



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

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

DECISION

FCP/149790

**PRELIMINARY RECITALS**

Pursuant to a petition filed June 4, 2013, under Wis. Admin. Code, §DHS 10.55, to review a decision by the Jefferson County Dept. of Human Services in regard to the Family Care Program (FCP), a hearing was held on July 23, 2013, by telephone.

The issues for determination are whether the agency correctly determined a monthly spend-down and if so, whether the Division of Hearings and Appeals can reduce it.

**PARTIES IN INTEREST:**

Petitioner:

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

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703  
By: Julie Ihlenfeld  
Jefferson County Dept. of Human Services  
874 Collins Rd.  
Jefferson, WI 53549

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [Redacted]) is a resident of Jefferson County. She is enrolled in the FCP.
2. Petitioner has gross monthly income of \$2,463.73 from social security and a pension. That income puts her in the FCP Group C because it is above the \$2,130 Group B limit.

3. Based upon petitioner’s monthly income the agency determined that she has a monthly spend-down for FCP of \$1,537.06. Petitioner was notified of the spend-down by a notice dated April 2, 2013.
4. Petitioner has monthly expenses for her home, which is for sale, of \$466 per month.

**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 Statute, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. See also Medicaid Eligibility Handbook, Chapter 29, available at [www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm](http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm).

Petitioner is eligible for FCP. 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.” MA Handbook, §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 FCP, 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. 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 \$2,130. Handbook, §39.4.1. A Group B recipient may have health insurance premiums, certain medical/remedial expenses and a Personal Maintenance Allowance (possibly including housing expenses) subtracted from her income before a cost share is computed. 42 C.F.R. §435.726; Wis. Admin. Code, §DHS 103.07(1)(d). Petitioner’s gross income of \$2,463.73 places her over the income limit for Group B status. Therefore 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 in Group C will then be subject to a spend-down for income that exceeds the “medically needy income limit of \$591.67, minus the \$20 unearned income disregard and the health insurance premium expense. Handbook, §39.4.1 – “EBD Medically Needy Limits.”

In somewhat confusing fashion, FCP 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 *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. The medical/remedial expenses are shifted to the calculation of the person’s room and board. The agency thus calculated the spend-down as shown below:

Gross Income	\$2,463.73
Minus unearned income disregard	- 20.00
Minus health insurance premium	-315.00
Minus “medically needy” income limit	<u>- 591.67</u>
Monthly spend-down	\$1,537.06

Petitioner argues that she has expenses that have not been considered in setting her spend-down. Specifically she pays \$466 per month for her home. She also has a phone bill, food, clothing, and

expenses for her dog. However, I can find no authority for deducting these items for a Group C recipient's spend-down. I must conclude that the spend-down was correctly calculated.

After an FC recipient is found to be eligible and has a cost share established, the Managed Care Organization (MCO – in this case the MCO is Care Wisconsin) 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. Therefore the portion of the RCAC's charge attributable to room and board should not be paid by the MCO. As noted the cost of medical/remedial expenses including prescription co-pays is included in that calculation, and if petitioner finds that expenses are higher than the \$146 per month previously allowed she can verify higher expenses to Care Wisconsin.

The upshot is that it appears the spend-down and other calculations were done correctly. The major expense not accounted for is petitioner's home expense; petitioner's son testified that after expense only \$1,103 is left to pay the spend-down, but if the \$466 home cost is taken out \$1,569 would be available. Furthermore any home costs can be recouped when the home is sold. Costs of a pet would not be a basis for finding undue hardship. Either the pet would have to be given up or the person's family would have to cover the costs.

There is an "undue hardship" partial waiver under Wis. Admin. Code, §DHS 10.34(4)(b). 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. 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 I cannot find that to be the case here.

I conclude that there is no basis to decrease petitioner's calculated monthly spend-down.

### **CONCLUSIONS OF LAW**

The agency correctly calculated petitioner's monthly FCP spend-down.

**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 31st day of July, 2013

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\sBrian C. Schneider  
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 31, 2013.

Jefferson County Department of Human Services  
Office of Family Care Expansion