



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/148937

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed April 22, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to the (Medical Assistance-based) Family Care Program (FC), a hearing was held on June 12, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the FC program has correctly computed the petitioner's FC cost share effective April 1, 2013.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
By: [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703  
By: Bryan Williams, HSPC Sr.  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County, and is a household of one person.

2. The petitioner, age 85, is an ongoing participant in FC. On March 7, 2013, the Department issued written notice to the petitioner advising that her FC cost share amount would increase to \$3,056.90 monthly, effective April 1, 2013.
3. The petitioner has gross monthly income consisting of \$347 in Social Security and \$3,550.91 from a civil service pension, for a total of \$3,897.91. She pays a monthly health insurance premium of \$229.34, which is subtracted from her income for FC purposes.
4. The petitioner lives in a residential care setting. The Department determined that she would be responsible for the “room and board” portion of her monthly bill, which the Department determined was a cost of \$750. The petitioner pays income taxes on her pension income, in an amount unknown in this hearing record. A pension payment statement from April 2011 is in the record, and shows that the petitioner was having \$415 monthly withheld to pay federal and state income taxes; the petitioner received a tax refund for 2012.
5. The petitioner’s cost share increased from its prior level in 2012 (\$2,892.39) because the petitioner’s income increased by \$69.62, and her health insurance premium decreased by \$94.89.

### 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 \$3,897 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	\$3897.91
Minus unearned income disregard	- 20.00
Minus health insurance premium	- 229.34

Minus “medically needy” income limit - 591.67  
 Cost Share/monthly spend-down        \$3056.90

The petitioner does not contest her gross income amount, or the health insurance premium cost. The petitioner argues that she has expenses that have not been considered in setting her cost share. Specifically, she pays income taxes on the pension, and some other costs have recently increased. However, I can find no authority for deducting these items for a Group C recipient’s cost share. 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 \$750 (total monthly residential care charges are usually higher). Therefore, the MCO declined to pay \$750 out of the monthly residential charge. The balance of the residential care charges can be paid by FC. *FCP Contract*, Addendum XIII, A-14.

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. After payment of her \$3,550.91 cost share, \$229.34 health insurance premium and \$750 room and board charge, the petitioner has zero remaining for payment of her income taxes and other expenses. Because the petitioner is in “negative” financial territory in this calculation, and has no discretion as to whether or not she can pay income taxes, a hardship is present. Because the petitioner’s 2012 tax returns are not in the hearing record, I cannot calculate the amount of the needed waiver to cover the monthly amount of the tax liability. This matter will be remanded to give the petitioner a 10-day window to submit her 2012 income tax returns to Bryan Williams or his designee for an undue hardship waiver adjustment.

### CONCLUSIONS OF LAW

1. The petitioner’s FC Group C cost share was correctly determined to be \$3,550.91.
2. *If* the petitioner timely submits her 2012 tax returns to the agency, the agency shall reduce the April 2013 through March 2014 cost share amount via undue hardship partial waiver by the monthly average of the petitioner’s income tax liability.

**THEREFORE, it is**

**ORDERED**

That the petition is remanded to Milwaukee Enrollment Services with instructions to:

- (1) Allow the petitioner to submit a copy of her 2012 federal and state income tax returns *within 10 days* of the date of this Decision, and

- (2) *If* the returns are timely received, calculate or cause to be calculated a new cost share for the 4/1/13 – 3/31/14 period by granting an undue hardship partial waiver of the cost share in the amount of the petitioner's average monthly income tax liability from 2012, *within 20 days* of the date of this Decision. In all other respects, the petition is dismissed. If the petitioner does not submit the tax returns within 10 days of this Decision, the petition shall be dismissed in its entirety.

## **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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

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

Milwaukee Enrollment Services  
Office of Family Care Expansion