in the various factors described above. Petitioner's income increased by \$20. Her cost of utilities decreased, which lowered her special housing amount. Her medical expenses also decreased.

I asked Ms. Porter if petitioner would have to pay the \$221.55 cost share for January. She replied that the \$148.07 was set now, and that is what petitioner should pay. There was much discussion about the pending February cost share. The medical expenses will decrease again because the agency now has contracted with three stores to provide various medical supplies for free, and thus petitioner will not have out-of-pocket expenses for those supplies. Petitioner needs to speak with the Community Care representatives to understand the changes (I understood them during the hearing but I am not sure that petitioner did).

I will dismiss the appeal because the January cost share (the only month that petitioner appealed) was set at \$148.07, lower than the amount calculated. Thus there is nothing for me to order the agency to do at this point. If petitioner disagrees with the February cost share, she can file a new appeal, but I believe the matter can be explained to her without an appeal.

CONCLUSIONS OF LAW

Petitioner's January, 2013 FCP cost share was determined to be \$148.07 after petitioner filed this appeal, and therefore there is no issue for the Division of Hearings and Appeals to review.

THEREFORE, it is

ORDERED

That 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 22nd day of January, 2013

\sBrian C. Schneider
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 22, 2013.

Portage County Department of Human Services
Office of Family Care Expansion