



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

In the Matter of

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

DECISION

CWA/150987

PRELIMINARY RECITALS

Pursuant to a petition filed July 27, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on September 04, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's cost share has been correctly calculated.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[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

Jill Speer - IRIS

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner's daughter is her power of attorney (POA) and represented Petitioner at the hearing.

3. Petitioner was sent a notice in July 2013 that informed her that her account had an outstanding cost share balance that dated back to approximately May 2011 in the amount of \$664.00. It was discovered in a routine review of agency records.
4. Petitioner's daughter/POA has been paying her cost share. Petitioner's cost share was \$332.00 per month during the period from some point in 2010 through September 2011.
5. In May 2011 apparently two months of payments were missed as a check did not clear the bank. This is the arrearage that the July 2013 notice seeks to collect.
6. In the process of inquiring as to why the agency was alleging an arrearage, in essence questioning the whole cost share calculation, Petitioner's POA learned that Petitioner's expenses had not been properly accounted for during some or all of the period when the cost share was \$332.00. Petitioner's cost share is correctly calculated at the present time - it has been it has been \$0.00 to \$7.00 since October 2011.

DISCUSSION

Petitioner's daughter does not object to paying the arrearage if it is correct but argues that a record review ought to look at the whole account. She testified that she received notices indicating that there was a cost share in 2010 and early 2011 but the actual calculations are not shown so there was no way of knowing whether or not the calculations were correct. Typically, there is a 45 day time limit for filing an appeal with the Division of Hearings and Appeals but that assumes proper notice and here there were no Notices of Decision available from 2010-2011 at the hearing so there is nothing to demonstrate that Petitioner's daughter was made aware of the detail of the calculations.

With a lack of documents to demonstrate how the cost share was calculated and the credible testimony of Petitioner's daughter it seems apparent that the cost share calculation should be checked for both over or underpayment. With permission from Petitioner's daughter I did talk to the agency's contact at the Department of Health Services for this program and was told that if it had been aware of the circumstances here they would also have had the agency check the records to see whether there is an under or overpayment in this case. I note, too, that there was some evidence offered at the hearing that there was a communication issue between the IRIS program and the economic support agency.

CONCLUSIONS OF LAW

That evidence is not sufficient to demonstrate that Petitioner's cost share for the period from 2010 through September 2011 was correctly calculated thus there may not be an arrearage in this case.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency with instructions to take the steps necessary to recalculate Petitioner's cost share for 2010 through September 2011 and, if Petitioner's cost share was not correctly calculated, the account must be adjusted and, if there was an overpayment of the cost share by Petitioner, any overpayment must be refunded.

If there was an underpayment/arrearage the agency should again notify Petitioner and her POA of that underpayment and Petitioner would still owe that to the program and this appeal is dismissed.

These steps must be taken within 10 days of the date of this Decision.

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 Milwaukee,
Wisconsin, this 25th day of October, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 25, 2013.

Milwaukee Enrollment Services
Bureau of Long-Term Support