



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/150588

PRELIMINARY RECITALS

Pursuant to a petition filed July 11, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services ["MiLES"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on August 20, 2013.

The issue for determination is whether taxes that petitioner's must pay 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:

[REDACTED] [REDACTED] (not present at August 20,
2013 Hearing)
[REDACTED]
[REDACTED]
[REDACTED]

Represented by;

[REDACTED] [REDACTED], petitioner's son & Power
of Attorney ["POA"]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Lillian Alford, Quality Assurance Improvement Coordinator, CMO
Chris Sobczak, HSPC, SR
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (73 years old; CARES # [REDACTED]) is a resident of Milwaukee County.
2. In 2012 petitioner drew down her Individual Retirement Account ["IRA"] to pay for her care; this created a U.S. federal tax liability in the amount of \$3,541.31 and a Wisconsin State tax liability in the amount of \$1,736.52 (a total of \$5,277.83).
3. When calculating petitioner's FCP monthly cost share amount the County did not allow a deduction for the 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, taxes are not an allowed disregard or deduction. MEH 15.1.5.3, 15.1.6, 15.3 & 15.4. 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, taxes that petitioner's must may not be deducted from her income when calculating her FCP monthly cost share amount.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

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.**

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 27th day of August, 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 August 27, 2013.

Milwaukee Enrollment Services
Office of Family Care Expansion