



FH
[REDACTED]

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

In the Matter of

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

DECISION

MGE/153570

PRELIMINARY RECITALS

Pursuant to a petition filed November 18, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on December 11, 2013, at Racine, Wisconsin.

The issue for determination is whether petitioner's appeal was timely filed.

NOTE: The record was held open until the end of the day to allow Petitioner's representative to submit a copy of the Power of Attorney documents. Petitioner's representative submitted a Wisconsin Basic Power of Attorney for Finances and Property. It has been marked as Exhibit 5 and entered into the record.

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, Room 651
Madison, Wisconsin 53703

By: John Heister, Economic Support Specialist
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On August 22, 2013, the agency sent Petitioner a notice indicating that as of October 1, 2013, he was enrolled in Nursing Home Long Term Care Medicaid with a patient liability of \$2,716.61 per month. (Exhibit 4)
3. Petitioner's power of attorney filed, on behalf of Petitioner, a request for fair hearing that was received by the Division of Hearings and Appeals on November 18, 2013. (Exhibit 1)
4. Petitioner receives \$1705.90 a month from Social Security, but has \$112.01 withheld from his Social Security Check for tax purposes. Petitioner also has \$104.90 deducted for his Medicare Premium. (Testimony of Petitioner's representative; Exhibit 1 and Exhibit 4)
5. Petitioner also receives \$1489.61 a month from a pension. (Testimony of Petitioner's representative; Exhibit 1 and Exhibit 4)
6. Petitioner's total gross income is: $\$1705.90 + \$1489.61 = \$3195.51$. (Id.)
7. Petitioner pays \$329 per month for supplemental insurance and \$104.90 per month for a Medicare premium. (Testimony of Petitioner's representative; Exhibit 4)

DISCUSSION

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 a county agency concerning MA 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, the reduction of benefits or the termination of an ongoing case. The petitioner's appeal was filed on November 18, 2013, 48 days after the October 1, 2013, date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

Even if jurisdiction existed to review the merits of Petitioner's case, the record shows that the agency acted correctly. Petitioner argues that his net income should be used in determining his patient liability because he has income taxes withheld. However, the Medicaid Eligibility Handbook (*MEH*) §15.4 gives explicit instructions to, "count gross unearned income in the person's income total." The only exception would be if the unearned income fell into a category of disregarded income in *MEH* §15.3 or was otherwise an allowable deduction.

Taxes withheld from income is not listed among the 30 categories of disregarded income in *MEH* §15.3. This list can be viewed on line at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

For a Medicaid member in a medical institution who does not have a spouse living in the community, the following are the only deductions from income that are allowed when determining an individual's patient liability:

1. \$65 and ½ earned income disregard ([15.7.5 \\$65 and ½ Earned Income Deduction](#)).
2. Monthly cost for health insurance ([27.6.4 Health Insurance](#)).
3. Support payments ([15.7.2.1 Support Payments](#)).
4. Personal needs allowance ([39.4 EBD Assets and Income Tables](#)).
5. Home maintenance costs, if applicable ([15.7.1 Maintaining Home or Apartment](#)).
6. Expenses for establishing and maintaining a court-ordered guardianship or protective placement, including court-ordered attorney and/or guardian fees ([27.6.6 Fees to Guardians or Attorneys](#)).
7. Medical Remedial Expenses. See [27.7.8 Payment for Non-Covered Services](#).

Tax that is withheld from income is not listed among the allowable deductions.

Applying the foregoing to Petitioner’s case:

- 1) Petitioner does not have earned income, so the earned income disregard does not apply;
- 2) Petitioner pays \$329.00 per month for supplemental health insurance and \$104.90 for a Medicare premium.
- 3) There is no claim, nor any indication that Petitioner is obligated to make payments for the care and maintenance of another person;
- 4) It is undisputed that Petitioner is entitled to the personal needs allowance of \$45.00 dictated by *MEH §39.4.2*;
- 5) There is no claim that Petitioner is entitled to a deduction for the rent on an apartment to which he intends to return;
- 6) Petitioner has not claimed, nor is there evidence that Petitioner incurs any expenses to maintain a court-ordered guardianship or protective placement and
- 7) It is undisputed that Petitioner has no other out of pocket medical expenses, beyond his health insurance premiums.

Looking at the Institution Medicaid Budget Printout, it appears that the agency included all allowable deductions in determining Petitioner’s Patient Liability, although in the agency’s budget printout they deducted the Medicare premium from Petitioner’s income, before doing the patient liability calculation. Had the agency done the calculation strictly by the book, the budget print out should have appeared as follows:

\$3195.51 total gross monthly income
 (\$329.00) Less supplemental insurance premium
 (\$104.90) Less Medicare premium
 (\$45.00) Less personal need allowance

 \$2716.61 Patient Liability

Thus, the agency allowed the correct deductions and correctly calculated Petitioner’s patient liability.

At the hearing, Petitioner’s power of attorney asked, what Petitioner should be doing, because he needs to have his taxes withheld or face a penalty at the end of the year and because he will be facing serious financial hardship. Regrettably, this is not the forum that can address Petitioner’s concerns.

Petitioner might be able to get some assistance from the Aging and Disability Resource Center of Racine, (262)833-8777, 866-219-1043, adrc@goracine.org. Petitioner might also be able to get some assistance from Disability Rights Wisconsin, 800-708-3034.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

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, 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 Milwaukee,
Wisconsin, this 13th day of December, 2013.

\sMayumi M. Ishii
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 13, 2013.

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