



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/148125

PRELIMINARY RECITALS

Pursuant to a petition filed March 19, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by Care Wisconsin in regard to the Family Care Program, a telephonic hearing was held on April 22, 2013, at Madison, Wisconsin. At the request of the parties, the record was held open for more information to be submitted to the Division of Hearings and Appeals (DHA) and the petitioner; and then a response by petitioner to DHA. Care Wisconsin timely sent a 51 page statement and evidence to DHA (and to petitioner) which is received into the hearing record. However, petitioner failed to submit any response to DHA.

The issues for determination are: a) whether the Family Care program (FCP) correctly increased the petitioner's room and board charges from \$631.98 to \$642.98 effective April 1, 2013, due to any increase in petitioner's SSI unearned income; and b) whether the petitioner is responsible to pay the outstanding balance of his unpaid Family Care Program (FCP) room and board charges for his stay at a CBRF since September, 2011.

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: Rob DeNure, financial accountant
Care Wisconsin, Inc.
2800 International Lane
P.O. Box 14017
Madison, WI 53708-0017

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 61 year old resident of Dane County who has been enrolled as a Family Care member through Care Wisconsin since April 1, 2011.
2. Petitioner has been a resident of the [REDACTED] CBRF since about September 2, 2011.
3. The agency completed Formula to Determine Amount of Income Available to Pay for Room and Board in Substitute Care for the Petitioner with an effective date of September, 2011. The cost of petitioner's room and board at the facility was the following: a) \$610.38 per month as of 2011; b) \$631.98 per month during 2012; and c) \$642.98 as of April, 2013. The amount determined to be available to the Petitioner to pay room and board was his total federal and state SSI of \$690.38 during 2011, \$711.98 during 2012, and \$722.78 during 2013 (but Care Wisconsin did not budget petitioner's increased 2013 SSI until April, 2013).
4. The petitioner did not pay his CBRF room and board charges during the period of September, 2011 through January, 2012, thus creating an unpaid balance of \$3,053.43 from that period.
5. Beginning in February, 2012, petitioner started paying \$500 per month of his \$631.98 monthly room and board charge thus creating an unpaid monthly remaining balance of \$131.98.
6. As of April, 2013, petitioner has a balance of \$5,859.40 for his unpaid room and board charges.
7. The total cost of petitioner's room and board charges at [REDACTED] were above the petitioner's total monthly income. Care Wisconsin granted petitioner room and board "supplementation" to reduce his room and board charges so that petitioner had sufficient income to pay his room and board charges with \$80 for personal usage per month.
8. Petitioner was timely informed by Care Wisconsin that he would be charged room and board for his stay at the CBRF based upon his total Supplemental Security Income (SSI) and State SSI unearned income: a) \$690.38 - \$80 = \$610.38 for 2011 (income available for petitioner's personal use per month); b) \$711.98 - \$80 = \$631.98 for 2012; and c) \$722.78 - \$80 = \$642.78 as of April, 2013.
9. Care Wisconsin sent many notices to the petitioner of his past due room and board bills beginning in about November, 2011 and issuing a new notice to petitioner each month. See documents submitted by Care Wisconsin while record held open.
10. The petitioner was timely notified that he was responsible to pay for his room and board charges at the CBRF in his Care Wisconsin Admission Agreements as of September, 2011.

DISCUSSION

The Family Care (FC) Program, which is supervised by the Department of Children and Families (DCF), 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 Wisconsin Administrative Code Chapter DHS 10 (Family Care). The program is operated and administered in each county by a Care Management Organization (hereafter referred to as "CMO"). In this case, the CMO is Care Wisconsin.

The federal government directs the State to not pay for "room and board" charges for a FC recipient. See, §1915(c) *Home & Community-Based Waiver Application*, § 6C, available at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/Waivers.html>. Therefore the portion of the RCAC's charge attributable to room and board should not be paid by the

MCO. Medicaid waiver funds may not be used to pay for costs associated with room and board in a substitute care living arrangement. Because room and board cannot be covered with Medicaid waiver funds it is generally paid for with the participant's resources. Medicaid Waivers Manual Appendix J-1.

In a CBRF setting, a distinction is made between the cost of care/supervision and cost of room and board. The FC agency calculates cost share for a member cover costs related to care/supervision. Room and board is the responsibility of the member. The MCO is required to calculate the amount of income a member has available for room and board based on the member's monthly earned income and deductions for health insurance premiums, medical/remedial expenses, special exempt income, family maintenance allowance, spousal income allocation and cost share. There is also an earned and unearned income disregard and discretionary income allowance. This calculation is required to be done at the time the member enters the facility. DLTC Numbered Memo Series 2010-05, March 5, 2010. The remaining income is the income that is available to the member for room and board. This is referred to as the member's room and board obligation.

Memo 2010-05 is a clarification of how to determine room and board expenses for people who live in substitute care; it is not a change in the definition of medical/remedial expenses. That Memo establishes the procedures for determining the amount of income a member has available to pay for the cost of room and board based upon calculations of forms applicable to all adult long term care program in Family Care counties. Substitute care facilities include community-based residential facilities (CBRF), residential care apartment complexes (RCAC), and all types and sizes of adult family home (AFH). The petitioner has resided in a CBRF since September, 2011.

Memo 2010-05 also indicated that in determining when it was cost-effective to supplement room and board payments, and identified three procedures that needed to be addressed: 1) Standardized policies and procedures for determining the amount of income a member has available to pay for the cost of room and board; 2) Standardized methods for establishing the cost of room and board in facilities and homes; and 3) Standardized procedures for documenting when it is cost effective to supplement room and board costs for an individual member.

According to that memo, an MCO can choose to supplement a member's excess room and board costs if the member would need nursing home care without the supplementation, and if the supplementation is less than the cost of room and board in a nursing home. In this case, the Petitioner chose a facility with a room and board rate that exceeded the amount of his income available for room and board. Care Wisconsin determined that petitioner met the criteria for supplementing petitioner's room and board bills, and Care Wisconsin did decide to supplement the petitioner's room costs as explained in Findings of Fact #7 above.

During the April 22, 2013 hearing, petitioner was upset at both the increase in his room and board charge from \$631.98 to \$642.98 as of April 1, 2013, but was unable to provide any reliable evidence to refute that Care Wisconsin had correctly calculated that increase in his room and board charge due to an increase in his SSI income. See Findings of Fact #3, #7 and #8. The petitioner was also very upset about his large unpaid room and board bill, but was unable to identify any error in the calculation of the outstanding balance of his charges. See above Findings of Fact. Petitioner alleged that he was not informed about his unpaid bills, but Care Wisconsin provided copies of letters confirming that he was notified of those monthly unpaid bills since at least November, 2011.

The petitioner also alleged that he was not informed that he was required to pay for room and board charges at the CBRF. However, there is no specific notice requirement for the agency as the waiver document is clear that Medicaid waiver funds may not be used for room and board in a CBRF, as

indicated in the above law and policy. Accordingly, based upon the above, I must conclude that: a) the Family Care program (FCP) correctly increased the petitioner's room and board charges from \$631.98 to \$642.98 effective April 1, 2013, due to any increase in petitioner's total SSI unearned income; and b) petitioner is responsible to pay the outstanding balance in his Family Care Program (FCP) room and board charges for his stay at the CBRF since September, 2011.

CONCLUSIONS OF LAW

1. The Family Care program (FCP) correctly increased the petitioner's room and board charges from \$631.98 to \$642.98 effective April 1, 2013, due to any increase in petitioner's total federal and State SSI unearned income.
2. The petitioner is responsible to pay the outstanding balance in his Family Care Program (FCP) room and board charges for his stay at the CBRF since September, 2011.

THEREFORE, it is

ORDERED

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 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 15th day of July, 2013

\sGary M. Wolkstein
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 July 15, 2013.

Care Wisconsin
Office of Family Care Expansion