



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/149435

PRELIMINARY RECITALS

Pursuant to a petition filed May 15, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Calumet County Department of Human Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on July 16, 2013.

The issue for determination is whether federal taxes that petitioner's must pay on her monthly pension and monthly Social Security may be deducted from her income when calculating her MA Family Care Program ["FCP"] monthly cost share amount.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

[Redacted], petitioner's Power of Attorney ["POA"]



Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Lynn Brunner, ES Supervisor
Ann Knaus, ESS
Calumet County Department of Human Services
206 Court Street
Chilton, WI 53014-1198

OTHER PERSON PRESENT:

[Redacted], husband of [Redacted]

ADMINISTRATIVE LAW JUDGE:
 Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 87 years old) is a resident of Calumet County.
2. Petitioner receives a monthly pension and monthly Social Security; she must pay federal taxes on that income; for the year 2012 those taxes were a total of \$256.00.
3. When calculating petitioner's FCP monthly cost share amount the County did not allow a deduction for the federal taxes that petitioner must pay.

DISCUSSION

A person who is eligible for FCP must pay a monthly amount toward their cost of care. This is known as the FCP *cost share*. See, Wis. Stat. § 46.286(2)(a) (2011-12); Wis. Admin. Code § DHS 10.34(2) (November 2009); *Medicaid Eligibility Handbook* ["MEH"] 29.3.1. A person who is required to pay an FCP cost share but fails to make the required payments is ineligible for FCP. Wis. Stat. § 46.286(2)(c) (2011-12); Wis. Admin. Code § DHS 10.34(4)(a) (November 2009)¹.

When calculating the FCP cost share certain disregards and deductions against income are allowed. See, Wis. Stat. § 46.286(2)(a) (2011-12); Wis. Admin. Code § DHS 10.34(2) (November 2009). However, in the case of unearned income, such as a pension and Social Security, gross income must be used (taxes are not an allowed disregard or deduction). MEH 15.1.5.3, 15.1.6, 15.3, 15.4, 15.4.4 & 15.4.10. Petitioner does not dispute that this is the case. However, petitioner argues that taxes should be deducted. Nevertheless, the policy not allowing such a deduction, as explained above, must still be followed. In fact, the DHA Secretary has recently reaffirmed this policy. See, DHA Case No. FCP-141537 (Final Decision January 7, 2013; Proposed Decision September 13, 2012) (DHS).

CONCLUSIONS OF LAW

For the reasons discussed above, federal taxes that petitioner's must pay on her monthly pension and monthly Social Security may not be deducted from her income when calculating her FCP monthly cost share amount.

¹ If the Wisconsin Department of Health and Services ["DHS"] determines that the person or his or her family would incur an undue financial hardship as a result of making the FCP cost share payment DHS may waive or reduce the amount. Wis. Admin. Code § DHS 10.34(4)(b) (November 2009). There is no evidence in the record of this matter that DHS has granted such a waiver or reduction in this case. Petitioner may wish to contact DHS and apply for such a waiver. She may do so by writing a letter to: **Bureau Director; Office of Family Care; Wisconsin Department of Health Services; P.O. Box 7850; Madison, Wisconsin 53707-7850.**

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 19th day of July, 2013

\sSean P. Maloney
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 19, 2013.

Calumet County Department of Human Services
Office of Family Care Expansion