



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/151966

PRELIMINARY RECITALS

Pursuant to a petition filed September 11, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on November 19, 2013, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner's cost share obligation has been correctly calculated.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Chris Sobczak

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is a participant in the Family Care Program (FCP). He filed this appeal to contest the amount of his cost share for participation in the FCP.
3. Petitioner's case was subject to review in July/August 2013. After the review Petitioner's cost share was increased effective September 2013. It had been \$92.44 and Petitioner was sent a Notice dated August 6, 2013 that informed Petitioner that it increased to \$299.39.

4. Petitioner has gross unearned income of \$1232.39. In the determination of the cost share, Petitioner has been credited, both before and after the review, with a basic needs allowance of \$890. His special housing amount was \$36.47 prior to the review and \$43.00 after the review.
5. Petitioner had medical remedial expenses prior to the review of \$213.48. The case management organization did not have those expenses when the cost share of \$299.39 was calculated but did receive those expenses and by the time of the hearing the medical remedial expenses were determined to be \$203.35. This resulted in a final cost share of \$96.04; an increase of \$3.60 over the prior year.
6. Petitioner is a post heart transplant patient. His physician wrote a note indicating that Petitioner needs certain over the counter medications and supplies. A handwritten list attached to the physician note indicates those are oxide, Tums, sport sun screen, mineral oil, multi-vitamins, Oscal, baby aspirin, laxatives, fish oil, Vaseline, peroxide, cotton balls, mouthwash, bath soap, tissue, laundry soap, dish soap, Ms. Dash salt substitute, bleach disinfectant and disinfectant household spray. It is these expenses that are at the core of the dispute here as they were disallowed by the managed care organization.

DISCUSSION

People eligible for Family Care Medicaid fall into one of the following categories:

Group A eligibility

1. People 18 and over who meet full benefit EBD Medicaid financial and non-financial requirements and who are also functionally eligible for FC at either the nursing home or non-nursing home level of care.
2. People 18 and over who meet BC+ Standard Plan, Well Woman Medicaid, Medicaid through Adoption Assistance or Foster Care financial and non-financial requirements and who are functionally eligible for FC at either the nursing home or non-nursing home level of care.

Group B eligibility

People 18 and over who meet full benefit EBD Medicaid non-financial and financial requirements except for income, who are functionally eligible for FC at the nursing home level of care, and whose income is at or below the special income limit (See the Community Waivers Special Income Limit in 39.4.1)

Group C eligibility

People 18 and over who meet full benefit EBD Medicaid non-financial and financial requirements except for income, who are functionally eligible for FC at the nursing home level of care, and whose income is above the special income limit (see the Community Waivers Special Income Limit in 39.4.1), but whose allowable monthly expenses are sufficient to reduce their income to the medically needy limit (See EBD Medically Needy Limits in 39.4.1.)

Medicaid Eligibility Handbook (MEH), §29.3.1.

The elderly, blind and disabled (EBD) financial income limit is \$591.67 and the Community Waivers Special Income Limit is \$2130, effective January 1, 2013. *MEH, §39.4.1 and Operations Memo12-63; issued November 28, 2012.* As Petitioner's counted gross income is \$1232.39, it is apparent that he falls into the group B category of Family Care eligibility. Group B FCP members must make a cost share payment. *Id.*, §28.8.3.

Cost sharing is the monthly amount a waivers participant has to contribute toward the cost of his/her waiver services. *MEH, § 28.5.1.* Payment of the cost share is a condition of eligibility. *Id.* The allowable

deductions from income are the personal maintenance allowance, a family maintenance allowance where the FCP member is the custodial parent, health insurance premiums, medical/remedial expenses and special exempt income. *MEH*, §§28.8.3.1; 28.8.3.2 and 28.8.3.3.

As there is some tension in this case as to what these deductions are and what is included in them I am providing a relatively comprehensive description of them. The personal maintenance allowance is calculated as follows:

28.8.3.1 Personal Maintenance Allowance

The Personal Maintenance Allowance is an income deduction used primarily when calculating a cost share for a Group B waiver member. However, it is also used in the cost share calculation of a Group C waiver member when completing Section C of the *Spousal Impoverishment* Income Allocation Worksheet (18.6.4).

The personal maintenance allowance (Line 6 and Page 2 of the worksheet) is for room, board, and personal expenses. It is the total of:

1. Community Waivers Basic Needs Allowance (See 39.4.2 EBD Deductions and Allowances)
2. \$65 and ½ earned income deduction (See 15.7.5 \$65 and ½ Earned Income Deduction).
3. Special housing amount. This is an amount of the person's income set aside to help pay housing costs. If the waiver applicant's housing costs are over \$350, add together the following costs:
 - a. Rent.
 - b. Home or renters insurance.
 - c. Mortgage.
 - d. Property tax (including special assessments).
 - e. Utilities (heat, water, sewer, electricity).
 - f. "Room" amount for members in a Community Based Residential Facility (*CBRF*), Residential Care Apartment Complex (RCAC) or an *Adult* Family/Foster Allowance.) Home (AFH). The case manager determines and provides this amount.

The total, minus \$350, equals the special housing amount. The person can set this amount aside from his/her income.

...

MEH, §28.8.3.1.

The special exempt income deduction consists of:

1. Income used for supporting others (15.7.2.1 Support Payments).
2. Court-ordered attorney fees (15.7.2.3 Fees to Guardians or Attorneys).
3. Court-ordered guardian and guardian ad litem fees (15.7.2.3 Fees to Guardians or Attorneys).
4. Expenses associated with establishing and maintaining a guardianship. (15.7.2.3 Fees to Guardians or Attorneys)
5. Expenses associated with a Self-Support Plan (15.7.2.2 Self-Support Plan).
6. Impairment Related Work Expenses (IRWE) (15.7.4 Impairment Related Work Expenses (IRWE)
7. Maintaining a home or apartment (15.7.1 Maintaining Home or Apartment)
8. Costs associated with real property listed for sale (16.2 Assets Availability)

...

MEH, §15.7.2.

Finally, medical remedial expenses are as follows:

Medical and Remedial Expenses (MRE) are used in:

1. the home and community-based waiver programs,
2. patient liability calculations for residents of a medical institution, and
3. cost share and Medicaid Purchase Plan (MAPP) premium calculations.

Medical expenses are anticipated incurred expenses for services or goods that have been prescribed or provided by a professional medical practitioner (licensed in Wisconsin or another state). The expense is for diagnosis, cure, treatment, or prevention of disease or for treatment affecting any part of the body. These are expenses that are the responsibility of the member, and cannot be reimbursable by any other source, such as Medicaid, private insurance, or employer.

The following are examples of medical expenses:

1. Deductibles and co-payments for Medicaid, Medicare, and private health insurances.
2. Health insurance premiums.
3. Bills for medical services which are not covered by the Wisconsin Medicaid program.
4. For purposes of meeting a Medicaid deductible, medical services received before the person became eligible for Medicaid. (Past medical bills cannot be used for MAPP premium calculations.)

Remedial expenses are costs incurred for services or goods that are provided for the purpose of relieving, remedying, or reducing a medical or health condition. These are expenses that are the responsibility of the member and cannot be reimbursable by any other source, such as Medicaid, private insurance, or employer.

Some examples of remedial expenses are:

1. Case management.
2. Day care.
3. Housing modifications for accessibility.
4. Respite care.
5. Supportive home care.
6. Transportation.
7. Services recognized under s.46.27, Wis. Stats.
8. Community Options Program, that are included in the person's service plan.

Remedial expenses do not include housing or room and board services.

MEH, §15.7.3

The above is, perhaps, overly detailed but provides an explanation of the cost share calculation.

Again, it is the items noted at Finding # 6 that are in dispute here. I am not, however, changing the cost share of \$96.04 based upon the record of this case. This is for several reasons. They do not meet the definition of medical expense in that they are not prescribed or provided by a medical professional. A noted from a physician stating that Petitioner needs them is not the same as a prescription. While the definition of remedial is somewhat vague with the use of the ‘...purpose of relieving, remedying, or reducing a medical or health condition’ language; the items listed in Finding # 6 are generic and ubiquitous. For a physician to say they are needed is somewhat like saying ‘maintain a healthy diet’. Even if some of the items might, arguably, meet the remedial definition, e.g., Tums or baby aspirin, there is insufficient evidence as to the frequency of use, cost and actual expenditure (as an aside and as an example – 36 chewable baby aspirin at drugstore.com are \$2.99 and 300 generic non chewable are \$8.99) to overturn the agency determination.

Finally, Petitioner should note that if any of the amounts used in the cost share calculation change and/or if he can get actual prescriptions from his physician he may certainly provide that documentation to his family care case worker for consideration.

CONCLUSIONS OF LAW

That the available evidence indicates that Petitioner’s cost share has been correctly calculated.

THEREFORE, it is

ORDERED

That this appeal 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 10th day of January 2014

\sDavid D. Fleming
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 January 10, 2014.

Milwaukee Enrollment Services
Office of Family Care Expansion