



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/151434

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 20, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Family Care eligibility, a hearing was held on September 18, 2013, at Milwaukee, Wisconsin.

The issues for determination are whether (1) petitioner's appeal was timely filed, and (2) her cost share was correctly computed.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Interpreter: Rose Zamora

Respondent:

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

By: Ms. Chris Sobczak, HSPC Sr.  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Prior to May 2013, the petitioner participated in the Family Care (FC) program without a cost share liability. Her case was reviewed in April 2013. On April 15, 2013, the Department issued

written notice to the petitioner advising that her cost share would be \$51 monthly from May 1, 2013, forward.

3. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on August 20, 2013.
4. On July 19, 2013, the Department issued another written notice to the petitioner, advising that her cost share would continue to be \$51, from August 2013 forward.
5. The petitioner receives monthly gross income of \$953. She pays rent of \$246, pays no health insurance premium, and has documented medical/remedial expenses of \$12 monthly.

## DISCUSSION

### I. THE PETITIONER'S APPEAL IS NOT TIMELY FOR THE PURPOSE OF CHALLENGING THE COST SHARE FOR MAY THROUGH JULY.

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by the Department/county agency concerning Medicaid or its Family Care derivative must be filed within **45** days of the date of the action. Wisconsin Stat. § 49.45(5); *Income Maintenance Manual* § 3.3.1. A negative action can be the denial of an application, imposition of a cost share, or the reduction or termination of an ongoing case. The petitioner's appeal was filed **111** days after the date of the May 1, 2013, action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case for the months of May through July. The petitioner's appeal is timely for the purpose of challenging the August 2013 cost share amount.

### II. AUGUST COST SHARE.

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 Statutes, § 46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. See also, *Medicaid Eligibility Handbook* at §29.1 *et seq.*, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

In this case, the petitioner has been found eligible for FC. 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." See, <http://www.dhs.wisconsin.gov/mltc/2012/2012Contract.htm> (the FCP standard contract), and the *MEH*, § 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 Family Care, 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. The 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 in 2013. *MEH*, § 39.4.1. A Group B recipient may have health insurance premiums, certain medical/remedial expenses and a \$890 Basic Needs 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). The petitioner's undisputed gross income of \$953 places her in Group B. (Group C is for a person with more than \$2,130 in monthly income).

Prior to May 2013, the agency was subtracting a \$240 special housing deduction from the petitioner's income in computing the cost share. This deduction was premised on a rent cost of \$590, minus a shelter cost threshold of \$350. At review, the agency learned that the petitioner's actual rent expense was \$246,

which fell below the deduction threshold. With the elimination of the excess shelter cost, the result was the correct determination that the petitioner had \$51 available monthly to pay as a cost share (\$953 - \$890 - \$12 = \$51).

### **CONCLUSIONS OF LAW**

1. There is no jurisdiction to review the cost share computation for May through July 2013, as the appeal is untimely.
2. The agency correctly computed the petitioner's August 2013 FC cost share.

**THEREFORE, it is**

**ORDERED**

That the petition is 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 1st day of October, 2013

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\sNancy J. Gagnon  
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 October 1, 2013.

Milwaukee Enrollment Services  
Office of Family Care Expansion