



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/150958

PRELIMINARY RECITALS

Pursuant to a petition filed July 29, 2013, under Wis. Admin. Code, §DHS 10.55, to review a decision by Milwaukee Enrollment Services in regard to the Family Care Program (FCP), a hearing was held on September 25, 2013, by telephone.

The issue for determination is whether petitioner's monthly cost share was calculated correctly.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Bryan Williams
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is eligible for FCP. On December 2, 2012, the agency notified petitioner that he had to meet a monthly cost share of \$344.94 to continue FCP eligibility. The cost share was based upon petitioner's monthly income of \$1,539 social security with deductions for basic needs and housing.
3. Petitioner filed this appeal on July 29, 2013 after his failure to pay his cost share was mentioned by the agency.

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 in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

Wis. Stat., §46.286(2)(a), provides that an FCP recipient must pay a cost share based upon income and certain expenses. Wis. Adm. Code, §DHS 10.34(3)(b) provides that cost of care is determined by taking the institutionalized person's income, then making several deductions. The first deduction is a personal needs allowance as provided under 42 C.F.R. §435.726(c). That personal needs allowance is \$890, as set out in the MA Handbook, App. 39.4.2. Another deduction is special housing expenses for costs above \$350 per month. MA Handbook, App. 28.8.3.1. A third deduction is for out-of-pocket medical/remedial expenses. Handbook, App. 15.7.3.

As a first point, I note that petitioner's appeal is untimely. The notice of the change in cost share was sent on December 3, 2012, effective January 1, 2013. An appeal concerning an FCP issue must be filed within 45 days of the effective date of the action. Wis. Admin. Code, §10.55(3). The notice informed petitioner that he needed to appeal by February 18, 2013 if he wished to do so. This appeal was filed on July 29, 2013, and thus was filed untimely. Generally if an appeal is filed untimely the Division of Hearings and Appeals does not have jurisdiction to review the merits of the case. Nevertheless, I will look at the cost share issue because it is ongoing, and if the cost share is calculated incorrectly it makes no sense to require a person to keep paying the incorrect amount.

I can find no error in the way the cost share was determined. The agency correctly gave the \$890 personal needs allowance and a \$304.06 special housing allowance based upon petitioner's rent and utilities. The agency gave nothing for medical/remedial expenses because petitioner has not provided evidence that he has out-of-pocket medical expenses.

At the hearing petitioner testified that his prescription costs have averaged \$200-\$300 per month. Under the rules those costs cannot be considered until petitioner presents proof of them to his FCP case manager. I strongly urge him to get those costs to Ms. Fedorchak so that his cost share can be reduced.

CONCLUSIONS OF LAW

The agency correctly determined petitioner's FCP cost share.

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 27th 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 27, 2013.

Milwaukee Enrollment Services
Office of Family Care Expansion