



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

In the Matter of

[REDACTED] Sr.
[REDACTED]
[REDACTED]

DECISION

FCP/153953

PRELIMINARY RECITALS

Pursuant to a petition filed December 3, 2013, under Wis. Admin. Code, §DHS 10.55, to review a decision by the Milwaukee County Dept. of Family Care to discontinue Family Care Program (FCP) services, a hearing was held on March 25, 2014, by telephone. Hearings set for January 15, February 5, and March 12, 2014 were rescheduled at the petitioner’s request.

The issue for determination is whether the agency had a basis for discontinuing FCP due to non-payment of petitioner’s cost share.

PARTIES IN INTEREST:

Petitioner:

[REDACTED] Sr.
[REDACTED]
[REDACTED]

Respondent:

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

By: Rosaida Schrank
Milwaukee County Dept. of Family Care
901 N. 9th St., Room 307C
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner has been eligible for FCP since at least 2008. Because his monthly income is approximately \$1,700, he has had a monthly cost share throughout his eligibility. He was referred to the agency’s Member Obligation Review Committee (MORC) three times between

2008 and 2011 for non-payment of cost share issues. He was allowed to continue on the program only after a representative payee was named.

3. Petitioner discontinued the payee effective January 1, 2013. He made no cost share payments in 2013.
4. He again was referred to the MORC in November, 2013. After reviewing the case and consulting with petitioner, the MORC recommended termination of FCP eligibility. By a notice dated November 21, 2013, the agency informed petitioner that FCP would end January 1, 2014 due to failing to pay his cost share.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized under Wisconsin Statute, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. See also Medicaid Eligibility Handbook, Chapter 29, available at www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm.

A person who receives both a Medical Assistance card and FCP, and is not on “regular MA” because of excess income, is classified as being in Group A, Group B, or Group C. Group A is for person who receives SSI or certain other benefits that are not relevant here. Petitioner does not fit within Group A. Group B status is available to a person who has gross income below the Community Waivers MA income limit that currently is \$2,130. Handbook, §39.4.1. Petitioner is in Group B. Group C is for a person whose income is above \$2,130.

A Group B recipient must pay a cost share based upon income and certain expenses. Wis. Admin. Code, §DHS 10.34(3)(b) provides that cost of care is determined by taking the institutionalized person’s income, then making several deductions. The first deduction is a personal needs allowance as provided under 42 C.F.R. §435.726(c), if the person is an FCP recipient. That personal needs allowance currently is \$890, as set out in the MA Handbook, App. 39.4.2. Another deduction is special housing expenses. MA Handbook, App. 28.8.3.1. A third deduction is for out-of-pocket medical/remedial expenses. Handbook, App. 15.7.3.

A person who is required to contribute to the cost of his care but who fails to make the required contributions is ineligible for FCP. Wis. Stat., §49.286(2)(c); Wis. Admin. Code, §§DHS 10.32(1)(f) & 10.34(4)(a). There is little or no written policy on when an agency may or should discontinue eligibility due to failure to pay a cost share. In researching the issue, I found several earlier decisions written by the Division of Hearings and Appeals. It appears that, for practical purposes, two scenarios lead to termination actions. First, the person simply refuses to pay the cost share. Second, the person falls behind in payments and fails to agree to a plan to make payments up.

Petitioner’s case has both elements at play. Petitioner was referred to the MORC in the past for failure to pay his cost share, but was not discontinued because he agreed to a plan to make the payments up. However, beginning in January, 2013, he reneged on the plan by canceling his payee, and he made NO cost share payments until he was referred to the MORC again in November, 2013. By his action to cancel his payee and then make no payments he essentially went from simply failing to make payments to refusing to make payments. I thus have no problem with the agency’s decision to terminate petitioner’s eligibility.

Petitioner essentially is asking for another chance. However, at this point he is so far behind in his payments, and by his own actions has shown to be untrustworthy of promises to make payments, that the agency had every reason to not consider another payment agreement.

CONCLUSIONS OF LAW

The FCP agency acted correctly within its discretion to terminate petitioner's FCP eligibility for continued failure to pay his monthly cost share.

THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 31st day of March, 2014

\sBrian C. Schneider
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 March 31, 2014.

Milwaukee Enrollment Services
Office of Family Care Expansion