



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/153165

PRELIMINARY RECITALS

Pursuant to a petition filed October 30, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance, a hearing was held on December 09, 2013, at La Crosse, Wisconsin.

The issue for determination is whether DHA has the authority to order a reduction of the Family Care Program (FCP cost-share amount based on hardship).

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: Tom Miller

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. Petitioner is a member of the FCP.

3. Petitioner is having difficulty paying her cost share and seeks a reduction in this amount based on hardship.

DISCUSSION

Petitioner is a member of the FCP. Her present cost-share for enrollment in this program is 617.42. Petitioner does not argue that this amount has been calculated incorrectly by the Department. Instead, she argues that the amount exceeds her ability to pay based on her income and other expenses.

The FCP does have a provision allowing for the reduction of the cost-share based on hardship at Wis. Admin Code DHS § 10.34(4) (emphasis added):

(4) Payment of cost share required.

(a) Except as provided in par. (b), a person who is required to contribute to the cost of his or her care but who fails to make the required contributions is ineligible for the family care benefit.

(b) If the department or its designee determines that the person or his or her family would incur an undue financial hardship as a result of making the payment, the department may waive or reduce the requirement. Any reduction or waiver of cost share shall be subject to review at least every 12 months. A reduction or waiver under this paragraph shall meet all of the following conditions:

1. The hardship is documented by financial information beyond that normally collected for eligibility and cost-sharing determination purposes and is based on total financial resources and total obligations.
2. Sufficient relief cannot be provided through an extended or deferred payment plan.
3. The person is notified in writing of approval or denial within 30 days of providing necessary information to the department or its designee.

Wis. Admin Code DHS § 10.34(4) (emphasis added). Because the hardship provision gives the discretion to the Department by stating that it “may” reduce the amount, the request for such reduction must be made to the Department. No such request has been filed and no such request has been denied by the Department. I do not have authority to grant such a reduction in these circumstances.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals lacks authority to reduce the FCP cost share based on hardship in this case.

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 Madison,
Wisconsin, this 15th day of January, 2014

\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 January 15, 2014.

La Crosse County Department of Human Services
Office of Family Care Expansion