



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CWA/148880

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 19, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Jefferson County Department of Human Services in regard to Medical Assistance, a hearing was held on June 04, 2013, at Jefferson, Wisconsin.

The issue for determination is whether the agency erred in not allowing medical and remedial deductions for over the counter supplements or with regard to reimbursement for payments to petitioner's niece for night cares.

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: Julie Ihlenfeld

Jefferson County Department of Human Services  
Workforce Development Center  
874 Collins Rd.  
Jefferson, WI 53549

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Jefferson County.
2. Petitioner uses a variety of over the counter supplements.

3. Petitioner gets funding for self-directed personal care (SDPC) through IRIS. 12.05 per hour for 159 hours per month. The IRIS calculation of this allocation included personal cares needed during the night.
4. The agency calculated petitioner's cost share on April 17, 2013 and sent notice indicating a \$417.14 cost share for IRIS. The calculation included zero deductions for medical and remedial expenses.
5. Petitioner appealed this cost share notice.

### DISCUSSION

First, petitioner stated at the time of the hearing that she disputed the \$119 monthly amount due toward her overdue cost share balance. This sum was the result of an Overdue Cost Share Payment Agreement signed by petitioner in January. It does not appear this petitioner has appeal rights from this liability as this was not an adverse action by the agency but was an agreed upon sum to be paid monthly. Furthermore, even if the \$119 monthly amount could be considered an adverse action by the agency, petitioner would have had 45 days in which to appeal that liability. The Agreement was signed by petitioner on January 17, 2013 (see ex. #4). This would have made the deadline for any appeal in early March. As this request for hearing was filed on April 22, 2013, any appeal of the \$119 liability, if there are indeed appeal rights, is untimely and I do not have jurisdiction to address that issue.

It is the notice from the agency dated April 17, 2013 that appears to be the document from which petitioner filed a timely appeal. This document informed petitioner of the \$417.14 cost share for IRIS.

The IRIS program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. It is a self-directed personal care program.

The federal government has promulgated 42 C.F.R. §441.450 - .484 to provide general guidance for this program. Those regulations require that the Department's agent must assess the participant's needs and preferences (including health status) as a condition of IRIS participation. *Id.*, §441.466. The Department's agent must also develop a service plan based on the assessed needs. Further, "all of the State's applicable policies and procedures associated with service plan development must be carried out ...." *Id.*, §441.468.

IRS financial eligibility is the same as for all home and community-based waiver programs. MA Handbook, Appendix 37.1.3. The calculation of a cost share is described in the Handbook at Appendix 28.8.3.1. From income there are several possible deductions including the personal needs allowance that is currently set at \$878, health insurance, medical/remedial expenses, and a special housing amount equal to the amount of housing costs above \$350.

Petitioner raised two specific issues at hearing relating to the calculation of the cost share. The first is that the agency did not calculate the medical remedial deduction properly. Petitioner provided IRIS with a list of her out of pocket costs (see exhibit #4). The agency indicated that it was told by IRIS that petitioner had no allowable medical remedial expenses. The IRIS program testified that the items claimed by petitioner are over-the-counter items and are, therefore, not allowable as a deduction. I reviewed the list of items provided by petitioner in a letter dated April 16 (see ex. #4). The list includes mostly supplements like vitamins, minerals, and fiber supplements. According to the DHS Division of Long Term Care Updated Medical and Remedial Expenses Checklist, over-the-counter drugs (specifically noted as vitamins and mineral products) are not allowable for Family Care and Iris members as a deduction. Similarly, laxatives are also noted as not allowable. Petitioner argues that these have been recommended by her physician. But, they are over-the-counter supplements and the Department

guidance seems quite clear. It does not appear that the agency or the program erred in not allowing the items claimed as deductions by petitioner. Petitioner may wish to speak with her program representative about other funding options for these supplements as she may be able to redirect some of the funding she already has chosen to put toward other things.

Petitioner also raised an issue involving payment of 50 or 60 dollars per night to her niece for supervising her during the night. The issue was not articulated clearly and I am not sure whether it has anything to do with the appeal from the notice of the cost share. I note, however, that the IRIS program has indicated that petitioner already get funding for personal cares during the night. Petitioner argued that the payments to her niece were allowed previously and implied that it is no longer allowed. Petitioner referred to documentation that would support this assertion. She had not submitted the documentation to this ALJ prior to hearing as required. I allowed petitioner an opportunity to submit documents to me after the hearing. I did not receive any documentation. I cannot find any error by the county or the program as petitioner did not explain the issue or provide any support.

### **CONCLUSIONS OF LAW**

The agency did not err in the calculation of the cost share.

**THEREFORE, it is**

**ORDERED**

That this appeal 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 16th day of July, 2013

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\sJohn P. Tedesco  
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 16, 2013.

Jefferson County Department of Human Services  
Bureau of Long-Term Support