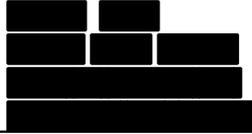




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/154528

PRELIMINARY RECITALS

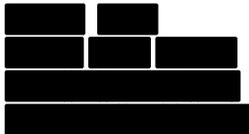
Pursuant to a petition filed January 03, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance/Family Care, a hearing was held on February 25, 2014.

The issue for determination is whether the agency properly calculated the Petitioner's cost share for Family Care (FC).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



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:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. On November 6, 2013, the agency reported receipt of notice that petitioner had moved to a new [redacted], [redacted], [redacted]. Exhibit R-1.
3. On November 6, 2013, the agency updated petitioner's file, confirmed his eligibility for Medical Assistance, and calculated his cost share. Exhibit R-1. Specifically, the Petitioner reported

medical expenses of \$40.00, her monthly rent expense of \$600.00, and a Medicare premium of \$104.90. The Petitioner has monthly Social Security income of \$1,511.00 and monthly annuity income of \$452.33; total monthly income is \$1,963.33. Based on this information, the agency calculated a monthly cost share of \$772.33. Exhibit R-5.

4. On December 9, 2013, the agency issued a Notice of Decision to the Petitioner notifying him of the change in his monthly cost share effective January 1, 2014. Exhibit R-5
5. On January 3, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals. Exhibit P-1

### 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 in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

Wis. Stat., §46.286(2)(a), provides that an FC recipient must pay a cost share based upon income and certain expenses. Wis. Adm. 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 needs allowance as provided under 42 C.F.R. §435.726(c), if the person is an FC recipient. That basic needs allowance is \$901, as set out in the MA Handbook, App. 39.4.2.<sup>1</sup> 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.

The petitioner did not raise any issue with regard to the Petitioner's income of \$1,963.33/month or the needs allowance of \$901.

A special housing allowance was calculated by the agency in determining the Petitioner's cost share. According to the MA Handbook, the special housing allowance 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, the agency is to add together the following costs: rent, homeowners insurance, mortgage, property tax (including special assessments), utilities (heat, water, sewer, electricity) and "room" (for members in a Community Based Residential Facility, Residential Care Apartment Complex, or an Adult Family Home). The total of these expenses, minus \$350, equals the special housing amount that is deducted from the applicant's income in determining the cost share.

In the Petitioner's case, the agency calculated the special housing allowance based on \$600.00 in rent; gas/electric expenses were not included. At hearing the respondent confirmed that it had received information regarding petitioner's electric bills, and that that would likely result in a cost share reduction of approximately \$90.00.

The other issue which the Petitioner raises relates to the out-of-pocket medical expenses deduction. The Petitioner reported \$40.00 out-of-pocket medical expenses on his renewal. The Petitioner's representative testified at the hearing that petitioner has a \$65.00 monthly medical payment, in addition to the \$40.00 already budgeted. If the Petitioner wishes to have out-of-pocket medical expenses considered, he must produce proof of those expenses.

The Petitioner produced sufficient evidence at the hearing to conclude that the agency did not properly calculate the special housing deduction in determining the cost share. Specifically, the agency should have included electric utility expenses. With regard to out-of-pocket medical expenses, the Petitioner

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<sup>1</sup> At hearing representatives for the respondent clarified that the *Medicaid Eligibility Handbook* had not yet been updated, but that Ops Memo13-40 correctly established the \$901 basic needs allowance.

produced insufficient evidence of such expenses. Therefore, the agency properly calculated the cost share without including any out-of-pocket medical expenses.

### CONCLUSIONS OF LAW

The agency did not properly calculate the special housing amount when determining the Petitioner's cost share.

**THEREFORE, it is**

### ORDERED

That the agency shall re-calculate the Petitioner's monthly cost share effective January 1, 2014, including its budget petitioner's electric utility bills, which information has been previously provided to the agency. The agency shall issue a new Notice of Decision regarding the re-calculated cost share to the Petitioner. These actions shall be completed within 10 days of the date of this decision.

### **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 3rd day of April, 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 April 3, 2014.

Milwaukee Enrollment Services  
Office of Family Care Expansion