



FH
[REDACTED]

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

In the Matter of

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

DECISION

CWA/152208

PRELIMINARY RECITALS

Pursuant to a petition filed September 09, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a hearing was held on November 06, 2013, at Madison, Wisconsin.

The issue for determination is whether petitioner has established the existence of a debt to family members that should qualify as a deduction as a medical/remedial expense.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: Nancy Rusch

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner was enrolled in Medicaid in 2012.

3. She resided in an assisted living facility from August 2012 until March 2012.
4. Petitioner was enrolled in the COP waiver program in March 2013.
5. The Department determined a cost share of \$70.07 per month for the waiver program. This cost share was communicated by notice to petitioner dated 9/5/13.
6. Petitioner appealed this amount.

DISCUSSION

Certain COP-W recipients receive services only if they pay a cost share. The cost share is determined by subtracting a number of specific deductions from income. See Manual, Chapter III, page III-7. The county agency must monitor the cost share to determine that the monthly amounts are correct and that the person is paying them. Id. Services may be discontinued if the person fails to make monthly cost share payments. Manual, Chapter II, page II-20.

That calculation starts with gross income and deducts several possible items including a basic needs allowance, a special housing amount, insurance, **and out-of-pocket medical/remedial expenses**.

The medical/remedial expense deduction interpretation and policy is clarified in Waiver Wise technical assistance update Volume 2, Issue 7 (December 2002) which explains when debt may be a medical/remedial expense. Debt payments to a credit card or bank or other lender may be deducted when certain conditions are met. Critically, and most relevant here, the payments must be for an item or service that qualifies as an allowable medical or remedial expense and “that the item/service is something that the waiver would fund;” and, the cost of the allowable expense should be reflected by “the original receipt from the participant, debtor or vendor.”

In this case, the Department first argued that the post-dated repayment agreement was not a contemporaneous document and should not be sufficient to memorialize the debt or payments for these purposes. I note that the policy cited by the Department relating to loans by a family member requires “documentation of original bill and payment agreement signed by **both participant and family member**” (see Waiver Wise Volume 2, Issue 7 at p. 9 (2002)). The requirement does not call for a contemporaneous document so this document does not, per se, fail on this basis. But, I do also consider the facts that petitioner herself did not testify, nor did any of the other claimed lender-family members. No canceled checks or bank statements showing disbursements were provided. I find this simple document, which has been post-dated, insufficient to establish the legal fact of the payments. But, the requirement does call for signatures of both lender(s) and debtor. The debt in this case was effectively a loan from various family members to petitioner. The only signature on the agreement is by petitioner. It, therefore, does not meet the requirements of a valid document memorializing the debt under this requirement. I am also concerned that the agreement was executed on September 19, 2013 but claims retroactivity back to March 2013.

More critical here is that there was no **original** bill from [REDACTED]. The only document submitted to reflect the items or services that were provided for the claimed payments was an undated skeletal summary of 8 months of payments. There is no itemization and no way to determine whether all or some or none of the expenditures are for costs that could be paid under the waiver. Petitioner claims that they are, but this is a legal proceeding and documentary support would be essential to establish such a claim. Petitioner failed to meet its burden based on the documentation in this record.

CONCLUSIONS OF LAW

The claim of the loan payments to family members has not been shown to be a medical/remedial expense justifying deduction from income for waiver purposes.

THEREFORE, it is

ORDERED

That this matter 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 22nd day of November, 2013

\sJohn P. Tedesco
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 November 22, 2013.

Dane County Department of Human Services
Bureau of Long-Term Support