



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

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/154775

PRELIMINARY RECITALS

Pursuant to a petition filed January 10, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Dept. of Family Care - MCO in regard to Family Care (FC) benefits, a hearing was held on March 5, 2014, at Milwaukee, Wisconsin. The hearing record was held open for re-faxing of the Department's exhibits to the Administrative Law Judge.

The issue for determination is whether the petitioner's cost share was correctly computed beginning with December 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Rosaida Schrank, QI Coordinator
Milwaukee Co. Dept. of Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. The petitioner has an ongoing Family Care (FC) case for herself. Her case was reviewed in November 2013. On December 19, 2013, the Department issued written notice to the petitioner advising that her cost share would be \$713.24 monthly from January 1, 2014, forward.
3. On December 30, 2013, the Department issued another written notice to the petitioner, advising that her cost share would be \$725.24, from February 1, 2014, forward. The only change made to the case was a change in the FC Basic Needs Allowance deduction from \$890 to \$901.
4. As of December 2013, the petitioner received monthly gross (unearned) income of \$1,736.94. She paid rent of \$326.00 and utilities of \$50, paid a \$104.90 health insurance premium, and had documented medical/remedial expenses of \$107.70 monthly. The monthly medical/remedial expenses counted by the Department were a \$36.00 Part D premium, a \$24.00 vision product expense, a \$21.08 dental expense, and a \$26.62 OTC medicine expense. These items total \$107.70.
5. The petitioner has a live-in attendant, who is her grand-daughter. They share a two-bedroom, HUD-subsidized apartment, paid for by the petitioner. The petitioner has Alzheimer's, and has been found to be in need of 82 paid hours of PC worker/supportive home care worker services weekly. The live-in attendant supplies 26 FC-paid hours of that care, and works outside of the home for an additional 30 hours weekly. The remaining 56 paid care hours are supplied by a worker from an agency.
6. At hearing, the Department advised that it had already revised its position to include subtraction of a PERS phone line expense beginning December 1, 2013.

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 Statutes, § 46.286, and is described in the Wisconsin Administrative Code, Chapter DHS 10. See also, *Medicaid Eligibility Handbook* at §29.1 *et seq.*, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

In this case, the petitioner has been found eligible for FC. An eligible person's income is reviewed to determine if the recipient has enough income to be responsible for payment of a monthly "cost share." See, <http://www.dhs.wisconsin.gov/mltc/2013/2013Contract.htm> (the FC standard contract), and the *MEH*, § 29.3. A recipient may request a hearing on the determination of the cost share amount. Wis. Stat. §46.287(2)(a)1b.

A person who receives both a Medical Assistance card and Family Care, 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. The 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 in 2013. *MEH*, § 39.4.1. A Group B recipient may have health insurance premiums, certain medical/remedial expenses and an \$890 Basic Needs Allowance (possibly including housing expenses) subtracted from her income before a cost share is computed. 42 C.F.R. §435.726; Wis. Admin. Code §DHS 103.07(1)(d). The petitioner's undisputed gross income of \$1,736 places her in Group B. (Group C is for a person with more than \$2,130 in monthly income).

In the December 2013 cost share calculation, the agency was subtracting a \$26 special housing deduction from the petitioner's income. This deduction was premised on a 100 percent rent and utility cost of \$376, minus a shelter cost threshold of \$350. Thus, the cost share calculation, prior to addition of the PERS deduction, looked like this:

Gross unearned income	\$1736.94
-Basic Needs Allowance	- 890.00
-Special Housing Amount	- 26.00
-Medical/Remedial Expenses	- <u>107.70</u>
Cost Share	713.24

The petitioner objects to the computation of her Medical/Remedial Expense above. She agrees that she incurs the \$107.70 listed. However, she contends that the Department has erred by declining to also deduct room and board costs for her live-in attendant. I cannot see how the “room” part can be subtracted on top of the deduction against shelter costs that the petitioner already receives in the calculation. The petitioner is essentially asking me to double-count her rent expense, as compared to other participants in the program. In any event, the state policy would not allow what the petitioner asks:

15.7.3 Medical/Remedial Expenses (MRE)

Medical and Remedial Expenses (MRE) are used in:

1. the home and community-based waiver programs ,
2. patient liability calculations for residents of a medical institution, and
3. cost share and Medicaid Purchase Plan (**MAPP**) premium calculations.

...

Remedial expenses are costs incurred for services or goods that are provided for the purpose of relieving, remedying, or reducing a medical or health condition. These are expenses that are the responsibility of the member and cannot be reimbursable by any other source, such as Medicaid, private insurance, or employer.

Some examples of remedial expenses are:

1. Case management.
2. Day care.
3. Housing modifications for accessibility.
4. Respite care.
5. Supportive home care.
6. Transportation.
7. Services recognized under s.46.27, Wis. Stats.
8. Community Options Program, that are included in the person's service plan.

Remedial expenses do not include housing or room and board services.

MEH, § 15.7.3 (*emphasis added*). This Judge found no further direction in the FC contract or the federal FC waiver document. Thus, based on **state** policy, the rent, utility, and food costs for the petitioner and her attendant cannot be subtracted as a remedial expense.

Finally, the petitioner argued that the Department should have subtracted half of the “incidental”/sundry expenses for the household as a remedial expense. The county’s FC policy appears to allow this. *See, Milwaukee County Dept. of Family Care Policy*, Appendix E, Question #25. The petitioner’s representative testified that half of the household’s combined cost for food and sundries was \$160 monthly. She did not offer a breakdown as to how much of that was attributable to sundries only, but indicated that she could find that number in documentation that was not brought to hearing. Thus, I cannot rule on how much half of the monthly sundries expense should be, based on the hearing record before me.

If the petitioner wishes me to make a finding as to the amount of the sundries that may be subtracted in the calculation, going back to December 2013, she should identify that amount and attach receipt copies documenting this amount for a three month period, and submit all of this to me as part of a timely Rehearing Request. See the instructions below for filing a Request for a Rehearing.

CONCLUSIONS OF LAW

1. After adjusting for addition of a PERS expense, the agency correctly computed the petitioner's December 2013 FC cost share.
2. The petitioner is not to be given an extra deduction, due to the presence of a part-time live-in attendant, for her rent expense in the medical/remedial expense deduction category.
3. The petitioner is not to be given an extra deduction, due to the presence of a part-time live-in attendant, for her grocery expenses in the medical/remedial expense deduction category.
4. There is insufficient information in the hearing record to determine the amount of sundries expense that could be subtracted as a remedial expense, per county policy.

THEREFORE, it is

ORDERED

That the petition is 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 11th day of April, 2014

\sNancy J. Gagnon
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 11, 2014.

Milw Cty Dept Family Care - MCO
Office of Family Care Expansion