



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FCP/146102

PRELIMINARY RECITALS

Pursuant to a petition filed December 21, 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 February 19, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred in its determination of the cost share for retroactive benefits under the Family Care Program.

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: Tina Anderson

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner was a member of the Family Care Program until May 2012. From the time of initial application until the case closed in May 2012, the petitioner was billed for a cost-share that ranged from approximately \$800 to \$901.
3. In May of 2012, petitioner was due for a review. Notice was properly mailed to petitioner's representative, her daughter [REDACTED]. The review was not completed as petitioner failed to submit required verification about a life insurance policy and her case was closed. The Family Care Program, however, did not receive notice of the closing of petitioner's case and it continued to provide services to petitioner despite her case having closed.
4. During the closed period, petitioner continued to pay the \$901 cost share.
5. Upon learning that the case was closed in October 2012, petitioner submitted a new application for Family Care. Eligibility was determined based on all the information submitted with the new October application. This October application included information regarding certain pension income that had never been budgeted before. Petitioner had provided the pension information to the Department at the time of the initial application in 2011, but the Department failed to budget that pension income. This additional pension income amounted to \$2,348.24 per month.
6. With the budgeting of the pension income in October 2012, petitioner's cost share for the Family Care Program was higher than what had previously been calculated, and what petitioner had been paying up until May 2012. The new cost-share was \$1,759.04.
7. In November 2012, the Department approved the application and enrolled petitioner in the program again. With the new enrollment, the Department granted benefits to pay for the services that were provided after the May closing of the case. The Department accepted the discounted \$901 cost-share for the period from June through July. But, the Department billed petitioner for the correctly calculated cost share for September onward.
8. Petitioner began paying the higher amount as of January 2013. This resulted in an accrual of past due amounts of approximately \$4,900.
9. The Department arranged a payment plan with petitioner by which she would pay an additional \$50 per month until the accrued balance is paid off.

DISCUSSION

The Family Care Program is a subprogram of Wisconsin's Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* § DHS 10.11. An individual who meets the functional and financial requirements for Family Care, *Wis. Stats.* §46.286(1) participates in Family care by enrolling with a Care Management Organization (CMO), *Wis. Admin. Code* § DHS 10.41 which, in turn, works with the participant and his/her family to develop an individualized plan of care. The CMO implements the plan by contracting with one or more service providers.

Individuals who wish to participate in Family Care but who do not meet the financial requirements for coverage under the MA program may receive Family Care coverage upon payment of a cost-share, *Wis. Stats.* §46.286(2); *Wis. Admin. Code* § DHS 10.34(3). A person who is required to contribute appropriate payments to the cost of his care but who fails to make the required contributions is ineligible for Family Care. *Wis. Stat.* § 46.286(2)(c); *Wis. Admin. Code* §§ DHS 10.32(1)(f) & 10.34(4)(a).

This appears to be a unique case. The Department admits that it has no rule that specifically permits a retroactive increase in cost-share. It also admits that its own manual requires a 10-day notice for increase to the cost-share. But, this did not happen in this case. The Department takes the position that there was no retroactive increase because the case was closed from May to October. I agree. Instead, what

happened here is that the Department offered retroactive benefits for the correct cost-share rather than the incorrectly calculated discounted cost-share.

Petitioner does not dispute the existence or amount of the pension. Petitioner also does not dispute that services were provided and were of value in excess of the cost-share amount. Petitioner also does not dispute that she received benefits at significant discount for more than a year due to the Department's failure to budget the pension. Petitioner only argues that the Department should not be charging the new increased cost-share for the period prior to the November enrollment.

The Department argues that any benefits granted prior to the November enrollment are part of the new application and benefit period and are not a continuation of the previous cost-share calculation. The Department points out that that period ended when petitioner failed to complete a timely review. I am convinced that notice for the required review was properly sent to petitioner at her daughter's address in April. The record reflects that if the petitioner had completed the review in May then the cost-share would have been calculated using the pension income. This would have resulted in the correct cost share being effective as of June 1, 2012. The petitioner is essentially arguing that she should get even greater benefit from the agency error and continue to receive the incorrect discounted cost-share that she had already benefitted from for the previous year.

It is a fact that the Program did not budget the pension properly. For that reason, petitioner received more than a year of Family Care benefits at the incorrect cost-share at a discount of nearly \$800-\$900 per month. The Department is not seeking those funds from petitioner which would amount to more than \$9,000. The Department approved the October application and determined the correct cost-share. It then offered benefits retroactive at the cost-share it determined.

It is unfortunate that petitioner finds hardship in paying the increased cost-share as requested by the Department (or, in not paying the incorrect discounted amount for that period). But, if the Department offered her the option of rejecting medical assistance coverage for benefits from May 2011 until her October application, petitioner would certainly not choose that in that she could then be billed by the Family Care agency for the services she received during those months. I simply do not find error in the Department's decision to bill petitioner at the *correct and accurate* rate for the months it has agreed to offer retroactive coverage prior to her October 2012 application.

CONCLUSIONS OF LAW

The Department did not err in its decision to bill petitioner at the correct and accurate rate for the months it has agreed to offer retroactive coverage prior to her October 2012 Family Care application.

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 Madison,
Wisconsin, this 5th day of March, 2013

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on March 5, 2013.

Milwaukee Enrollment Services
Office of Family Care Expansion