



FH
[REDACTED]

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

In the Matter of

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

DECISION

MGE/150927

PRELIMINARY RECITALS

Pursuant to a petition filed July 29, 2013, under Wis. Stat., §49.45(5), to review a decision by the Marathon County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on September 4, 2013, by telephone.

The issue for determination is whether the county correctly determined petitioner's monthly available income.

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Sherry Seibert
Marathon County Dept. of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner resides in a nursing home and receives nursing home MA with a monthly cost of care responsibility. In May, 2013, the county updated petitioner's income after receiving information that his social security would be reduced partially to repay a Veterans Administration overpayment.

3. The county made the change but petitioner's monthly cost of care did not change. As a result petitioner's social security is \$141.15 less each month but the county still budgets the full payment, and thus petitioner's cost of care remains the same. Petitioner is required to pay \$1,046 each month to the nursing home.

DISCUSSION

Treatment of unearned income for the MA program is prescribed by specific MA rules. The state MA statute instructs the Department to use federal Supplemental Security Income (SSI) rules for counting income. Wis. Stat., §49.47(4)(c). The federal SSI rules as delineated in the Code of Federal Regulations (C.F.R.) declare that income is counted, from whatever source, unless it is specifically exempted in the SSI rules:

§416.1121 Types of unearned income.

(a) *annuities, pensions, and other periodic payments.*

This income is usually related to prior work or service.

It includes, for example, private pensions, Social Security benefits, . . .

20 C.F.R. §416.1121.

The federal rules also explain "we may include more or less of your unearned income than you actually receive." 20 C.F.R. §416.1123(b). That section continues by explaining:

We also include more than you actually receive if amounts are withhold from unearned income because of a garnishment, or to pay a debt or other legal obligation, or to make any other payment such as payment of your Medicare premiums.

20 C.F.R. §416.1123(b)(2).

This same standard is specifically included by the Department in written MA policy. See the Medicaid Eligibility Handbook, Appendix 15.1.5. Under the Handbook, App. 15.3.21, a reduction of social security can be disregarded only if the reduction is to repay a social security overpayment.

Wisconsin MA law states the following:

A recipient who is a patient in a public medical institution or an accommodated person and has a monthly income exceeding the payment rates established under 42 USC 1382(e) may retain \$45 unearned income or the amount of any pension paid under 38 USC 3203(f), whichever is greater. Except as provided in s. 49.455(4)(a), the recipient shall apply income in excess of the \$45 or the amount of any pension paid under 38 USC 3203(f), whichever is greater, less any amount deducted under rules promulgated by the department, toward the cost of care in the facility.

Wis. Stat., §49.45(7)(a).

None of the state and federal statutes cited in Wis. Stat., §49.45(7)(a) provide relief to petitioner. Petitioner's income exceeds the various limits in 42 USC 1382(e). Finally, Wis. Stat., §49.455(4) refers to income protected for the spouse of an institutionalized person, which does not apply here.

Rules promulgated by the Department allow only the following deductions, in the parts relevant here, from the petitioner's patient liability share of his medical care:

- (1) A personal needs allowance as provided under sec. 49.45(7)(a), Wis. Stats.;
- (2) If employed, the first \$65 and one-half of the remainder of gross earnings;
- (3) The cost of health insurance;
- (4) Necessary medical or remedial care recognized under state law but not covered by MA;
- (5) The actual amount paid by the institutionalized person for support of a person for whom the institutionalized person is legally responsible . . . ;
- (6) The monthly cost of maintaining a home when the conditions of s. HFS 103.06(1)(b)3. are met...

Wis. Admin. Code, §DHS 103.07(1)(d).

None of these exceptions allow a deduction or disregard for the recovery of a Veterans recovery from Social Security benefits. Therefore, I have no authority to allow petitioner's request. The agency computed his countable net income, and consequent patient liability, in conformance with federal and state law, and it must be affirmed.

CONCLUSIONS OF LAW

A Veterans Administration recovery taken from petitioner's social security is not deducted from his income for MA purposes

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 10th day of September, 2013

\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 September 10, 2013.

Marathon County Department of Social Services
Division of Health Care Access and Accountability