



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/148237

PRELIMINARY RECITALS

Pursuant to a petition filed March 25, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Department of Family Care - MCO in regard to Medical Assistance, a telephonic hearing was held on July 17, 2013, at Milwaukee, Wisconsin. At the request of petitioner, hearings set for May 1, 2013, June 12, 2013, and June 18, 2013 were rescheduled. At the request of the parties, the record was held open for written closing arguments to be sent to the Division of Hearings and Appeals (DHA). Those arguments were timely received at DHA and received into the hearing record.

The issue for determination is whether the Family Care Program correctly denied the petitioner's request for proration of his March, 2013 Family Care cost share.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED], Ombudsman
State of Wisconsin Board on Aging and
Long Term Care
1402 Pankratz St., Suite 111
Madison, WI 53704

Respondent:

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

By: Chris Sobczak, supervisor
Milwaukee County Department of Family Care - MCO
901 N 9th St., Room 307A
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who is disabled. He resides in an independent apartment.
2. The petitioner is diagnosed with coronary artery disease, low vision, neuropathy, CVA, depression, Diabetes Mellitus on Insulin, hypercholesterolemia, lymphedema, and PVD.
3. The petitioner is enrolled in the Milwaukee County Family Care (FC) Program and receives supportive services from ANS Home Care.
4. The petitioner's monthly income is Social Security Disability Income (SDDI) of \$1,412.00.
5. The Milwaukee Enrollment Services (MES) sent a notice to the petitioner stating that his monthly cost share was \$419.70 as of March 1, 2013. The petitioner's cost share is based upon the member's income and allowable deductions.
6. The petitioner is enrolled in Family Care program as a Group B Waiver member because he has an income at or below the Community Waivers special income limit of \$2,130.00, per Medicaid Eligibility Handbook § 39.4.
7. The petitioner timely paid his March, 2013 cost share.
8. Milwaukee Enrollment Services (MES) incorrectly determined petitioner was over the Family Care asset eligibility limit.
9. Milwaukee Enrollment Services incorrectly sent a February 11, 2013 notice to the petitioner stating that he was disenrolled from the Family Care Program effective March 1, 2013 due to assets above the FC asset limit.
10. MES sent a March 8, 2013 notice to the petitioner stating that he was reinstated in the FC program as of March 1, 2013 with a cost share of \$419.70 (reinstatement actually took place as of March 11, 2013).
11. The petitioner did not contest the general amount of his monthly FC cost share, but disputed the amount of his cost share only for the month of March, 2013.
12. The petitioner sent a request to MES requesting that his March, 2013 cost share be prorated from March 11, 2013 – March 31, 2013 (removing his disenrolled period of March 1, 2013 to March 11, 2013 which would result in a reduced March, 2013 cost share of \$284.30). See Ms. [REDACTED]'s closing argument, page 1.
13. MES denied petitioner's request for proration of his March, 2013 cost share on the basis that there is no legal or policy authority to authorize proration of monthly cost share amounts in the Family Care program.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services (DHS), is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

Wis. Adm. Code, §DHS 103.075(6)(c) details the determination of the cost share for someone "institutionalized" for spousal impoverishment purposes. I note that an "institutionalized spouse" includes a person eligible to receive community waiver services including FCP. Wis. Adm. Code, §DHS 103.075(3)(e). §DHS 103.075(6)(c) provides that cost of care is determined by taking the institutionalized person's income, then making several deductions.

A person who receives both a Medical Assistance card and Family Care, and is not on “regular MA” because of excess income, is classified as being in Group A, Group B, or Group C. Group A is for person who receives SSI or certain other benefits that are not relevant here. The petitioner does not fit within Group A. **Group B status is available to a person who has gross income below the Community Waivers MA income limit of \$2,130.** *MEH*, § 39.4.1. **A Group B recipient** may have health insurance premiums, certain medical/remedial expenses and a Personal Maintenance Allowance (possibly including housing expenses) subtracted from his/her income before a cost share is computed. 42 C.F.R. §435.726; Wis. Admin. Code §DHS 103.07(1)(d). The petitioner’s gross income of \$1,412.00 places him in the income limit for Group B status. Therefore, the petitioner is relegated to **Group B status**.

A person in Group C status must expend income that exceeds the \$591.67 “medically needy income limit of \$591.67, minus the \$20 unearned income disregard and the health insurance premium expense. *MEH*, 39.4.1 – “EBD Medically Needy Limits.” The agency would subtract a \$20 disregard, the health insurance premium, and the \$591.67 income limit from the petitioner’s income here. There is no authority for subtraction of a Personal Maintenance Allowance from a Group C recipient’s income.

During the July 17, 2013 hearing, the petitioner did not contest the general amount of his monthly FC cost share, but contested his cost share only for the month of March, 2013. Petitioner explained that he was disputing the amount of his cost share for March, 2013 because he believed that cost share should be prorated. Petitioner’s representative, [REDACTED], explained that Mr. [REDACTED]’s was temporarily disenrolled from the Family Care program because the income maintenance unit incorrectly determined that he was over the FC asset limit. Ms. [REDACTED] established with testimony and evidence that petitioner was without his FC provided services (transportation, twice daily home delivered meals, nursing services including thrice weekly wound care, and supportive home care/attendant care) for the period of March 1, 2013 until March 11, 2013. Petitioner argued that due to his lack of FC services or eligibility during that 10 day period his cost share for that month should be prorated. Ms. [REDACTED] provided in her closing argument the calculation for petitioner’s requested proration reduction from \$419.70 to \$284.30 for his March, 2013 cost share.

However, this ALJ requested that both parties submit specific statements regarding what legal or policy basis provides the authorization for any proration of cost share in the Family Care program. In her written closing argument, Ms. [REDACTED] referred to two legal citations: DHS 10.55(1)(b) and § 46.287(2)(a)(1)(b), Wis. Stats. In reviewing those citations, neither section makes any statement whatsoever regarding proration of cost share. Those statements only indicate generally the right to a fair hearing regarding generally the calculation of a member’s cost share amount. The Family Care program responded that there is no policy authorizing any proration of cost share and provided relevant sections to that FC policy. This ALJ reviewed the relevant law and policy and found no basis for proration of FC cost share. The petitioner certainly had the legal right to his cost share hearing before DHA. However, neither during the hearing nor in the closing argument was petitioner or his representative able to provide any legal or policy basis authorizing proration of monthly cost share amounts in the Family Care program.

While I understand petitioner’s argument that it is “unfair” that he be charged cost share for the portion of the month (March 1 -11, 2013) that he did not receive FC services, FC law and policy do not establish the legal authority to prorate a FC member’s monthly cost share. Ms. [REDACTED] was a zealous advocate, and clearly documented the services that Mr. [REDACTED] did not receive during early March. However, petitioner is basically requesting DHA to grant equitable relief from the full monthly cost share for March. ALJs are not authorized to act in equity, and thus I must conclude that I am without authority to grant the requested proration. Accordingly, based upon the above, I conclude that the Milwaukee Department of Family Care correctly denied the petitioner’s request for proration of his March, 2013 Family Care cost share.

CONCLUSIONS OF LAW

The Milwaukee Department of Family Care correctly denied the petitioner's request for proration of his March, 2013 Family Care cost share.

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 25th day of September, 2013,
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 September 25, 2013.

Milw Cty Dept Family Care - MCO
Office of Family Care Expansion
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