



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

MGE/152083

PRELIMINARY RECITALS

Pursuant to a petition filed September 16, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Jefferson County Department of Human Services in regard to Medical Assistance, a telephonic hearing was held on October 21, 2013, at Jefferson, Wisconsin.

The issue for determination is whether the county agency correctly increased the petitioner's patient liability for Institutional MA from \$1,336.56 to \$1,730.66 effective November 1, 2013, due to an increase in petitioner's rental income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

Representative:

[Redacted], son
[Redacted]
[Redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Julie Ihlenfeld, ESS
Jefferson County Department of Human Services
Workforce Development Center
874 Collins Rd.
Jefferson, WI 53549

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Jefferson County who resides in the [REDACTED]
2. The petitioner receives Institutional MA for her nursing home.
3. The petitioner receives monthly Social Security Retirement Income of \$926.00.
4. The county agency received from petitioner's representative a copy of the petitioner's 2012 taxes on or about August 13, 2013.
5. The petitioner's 2012 Schedule E indicates petitioner's rental income was \$11,549.00 minus expenses of \$1,347 equals net income of \$10,196 (divided by 12 equals monthly self-employment income of \$849.66).
6. Based upon petitioner's 2012 tax return (Schedule E), petitioner's rental income increased from \$455.57 to \$849.66 from 2011 to 2012 self-employment income.
7. The county agency sent a September 23, 2013 Notice of Decision to the petitioner stating that her patient liability at the nursing home was increasing from \$1,336.56 to \$1,730.66 effective November 1, 2013.

DISCUSSION

After an institutionalized person is determined eligible for MA, a county agency must calculate the amount of income the institutionalized person must contribute to defray the cost of care incurred by MA on his or her behalf on a monthly basis. See *MA Eligibility Handbook (MEH)*, 27.7.1., viewable online at www.emhandbooks.wi.gov/meh-ebd/. The amount to be paid by the institutionalized person is his/her "patient liability."

The *MEH* contains the following directive for computing a cost of care/patient liability amount:

Calculate the cost of care in the following way:

1. For a MA client in a nursing home who does not have a community spouse, subtract the following from the person's monthly income:
 - a. \$65 and ½ earned income disregard ([4.1.3.6](#)).
 - b. Monthly cost for health insurance ([5.8.6.3](#)).
 - c. Support payments ([4.1.3.2.1](#)).
 - d. Personal needs allowance ([8.1.5.1](#)).
 - e. Home maintenance costs, if applicable ([4.1.3.1](#)).
 - f. Expenses for establishing and maintaining a court-ordered guardianship or protective placement, including court-ordered attorney and/or guardian fees ([4.1.3.2.3](#)).

Id. See in accord federal rule at 42 C.F.R. §435.725.

The Wisconsin Administrative Code provision that controls the patient liability computation reads as follows:

(d) *Computing income available towards cost of care.*

Institutionalized recipients of MA who are determined eligible under s. HFS 103.06 and this section shall apply their available income toward the cost of their care after deducting

the income disregards in this paragraph. In this paragraph, “available income” means any remaining income after the following reductions are made:

1. A personal needs allowance, as provided under s.49.45(7) (a), Stats., and
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 of Wisconsin 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 DHS 103.06(1)(b)3 are met, but not to exceed the SSI payment level for one person living in that person’s own household.

Wis. Admin. Code §DHS 103.07(1)(d). See, in accord, the federal rule at 42 C.F.R. §435.725.

During the October 21, 2013 hearing, ESS Julie Ihlenfeld, provided reliable testimony and evidence to establish that the county correctly increased the petitioner’s patient liability as of November 1, 2013, due to an increase in her rental income. During the hearing, petitioner’s representative and son, [REDACTED], alleged that his mother had higher expenses than \$1,347 which should reduce her monthly rental income and patient liability. See Finding of Fact #5 and #6 above. However, Ms. Ihlenfeld explained that she offered to Mr. [REDACTED] that he submit a “revised” Schedule E to the county agency to establish that the petitioner’s expenses were more than reported on her 2012 Schedule E. Mr. [REDACTED] was unable to refute that he did not submit any revised Schedule E to the county agency or during the October 21, 2013 hearing. He was also unable to establish any specific error in the calculation of the petitioner’s patient liability.

The county representative also explained that the only deductions allowed against petitioner’s available (countable) income are the ones stated in *MA Eligibility Handbook (MEH)*, 27.7.1 above. ESS Ihlenfeld explained that while petitioner may very well have outstanding debts, those debts can not correctly be deducted from her income in determining her patient liability. While it is understandable that petitioner may wish that her outstanding debts could lower her patient liability, §DHS 103.07(1)(d) confirms that only the listed income disregards (deductions) are permitted by law. Accordingly, I conclude that the county agency correctly increased the petitioner’s patient liability for Institutional MA from \$1,336.56 to \$1,730.66 effective November 1, 2013, due to an increase in petitioner’s rental income.

CONCLUSIONS OF LAW

The county agency correctly increased the petitioner’s patient liability for Institutional MA from \$1,336.56 to \$1,730.66 effective November 1, 2013, due to an increase in petitioner’s rental income.

THEREFORE, it is

ORDERED

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, Room 651, 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 12th day of December, 2013

\sGary M. Wolkstein
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 December 12, 2013.

Jefferson County Department of Human Services
Division of Health Care Access and Accountability