



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

FCP/149107

PRELIMINARY RECITALS

Pursuant to a petition filed April 30, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Dept. of Family Care - MCO in regard to Family Care (FC) benefits, a hearing was held on June 19, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner continues to qualify for FC benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
By: [Redacted]
[Redacted]
[Redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Alison Gunia, Supr.
Curative FC Team
Milw Cty Dept Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

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.
2. The petitioner has diagnoses of traumatic brain injury (TBI), bilateral hearing loss, chronic pain – left humerus, left clavicle, left rib left femur, bilateral ankle fractures, fracture of the hip, and past

illegal drug use. When evaluated for FC in July 2012, the petitioner met the nursing home level of care, and his FC program benefits continued.

3. The petitioner was re-evaluated in 2013. His condition had improved. On March 18, 2013, the agency advised the petitioner that he no longer met the nursing home care level.
4. The agency then determined whether the petitioner could remain financially eligible for FC as a non-nursing home level care case. It determined that his income was too high, and that he should be disenrolled from FC effective April 30, 2013. The petitioner timely appealed, and his aid was ordered continued through the pendency of this appeal.
5. The Department issued an array of confusing notices to the petitioner. On March 18, 2013, a notice was issued advising that Medicaid and FC were ending April 1, 2013, due to lack of income verification and excess income. On March 27, a notice was issued advising that FC would remain open for April. On April 9, the Department issued a more accurate notice advising that the petitioner's FC was ending May 1, 2013, for failure to meet a nursing home care level. It also advises that the petitioner could receive Medicaid services if he meets a \$1,621.92 deductible in the six-month May 1 – October 31 period. On May 3, a notice was issued that reiterated the \$1,621.92 deductible, and advised that the petitioner was not eligible for FC effective June 1, 2013.

On May 20, the Department issued a notice to the petitioner advising that his FC was open for May 2013. This was probably due to the requirement that his aid be continued pending an appeal result. On May 21, the Department issued a notice to the petitioner advising that his FC was open for June 2013 (again, probably as aid continuation pending appeal).

6. In evaluating the petitioner's financial eligibility, the agency considered the petitioner's \$652 in Social Security benefits, part-time earnings from Wisconsin Athletic Club, and a \$550 rent expense. The Social Security benefits and rent expense are not in dispute.

DISCUSSION

The petitioner does not object to dis-enrollment from FC at the nursing home level; his stated desire is to retain Medicaid coverage. Although the Division of Hearings and Appeals suggested that a worker from DHCAA-MiLES be present at hearing, that branch of the Department did not appear. Apparently, that branch has a role in determining financial eligibility that is relevant to the petitioner's case.

The petitioner asserts that he has more updated earnings records and medical expense documentation that should be reviewed by the Department regarding his financial eligibility. The parties present at hearing agreed to the following schedule for submission of verification and its evaluation:

- (1) The petitioner shall submit updated income (other than Social Security) and expense verification to Alison Gunia within 14 days of the date of this Decision,
- (2) Ms. Gunia will forward the received verification to the Income Maintenance unit at 1220 W. Vliet, Milwaukee, within 24 days of the date of this Decision, and
- (3) The Income Maintenance unit shall redetermine the petitioner's financial eligibility within 34 days of the date of this Decision, and communicate its findings back to the CMO. The CMO will then advise the petitioner of the result of this redetermination.

CONCLUSIONS OF LAW

1. The petitioner does not contest that he is no longer at the nursing home level of care for FC purposes.
2. The parties agreed to a re-evaluation of the petitioner's benefit status as described in the Discussion above.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to do the following:

- (1) The petitioner is given up to 14 days from the date of this Decision to submit updated income (other than Social Security) and expense verification to Alison Gunia,
- (2) Ms. Gunia will forward the received verification to the Income Maintenance unit at 1220 W. Vliet, Milwaukee, within 24 days of the date of this Decision, and
- (3) The Income Maintenance unit shall redetermine the petitioner's financial eligibility within **34** days of the date of this Decision, and communicate its findings back to the CMO. The CMO will then advise the petitioner of the result of this redetermination.

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 24th day of June, 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 June 24, 2013.

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