



FH
[REDACTED]

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

In the Matter of

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

DECISION

MAP/148978

PRELIMINARY RECITALS

Pursuant to a petition filed April 26, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on June 05, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the expenses claimed by petitioner as medical remedial expenses and impairment related work expenses should be deducted from petitioner's income in calculation of her MAP premium.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner is employed by the [REDACTED] [REDACTED] [REDACTED]. She makes telemarketing calls to try to raise money for the organization. She does this work from her home. She is not reimbursed for any of her expenses related to the work she does.
3. On March 26, 2013, the Department sent notice to petitioner that she was eligible for the MAPP Program but would be liable for a \$350 premium. The calculation does not include any deductions from petitioner gross monthly income for Medical Remedial Expenses (MRE) or Impairment Related Work Expenses (IRWE).
4. On April 23, 2013, petitioner's representative contacted the agency noting certain IRWE. The e-mail to the agency does not mention MRE.
5. An agency representative named "[REDACTED]" replied by e-mail the same day that the expenses would be allowed if petitioner were self-employed. [REDACTED] specifically noted that they would be able to deduct medical expenses.
6. Petitioner filed an appeal from the March 26 premium notice.

DISCUSSION

The petitioner receives benefits under the Medicaid Purchase Plan, which allows disabled persons to work and receive medical assistance if their income falls below 250% of the federal poverty level after excluding those amounts found in 42 USC 1382a (b). Wis. Stat. § 49.472(3)(a). Those whose income exceeds 150% of the federal poverty level, whether earned or unearned, must pay a premium. Wis. Stat. § 49.472(4)(b).

The Medicaid Eligibility handbook includes deductions from monthly gross income of medical remedial expenses and impairment related work expenses:

15.7.3 Medical/Remedial Expenses (MRE)

Medical and Remedial Expenses (MRE) are used in:

1. the home and community-based waiver programs ,
2. patient liability calculations for residents of a medical institution, and
3. cost share and Medicaid Purchase Plan ([MAPP](#)) premium calculations.

Medical expenses are anticipated incurred expenses for services or goods that have been prescribed or provided by a professional medical practitioner (licensed in Wisconsin or another state). The expense is for diagnosis, cure, treatment, or prevention of disease or for treatment affecting any part of the body. These are expenses that are the responsibility of the member, and cannot be reimbursable by any other source, such as Medicaid, private insurance, or employer.

The following are examples of medical expenses:

1. Deductibles and co-payments for Medicaid, Medicare, and private health insurances.
2. Health insurance premiums.
3. Bills for medical services which are not covered by the Wisconsin Medicaid program.
4. For purposes of meeting a Medicaid deductible, medical services received before the person became eligible for Medicaid. (Past medical bills cannot be used for MAPP premium calculations.)

Remedial expenses are costs incurred for services or goods that are provided for the purpose of relieving, remedying, or reducing a medical or health condition. These are expenses that are the responsibility of the member and cannot be reimbursable by any other source, such as Medicaid, private insurance, or employer.

Some examples of remedial expenses are:

1. Case management.
2. Day care.
3. Housing modifications for accessibility.
4. Respite care.
5. Supportive home care.
6. Transportation.
7. Services recognized under s.46.27, Wis. Stats.
8. Community Options Program, that are included in the person's service plan.

Remedial expenses do not include housing or room and board services.

15.7.4 Impairment Related Work Expenses (IRWE)

Impairment Related Work Expenses (IRWE) are expenses used to determine eligibility for Medicaid, MAPP eligibility and premium calculations. IRWEs are anticipated incurred expenses by the member related to the member's impairment and employment. The expense cannot be one that a similar worker without a disability would have, such as uniforms. The expense cannot be reimbursable by a legally obligated third party such as Medicaid, private insurance, or the member's employer. If an anticipated IRWE is later paid by an unanticipated source it is still allowable for past months in which it was budgeted, but not for future months.

Example 2: On March 25, Cecil was told by Harvey's Auto Repair Shop that his wheelchair accessible van required repairs to fix the specialized door ramp. Cecil received an estimate of \$2,000 for the repairs. The \$2,000 estimate was determined to be a standard charge for this type of repair in the community.

On March 26, Cecil applied for Medicaid in Milwaukee County. At this time the anticipated expense of the van repair was deducted from Cecil's income.

Cecil delayed making the repairs until May 27, when the van's wheelchair accessible door completely quit working. At that time Cecil's friend Robin paid Harvey's Auto Repair Shop for the repairs to Cecil's van door. Cecil reported the repairs and the source of the money for the repairs to his IM worker.

Cecil's IM worker should not deduct the anticipated cost of the van repairs for any subsequent eligibility and premium determinations.

Deduct any EBD person's expenses which:

1. Do not exceed his/her gross monthly earned income (plus room and board income, if any).
2. Are reasonably related to his/her earned income. Expenses which are reasonably related to earned income include those incurred in performing on the job and improving the person's ability to do the job.

Bills from months prior to the months for which eligibility is being determined are not an allowable IRWE. This is true even if it is currently being paid.

Determine a standard charge for the item or service based on what is representative for the member's community. If you count an expense as an IRWE, do not also use the expense as a Medical/Remedial Expense (MRE).

Some examples of IRWEs are: Modified audio/visual equipment, typing aides specialized keyboards, prostheses, reading aids, vehicle modification (plus installation, maintenance, and associated repair costs), and wheelchairs.

Do not allow the expense of getting to and from work as an IRWE, unless the expense is related to the member's disability.

The petitioner's argument in this case is that she informed the County of MRE's and IRWE's and the County refused to deduct these from gross monthly income. At the time of the hearing, the Department representative did not have any information or argument as to why the claimed expenses were refused.

First, with regard to the claim of MRE's, I note that petitioner included in her exhibits a variety of documents described as receipts for medical and prescription co-pays. In her testimony, she stated that she sent all these, along with the IRWE receipts to the worker. But, I note that petitioner's representative, in the e-mail to the worker, only mentions the IRWE. She mentions a service animal and computer paper and type of work petitioner does. She mentions that she is including documentation of expenses "related to her disability and ability to work." The response from [REDACTED] clearly states that the submitted expenses are not allowable but "dependent care, support obligations, medical expenses, shelter, and utilities" would be permitted to be deducted. Based on these facts, I conclude that the MRE information was not submitted to the agency. If the documentation was not provided, then there was no error in not including the MRE as a deduction. *If petitioner would like to provide thorough documentation to the agency at this point, it may result in a change to the premium from this point forward.*

As for the claimed IRWE's, petitioner has submitted several specific items she claims are recurring and qualify as IRWE's. First, the petitioner claims that the cost of braille computer paper should be deducted. Petitioner is a telemarketer and understandably must create records of her work which are then communicated to her employer. I am perplexed by the assertion that the employer does not pay for these expenses. But petitioner credibly stated this was the case and I have no evidence to the contrary and accept it as fact. The problem with the Braille paper is that while petitioner included receipts for various things, including veterinarian bills, printer ink, and her phone bill, she did not document the cost of braille paper (unless the braille paper is the expense reflected in the receipt at p. 9 of petitioner packet which is marked as ex. #1. I am, however, convinced that the cost of braille paper should be an IRWE in this particular case. Petitioner will be required to document this expense to the agency in order to have it deducted.

Petitioner's job is as a telemarketer. I am convinced that the presence of a working telephone line is related to her work. But, the expense is also required, according to the rule above, to be related to the person's impairment as well: "The expense cannot be one that a similar worker without a disability would have." Certainly, a telemarketer without a disability would also need to have a working telephone line, and Internet (if that is related to the work). Petitioner also includes on the submitted receipt a cost of \$130.02 for her cell phone. I see no reason to allow a cell phone as an IRWE.

Petitioner also includes receipts for computer supplies and printer ink. Similarly, these do not appear to be related to petitioner's impairment as any worker, disabled or not, would need computer supplies and printer ink to do such a job.

Finally, petitioner requests a deduction for costs relating to her service animal. While I fully understand that the service animal is related to petitioner's impairment (she is blind), I do not understand how the animal is related to her work as a telemarketer who makes phone calls to raise money for an organization.

CONCLUSIONS OF LAW

The Department must include the anticipated and incurred expenses of braille paper as a medical remedial expense in its calculation of the MAPP premium.

THEREFORE, it is

ORDERED

The matter is remanded to the Department and its county agent with instructions to obtain verification from petitioner relating to the expense of braille paper that is used by petitioner for her work for the [REDACTED], and to calculate that expense as an impairment related work expense as part of the MAPP premium calculation. The application of that deduction must be retroactive to May 1, 2013. New notice, with new appeal rights, must be issued to petitioner if there is any change in her premium amount. These actions must be completed within 10 days.

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 12th day of July, 2013

\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 12, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability