



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

In the Matter of

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

DECISION

CWA/148287

PRELIMINARY RECITALS

Pursuant to a petition filed March 26, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance-related Family Care (FC) program, a hearing was held on April 23, 2013, by telephone. A hearing set for April 16, 2013, was rescheduled at the petitioner's request.

The issue for determination is whether the Department correctly determined the petitioner's FC cost share effective March 1, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

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

Respondent:

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

By: Tom Miller, Supr.

Western Region for Economic Assistance, at
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Monroe County, and receives FC as a household of one person.
2. The petitioner, age 87, is an ongoing participant in FC. Her case was reviewed in February/March 2013, and income verification was received on March 20. On March 22, 2013, the Department issued written notice to the petitioner advising that her FC cost share amount would increase to **\$1,907.33** monthly, effective March 1, 2013.
3. The petitioner has gross monthly income consisting of \$583 in Social Security, \$721 from an annuity, and \$1,215 from a VA pension, for a total of \$2,519. Her Medicare monthly health insurance premium of \$104.90 was subtracted from Social Security, to arrive at the \$583.
4. The petitioner lives in a residential care setting (an RCAC). The Department determined that she would be responsible for the “room and board” portion of her monthly bill.
5. The petitioner’s cost share increased from its prior level in 2012 (\$1,803.33) because the petitioner’s income increased (\$27 from Social Security, \$61 from VA, \$36 from annuity).

DISCUSSION

The Family Care 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 in the Wisconsin Administrative Code, Chapter DHS 10. See also, *Medicaid Eligibility Handbook* at §29.1 *et seq.*, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

In this case, the petitioner has been found eligible for FC at the comprehensive level. 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.” See, <http://www.dhs.wisconsin.gov/mltc/2013/2013Contract.htm> (the FCP standard contract), and the *MEH*, § 29.3. A recipient may request a hearing on the determination of the cost share amount. Wis. Stat. §46.287(2)(a)1b.

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 \$2,094. *MEH*, § 39.4.1. The petitioner’s gross income of \$2,519 places her over the income limit for Group B status. Therefore, the petitioner is relegated to Group C status. To be *eligible* under Group C, the recipient’s income minus expenses must be under \$591.67.

A person eligible in Group C will then be subject to a cost share for 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.”

In somewhat confusing fashion, the FC program allows for subtraction of medical/remedial expenses paid by the client as a deduction from her income to determine eligibility for the program. See the Department’s form F-20919. However, the Department’s instructions go on to direct the agency to *then* compute the *cost share/spend-down* amount by only subtracting the \$20 unearned income disregard, a health insurance premium, and the \$591.67 medically needy income limit from her income. That is what the agency did, as shown in the calculation below:

Gross Income	\$2519.00
Minus unearned income disregard	- 20.00
Minus health insurance premium	- 000.00
Minus “medically needy” income limit	<u>- 591.67</u>
Cost Share/monthly spend-down	\$1907.33

The petitioner does not contest her gross income amount. The petitioner has argued in a prior fair hearing that she has expenses that have not been considered in setting her cost share. That argument was addressed and rejected in prior fair hearing decision, FCP/141540 (August 31, 2012). I therefore conclude that, before reviewing the Room and Board determination, the cost share was correctly calculated.

After an FC recipient is found to be eligible and has a cost share established, the MCO creates a budget that sets out what the MCO will pay for on the petitioner’s behalf. 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 a residential facility’s charge attributable to room and board should not be paid by the MCO. In this case, the facility’s room and board charge was identified as being \$660 (total monthly residential care charges are usually higher). Therefore, the MCO initially declined to pay \$660 out of the monthly residential charge. The balance of the residential care charges can be paid by FC. *FCP Contract*, Addendum XIII, A-14. However, the MCO performed another calculation (referenced in the prior decision), that further supplemented the amount paid to the RCAC by the MCO.

A petitioner can request an “undue hardship” partial waiver under Wis. Admin. Code § DHS 10.34(4)(b). This is really what the petitioner is asking for here. Clearly, a hardship is present if the recipient’s income remaining after the cost share is not enough to pay the room and board charge at the facility, because the recipient could not continue to live there. The code language says that the Department *may* grant a hardship waiver – it is not required to do so. The hardship waiver should only be used when it is impossible for the recipient to cover her care costs, and it is granted for a 12-month period. In the prior decision, I found that no undue hardship was present. I have now had more experience in deciding this type of case, and have begun to grant partial cost share waivers for recipients who are paying income taxes on some portion of their income. The recipient has no discretion as to whether or not she can pay income taxes, so a hardship is present.

Because the petitioner’s 2012 tax returns are not in the hearing record, I cannot determine whether the petitioner paid income taxes on any portion of her income (such as the annuity) and cannot calculate the amount of the needed waiver to cover the monthly amount of the tax liability. The petitioner may wish to send a copy of her 2012 tax returns (schedules not needed) to me within the Rehearing period described below. *If I receive the tax returns in time and observe that she did pay income taxes in 2012, I will amend my Decision to direct a re-calculation of the cost share with subtraction of her income tax liability, under the guise of an undue hardship partial waiver of the cost share.*

CONCLUSIONS OF LAW

1. The petitioner's FC Group C cost share was correctly determined to be \$1,907.33.

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 11th day of July, 2013

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



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 11, 2013.

La Crosse County Department of Human Services
Bureau of Long-Term Support
Dunswit@xplornet.ca