



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/154352

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 23, 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 February 25, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency correctly and properly discontinued petitioner's participation in the Family Service Plan for ongoing non-payment of his cost-share.

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

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner enrolled in and has received services from the Family Care Plan; he was assessed a monthly patient cost share in the amount of \$408.70.<sup>1</sup> Exhibit 2.
3. During the course of his participation in the Family Care Program, petitioner has irregularly paid his cost share member obligation, and has been billed for but has failed to pay \$4,666.56 in cost share payment. The petitioner has declined to institute a representative payee, and has not agreed to a payment plan See, Exhibit 2.
4. The county agency notified petitioner that his enrollment in the Family Care Program would stop after December 31, 2013, due to failure to pay his monthly cost share. See Exhibit 2.
5. The petitioner timely filed a December 23, 2013, appeal with the Division of Hearings and Appeals (DHA).

### **DISCUSSION**

The Family Care Program is a subprogram of Wisconsin's Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* §DHS 10.11. An individual who meets the functional and financial requirements for Family Care, *Wis. Stats.* §46.286(1) participates in Family care by enrolling with a Care Management Organization (CMO), *Wis. Admin. Code* §DHS 10.41 which, in turn, works with the participant and his/her family to develop an individualized plan of care. The CMO implements the plan by contracting with one or more service providers.

Individuals who wish to participate in Family Care but who do not meet the financial requirements for coverage under the MA program may receive Family Care coverage upon payment of a cost-share, *Wis. Stats.* §46.286(2); *Wis. Admin. Code* §DHS 10.34(3). An individual who is enrolled in Family Care under a cost-share is required, as a condition of continued eligibility, to make the appropriate payments:

A person who is required to contribute to the cost of his or her care but who fails to make the required contribution is ineligible for the family care benefit unless he or she is exempt from the requirement under rules promulgated by the department.

*Wis. Stats.* §46.286(2)(c).

Petitioner's enrollment in Family Care included an assessed cost-share. There is nothing on record to indicate that petitioner raised any objection to the program, the cost-share or any of the details of the individual service plan that was developed with her, even though the Family Care program provides ample opportunity for consultation with the participant and a wide range of complaint and grievance procedures, *Wis. Stats.* §46.287; *Wis. Admin. Code* §§DHS 10.51-10.55. Over time, petitioner's payment of the cost-share fell significantly into arrears. The CMO requested that the petitioner authorize the assignment of a representative payee, but the petitioner refused. The county did attempt to work with the petitioner on his ongoing arrearage of cost share, but petitioner has not entered into a repayment agreement. Ultimately, the county agency sent petitioner a notice of decision advising him that his participation in Family Care would end as of December 31, 2013, due to his failure to pay his required monthly cost-share payments.

When it comes to cost-sharing, the statute which creates the Family Care Benefit and the regulations adopted to implement the plan are quite explicit: in the absence of an exemption, an individual who fails

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<sup>1</sup> Respondent included a document at Exhibit 2 which indicates that the cost share obligation as of February 1, 2014, is 417.70.

to pay the cost-share is ineligible for Family Care services, *Wis. Stats.* §46.286(2)(c). Regulations allow a waiver for individuals who can demonstrate that payment of the cost-share would result in “undue financial hardship, *Wis. Admin. Code* §DHS 10.34(4)(b); the record is void of any request for a waiver or any communication that could be interpreted as a request for a waiver.

At hearing, petitioner’s sister testified that petitioner has many bills, including consolidated credit cards bills, and that he simply cannot afford his cost share payments based on his present income. Such explanation is understandable. However, it is not understandable that petitioner has simply refused to agree to any payment arrangement (or a representative payee) whereby his monthly payments could be potentially be adjusted to what he is able to pay based on his monthly income.

State law provides that an individual who fails to pay the Family Care cost-share is ineligible for Family Care benefits. The county agency has the authority to remove such an individual from the plan and it correctly exercised that authority in this case.

### CONCLUSIONS OF LAW

The county agency properly terminated petitioner’s participation in the Family Care program as of December 31, 2013, when petitioner failed to pay or make reasonable arrangements to pay his monthly cost-share obligations.

**THEREFORE, it is**

**ORDERED**

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 the law of 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 18th day of March, 2014

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\sPeter McCombs  
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 18, 2014.

Milwaukee Enrollment Services  
Office of Family Care Expansion