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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/147328

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 14, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance – Family Care Program, a hearing was held on April 10, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent correctly assessed petitioner's Family Care Program (FCP) cost share.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Shannon Alberti  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is a participant in the Family Care Program (FCP). She filed this appeal to contest her FCP cost share because she cannot afford the newly increased amount.

3. Petitioner has gross unearned income of \$1,913.00. Petitioner had a cost share as of at least January 1, 2013 in the amount of \$98.40.
4. In the determination of cost share effective January 1, 2013, Petitioner was credited with a basic needs allowance of \$890, a special exempt income allowance of \$63.60, a special housing amount of \$608.70, and medical/remedial expenses in the amount of \$252.30.
5. In the determination of cost share effective March 1, 2013, petitioner's credits for the special housing amount and for the medical/remedial expenses decreased (special housing amount decreased to \$372.19 and medical/remedial expenses decreased to \$197.50).

### DISCUSSION

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 is \$2130 effective January 1, 2013. *MEH, §39.4.1 and Operations Memo12-63; issued November 28, 2012.* As Petitioner's gross income is \$1913.00, it is apparent that she falls into the group B category of FCP eligibility. Group B FCP members must make a cost share payment. *Id.*, §28.8.3.

Cost sharing is the monthly amount a waivers participant has to contribute toward the cost of 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 single 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.*

Petitioner argues that she should not have to pay the increased cost share as she simply cannot afford to pay that amount monthly. While I certainly empathize with her situation, there is no such cost share affordability exemption (see, generally, MEH, Chapters 28 – Home and Community Waivers, and 29 - Family Care) and the Division of Hearings and Appeals does not have authority to create exemptions.

At hearing Respondent testified that Petitioner's utilities and Colonial Penn matter had initially been budgeted incorrectly. Additionally, Petitioner reported fewer medical/remedial expenses at a subsequent review. Corrections and updated financial information led to an overall reduction in credits applied to petitioner's budget. As a result, the cost share increased. The Petitioner testified that the change in cost share was questionable, since the Petitioner's financial situation had not changed. The respondent addressed this by acknowledging its errors in the initial cost share determination; *i.e.*, failure to disregard utility bill arrears in determining monthly utility cost and inclusion of the Colonial Penn amount in the budget.

I have reviewed the record in this matter, including all exhibits, and conclude that, based upon the evidence available to the agency at the time of the calculation of Petitioner's cost share for March 1, 2013, that cost share amount of \$389.71 is correct.

### **CONCLUSIONS OF LAW**

That the available evidence indicates that Petitioner's cost share has been correctly calculated.

**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 10th day of May, 2013

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\sPeter McCombs  
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 May 10, 2013.

Milwaukee Enrollment Services  
Office of Family Care Expansion