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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MGE/148028

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 15, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a hearing was held on May 07, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the petitioner must pay a MA deductible even though she is a disabled adult child (DAC).

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Anne McIntyre  
2675 N Mayfair Road Suite 420  
Wauwatosa, WI 53226

Respondent:

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

By: Josie Lomonte

Waukesha County Health and Human Services  
500 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner was determined disabled by the Social Security Administration (SSA) before the age of 22. She is now 53 years old.

3. Petitioner's father passed away on February 21, 2012.
4. Petitioner received Supplemental Security Income (SSI) until September 30, 2012.
5. On September 19, 2012 the State of Wisconsin issued a notice to petitioner stating that petitioner's federal SSI was ending on September 30, 2012 because she:

became eligible for, or you got an increase in, Title II Disable Adult Child benefits. Because your Federal SSI cash payment is ending, your State SSI cash payment will end. You got Medicaid because you were eligible for SSI. Even though your SSI payments are ending, your Medicaid has been extended until 12/31/2012, so that we can see if you meet other rules that will let you to continue to get Medicaid.

See Petitioner's Exhibit A.

6. Previous to October 1, 2012 petitioner's DAC benefit was \$628. On October 1, 2012 petitioner began receiving her monthly DAC benefit in the amount of \$1370.
7. Petitioner reapplied for MA and on January 31, 2013 the State of Wisconsin issued a notice of decision to petitioner stating that she would be eligible for MA if she met a deductible in the amount of \$4621 for the time period of October 1, 2012 to March 31, 2013. See Petitioner's Exhibit B.

### DISCUSSION

An individual is eligible to receive Social Security benefits as a dependent from his or her parents if over age 18 and determined disabled before age 22. See 20 C.F.R. §404.350. Such an individual is defined by the Social Security Administration as a "disabled adult child" (DAC) and may also be eligible for SSI under the same provisions. See 20 C.F.R. §416.906. However, it is possible for a DAC to be *financially* ineligible for SSI if his/her income from other sources, including the Social Security Survivor's benefit, is too high for the SSI program. This is what occurred in this case.

The *Medicaid Eligibility Handbook (MEH)* contains the following requirements for finding a DAC to be MA eligible with a disregard of his/her DAC payments:

A Disabled Adult Child (DAC) is:

1. At least 18 years old at the time SSI was lost.
2. Classified by the Social Security Administration as disabled before age 22.
3. Receives an OASDI (DAC) payment that is based on the earnings of a parent who is disabled, retired, or deceased.

**Note:** Receipt of Railroad Retirement is not considered OASDI for this policy.

4. Was receiving SSI, but lost SSI eligibility because the OASDI (DAC) payment exceeded the SSI income limits.

*MEH*, §25.2.1, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

If the DAC meets these conditions, the DAC payments are disregarded in determining whether she is under the income limit for categorical, SSI-related MA (i.e., whether she meets the income test for SSI). See *MEH* §25.2.2. Further, an individual who loses their SSI eligibility due to the receipt of an initial DAC benefit **or increase in their current DAC benefit** is entitled to all of the following disregards when determining their eligibility for Medicaid:

1. The DAC payment, either initial or increase which made them ineligible for SSI.

2. The SSI-E supplement, if the individual was receiving the E supplement at the time they became ineligible for SSI.
3. All COLAs received since the last month that the individual was eligible for and received both OASDI and SSI benefits.

*MEH*, §25.2.4 (emphasis added).

The agency did not process this case using these DAC policies and petitioner's DAC increase of \$742 was not disregarded. Based on the foregoing I am remanding this matter so that the agency may redetermine petitioner's application made on December 28, 2012 using the appropriate DAC disregards cited above. Petitioner's income was noted to have fluctuated some for the time periods in question. Because certain verifications of income or otherwise may be necessary, I am allowing 30 days for the redetermination to occur.

### **CONCLUSIONS OF LAW**

The agency failed to process petitioner's application using the appropriate DAC disregards.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the agency with instructions to redetermine petitioner's application made on December 28, 2012 using the appropriate DAC disregards and to issue a notice of decision regarding same to the petitioner. The agency shall take these actions within 30 days of this decision.

### **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 Milwaukee,  
Wisconsin, this 14th day of May, 2013

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\sKelly Cochrane  
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 14, 2013.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability