



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

FCP/154041

PRELIMINARY RECITALS

Pursuant to a petition filed December 11, 2013, under Wis. Admin. Code, §DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to the Family Care Program (FCP), a hearing was held on January 15, 2014, by telephone. The record was held open 22 days for submission of written arguments.

The issue for determination is whether petitioner's income can be re-determined to exclude mandatory tax deductions.

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

Petitioner's Representative:

Atty. [Redacted]
SeniorLAW
[Redacted]
[Redacted]

Respondent:

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

By: Rosaida Schrank, Chris Sobczak
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

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 enrolled in the FCP on August 1, 2013. She was a Group C participant because her gross monthly income was \$2,242 - \$330 from social security and \$1,912 from a pension.

\$176.19 was deducted each month from petitioner's pension payment for tax purposes. Social security increased to \$336 on January 1, 2014.

3. Based upon petitioner's 2013 income, the agency determined that petitioner had to meet a monthly spend-down of \$1,432.42 to be eligible for FCP. That amount was changed to \$1,445.30 effective December 1, 2013 and then to \$1,451.30 effective January 1, 2014. The spend-down was determined by subtracting a \$20 disregard, the cost of health insurance from gross income (the cost of health insurance decreased December 1 which caused the change in the spend-down amount for that month), and the \$591.67 medically-needy income limit from gross monthly income. For example, beginning August 1, \$2,242 minus \$20 minus \$197.91 minus \$591.67 equaled \$1,432.42.
4. Petitioner resides in an assisted living facility with a monthly room and board contract rate of \$993. Petitioner is responsible for paying the monthly room and board. However, the Managed Care Organization (MCO) wrote off \$461.33 leaving petitioner's monthly room and board expense at \$531.67.
5. Petitioner filed this appeal because she could not pay the spend-down, room and board, tax obligation, and other expenses.
6. After the hearing the agency agreed to reduce petitioner's monthly room and board by writing off an additional \$85.92 per month. The agency took petitioner's most recent tax return from 2012 and divided the 2012 yearly tax liability by twelve to get the \$85.92 monthly write-off.

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 of \$2,130. Handbook, §39.4.1. Petitioner's gross income of \$2,242 places her over the income limit for Group B status. Therefore, petitioner is relegated to Group C status. To be *eligible* under Group C, the recipient's income minus expenses must be under \$591.67.

A person in Group C is subject to a spend-down for income that exceeds the "medically needy income limit of \$591.67, minus the \$20 unearned income disregard and the health insurance premium expense. Handbook, §39.4.1 – "EBD Medically Needy Limits."

In her brief petitioner uses January, 2014 numbers. She argues that her net monthly income is \$2,248 minus \$176.19 tax payment minus \$185.03 health insurance equals \$1,886.76. However, her monthly spend-down of \$1,451.30 plus the room and board obligation of \$531.67 totals \$1,982.97, making it impossible to pay her FCP obligations. I agree that there clearly is a problem there. Petitioner's position is that the tax obligation should be deducted from petitioner's income in the spend-down determination, arguing that the tax deduction lowers petitioner's available income.

There are two problems with petitioner's position. First, state law does not allow it. Gross income must be used when determining the patient liability amount. Wis. Admin. Code, §DHS 103.07(1)(a)1;

Medicaid Eligibility Handbook, §§15.1.5.3 and 15.1.6. Income includes earned or unearned income that would be included in determining eligibility for Supplemental Security Income (SSI). Wis. Stat., §49.47(4)(c)1; see also 42 U.S.C. §§1381-1385. For purposes of SSI eligibility, income includes more than a person actually receives if amounts are withheld from unearned income because of a garnishment, or to pay a debt or any other legal obligation. 20 C.F.R. §416.1123(b)(2); See also Wis. Admin. Code, §§DHS 103.07(1)(a)1 and 103.07(2)(g).

Certain specific disregards are allowed to be subtracted from gross income (such as payments to Native Americans, Kinship Care payments, W2 payments, etc.), but tax liabilities are not among the allowed disregards. Wis. Admin. Code, §DHS 103.07(2)(g); Handbook, §15.3. The Department has addressed this issue with regard to tax garnishments in Final decisions MED-75527 (1/23/07) and MED-28/75117 (6/5/06).

Second, the amount of taxes deducted from a monthly payment is variable; the pension recipient has the option of changing deductions so more or less can be deducted for tax purposes. For practical reasons, therefore, gross income is the best financial indicator, and the Department has historically dealt with tax deductions at other stages in the financial determination.

In this case, following the hearing the agency obtained petitioner's 2012 tax return. Petitioner's 2012 tax liability was \$1,031. That amount divided by twelve was \$85.92. The agency thus agreed to reduce petitioner's room and board amount to \$445.75. I have no problem with that solution. It takes into account petitioner's tax liability using the financial instruments available to the agency.

Obviously, petitioner still has \$176.19 deducted from her monthly pension check, not \$85.92. If she pays her monthly room and board, and as much of the monthly spend-down as possible, she will fall behind in her monthly payments. However, if the MCO is aware of her circumstances, it also will realize that petitioner will be able to catch up every spring after receiving her tax refund. It is extremely unlikely that the agency would seek to discontinue petitioner's FCP eligibility for non-payment of the spend-down if she regularly made payments and then applied her tax refund to the balance. I conclude that the agency's action to reduce petitioner's monthly room and board to account for her tax liability is the best solution to the dilemma raised in this appeal.

Petitioner also argues that the agency must issue a due process notice not only with regard to a person's FCP eligibility but also her monthly financial obligation including room and board. The agency argues that room and board is beyond the eligibility determination, and that the client is told about her responsibility in her Individualized Service Plan (ISP). In this case the issue is moot because this decision will resolve the issue retroactive to petitioner's enrollment date. I strongly urge the agency to strive to make clear to FCP clients how room and board charges are determined. Because of the liberal appeal rights afforded to FCP clients in Wis. Stat., §48.287, providing clients the best understanding of how charges are determined is a way to avoid unnecessary appeals.

Because the agency has already taken the retroactive action I will dismiss the appeal. No further corrective action is necessary.

CONCLUSIONS OF LAW

1. The agency correctly determined petitioner's monthly FCP spend-down by utilized gross income and subtracting legally mandated disregards.
2. The agency addressed petitioner's tax liability reasonably by reducing her monthly room and board charge retroactive to petitioner's enrollment date by one-twelfth of petitioner's annual tax liability.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 19th day of February, 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 February 19, 2014.

Milwaukee Enrollment Services
Office of Family Care Expansion
Attorney [REDACTED] [REDACTED]