



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/147634

PRELIMINARY RECITALS

Pursuant to a petition filed February 26, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Dane County Department of Human Services in regard to Medical Assistance-related Family Care Partnership benefits, a hearing was held on June 4, 2013, by telephone. Hearings set for April 1 and April 30, 2013, were rescheduled at the petitioner's request.

The issue for determination is whether the Department correctly discontinued the petitioner's Family Care (FC) Partnership coverage effective March 1, 2013, due to cost share nonpayment.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Rob De Nure
Financial Accountant
Care Wisconsin

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. The petitioner was an ongoing participant in the Family Care Partnership program. This is a means-tested program, designed to help elderly persons to continue living in the community rather than a nursing home. Participants with income over a certain level are required to pay a

cost share as a condition of ongoing eligibility. The petitioner has had a cost share obligation for several years. As of May, 2013, the petitioner's monthly cost share was \$483.75, based on gross income of \$1,736.

3. As of May 31, 2013, the petitioner had accumulated a cost share arrearage of \$7,611.66. The agency issues periodic statements to each participant that identifies an overdue cost share amount. The Department also issued written notices to the petitioner at his correct address that advised him of his monthly cost share amounts on August 4, 2011, October 10, 2011, January 16, 2012, April 2, 2012, June 18, 2012, July 12, 2012, December 3, 2012, and March 5, 2013 (notices are issued when the amount changes, not necessarily every month). The petitioner has made no payment against his cost share since making a \$50 payment in March 2012. The petitioner did appeal an adverse cost share fair hearing decision in 2012, and the circuit dismissed that appeal as meritless on January 15, 2013.
4. On February 18 and 21, 2013, the Department issued written notice to the petitioner advising that his FCP would be discontinued effective February 28, 2013. The basis for discontinuance was failure to pay his cost share obligation. Exhibit 1, p.15. The petitioner filed the instant appeal, and aid has been continued pending appeal.

DISCUSSION

The Family Care Partnership 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 under Wisconsin Statutes, § 46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. See also, *Medicaid Eligibility Handbook* at §§29.1 and 30.1, *et seq.*, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. Whenever the local Family Care program notifies a person that s/he is ineligible for the program, imposes or changes a cost share, or when the CMO discontinues an ongoing service in the service plan, the client is allowed to file a fair hearing request.

An eligible person's income is reviewed to determine if the recipient has enough income to be responsible for payment of a monthly "cost share." *MEH*, §§ 29.3 and 30.3.1. There is no dispute that the petitioner's income levels at all times relevant herein have caused him to be subject to a cost share liability, with the exception of December 2011 and January 2012 (when he lived in a hotel following an eviction). It is also undisputed that the petitioner has failed to make payments since March 2012, and that his arrearage as of May 31, 2013, was \$6,187.41.

The FC program requires that cost share payments be made by the recipients as a condition of continued eligibility. Wis. Admin. Code §DHS 10.32(1)(f). The code does contain a provision regarding waiver of current cost share amounts:

(4) PAYMENT OF COST SHARE REQUIRED.

(a) Except as provided in **par. (b)**, ***a person who is required to contribute to the cost of his or her care but who fails to make the required contributions is ineligible for the family care benefit.***

(b) If the department or its designee determines that the person or his or her family would incur an undue financial hardship as a result of making the payment, the department may waive or reduce the requirement. Any reduction or waiver of cost share shall be subject to

review at least every 12 months. A reduction or waiver under this paragraph shall meet all of the following conditions:

1. The hardship is documented by financial information beyond that normally collected for eligibility and cost-sharing determination purposes and is based on total financial resources and total obligations.
2. Sufficient relief cannot be provided through an extended or deferred payment plan.
3. The person is notified in writing of approval or denial within 30 days of providing necessary information to the department or its designee.
(*emphasis added*)

Wis. Admin. Code §DHS 10.34(4)(a),(b) (2009). The code says that the department “may” waive/reduce the cost share requirement—it is not required to do so. The petitioner’s financial behavior is not that of a person who is trying to pay his bills: despite receiving regular disability income, he has been evicted, he is \$1,400 behind to his current landlord, he has not made even partial payment to the Partnership program for over a year, and he testified that he is in trouble with the IRS. He is also excessively litigious, having filed at least 29 appeals (often unsuccessful) with this office. Given the petitioner’s financial behavior, I see no reason to waive or reduce the current cost share if the petitioner were still eligible, or to prevent his disenrollment. I see nothing in the code that empowers me to reduce the arrearage itself. Based on the size of the arrearage and the petitioner’s noncompliance with any good faith effort to get the arrearage paid, I conclude that discontinuance of his eligibility for failure to pay the FC Partnership cost share was reasonable.

CONCLUSIONS OF LAW

1. The Department correctly sought to discontinue the petitioner’s FC Partnership certification effective February 28, 2013, due to repeated failure to pay his cost share obligation.

THEREFORE, it is

ORDERED

That the petition 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 6th day of June, 2013

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on June 6, 2013.

Dane County Department of Human Services
Office of Family Care Expansion