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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FCP/145936

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 12, 2012, under Wis. Stat. § 49.45(5) (2011-12), to review a decision by the Dane County Department of Human Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held on January 15, 2013, at Madison, Wisconsin.

The issue for determination is whether back taxes that are withheld from petitioner's monthly Social Security and monthly pension may be deducted from her income when calculating her MA Partnership monthly cost share amount.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED] (not present at January 15, 2012 Hearing)

c/o [REDACTED]  
[REDACTED]

Represented by:

[REDACTED] [REDACTED], petitioner's daughter & Power of Attorney ["POA"]  
[REDACTED]

Respondent:

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

By: Carmen Lord, Member Rights Specialist, Care Wisconsin  
Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**OTHER PERSONS PRESENT:**

Jean Anton, Accounts Receivable Enrollment Manager, Care Wisconsin  
Jennifer Danz, Eligibility Specialist, Care Wisconsin  
Rob Denure, Financial Accountant, Care Wisconsin

ADMINISTRATIVE LAW JUDGE:  
 Sean P. Maloney  
 Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County, Wisconsin and receives MA Partnership program benefits.
2. Petitioner receives monthly Social Security and a monthly pension; back taxes are withheld from the monthly Social Security and monthly pension that petitioner receives.
3. When calculating petitioner's MA Partnership program monthly cost share amount the County did not allow a deduction for the back taxes that are withheld.

### DISCUSSION

A person who is eligible for the MA Partnership program must pay a monthly amount toward their cost of care. This is known as the *cost share*. See, 42 C.F.R. §§ 435.725, 435.726 & 435.735 (2011); *Medicaid Eligibility Handbook* ["MEH"] 30.3.1 & 30.3.3.

For purposes of calculating the cost share a person receiving Partnership Program benefits is considered to be an *institutionalized person*. MEH 27.4.1.1 & 30.3.3. When calculating the cost share certain disregards and deductions against income are allowed. However, in the case of unearned income (such as Social Security and a pension) gross income must be used (taxes are not an allowed disregard or deduction). See, 42 C.F.R. §§ 435.725(c), 435.726(c) & 435.735(c) (2011); Wis. Stat. § 49.45(7)(a) (2011-12); Wis. Admin. Code § DHS 103.07(1)(d) (December 2008); MEH 15.1.5.3, 15.1.6, 15.3, 15.4, 15.4.4 & 15.5.7.

Petitioner's representative points out that if a deduction is not allowed for the back taxes that are withheld petitioner will not have sufficient income to meet her cost of care. Petitioner may be correct -- but the law and policy explained above must still be followed.

This same policy was recently affirmed by the Secretary of Wisconsin Department of Health Services ["DHS"] as applicable to the MA Family Care Program. See, DHA Case No. FCP/141537 (Wis. Di v. Hearings and Appeals; Proposed Decision September 13, 2012; Final Decision January 7, 2013) (DHS).

### CONCLUSIONS OF LAW

For the reasons discussed above, back taxes that are withheld from petitioner's monthly Social Security and monthly pension may not be deducted from her income when calculating her MA Partnership Program monthly cost share amount.

**NOW, 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 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, Room 651, 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 14th day of February, 2013

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\sSean P. Maloney  
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 14, 2013.

Dane County Department of Human Services  
Office of Family Care Expansion