



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/155214

PRELIMINARY RECITALS

Pursuant to a petition filed February 03, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Door County Department of Social Services in regard to Medical Assistance, a telephonic hearing was held on March 24, 2014, at Sturgeon Bay, Wisconsin. At the request of petitioner, the hearing record was held open for him to submit documentation to the county agency of a Court ordered marital settlement agreement (Milwaukee County Case No. 10-FA-5653 filed September 7, 2011, divorce: 40101 from [REDACTED] J. [REDACTED]) signed by any Judge, and verification of his payments for any life insurance possibly related to the calculation his nursing home cost share. The county agency confirmed petitioner only submitted to the agency a 2011 purported marital settlement agreement which was not signed by any Judge, and petitioner failed to document that he made any payments to his 2011 life insurance policy or other medical payments. The petitioner was provided multiple opportunities to submit reliable documentation to the county agency and DHA, but failed to submit to DHA any reliable documentation to DHA to refute the county agency's case that it correctly calculated his nursing home patient liability as of January, 2014.

The issue for determination is whether the county agency correctly calculated the petitioner's nursing home cost share to be \$1,601 effective January 1, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED], ES Manager

Door County Department of Social Services
Door County Government Center
421 Nebraska Street
Sturgeon Bay, WI 54235-0670

ADMINISTRATIVE LAW JUDGE:
 Gary M. Wolkstein
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Door County who resides in the Golden Living Center Nursing Home. He does not have a community spouse.
2. The petitioner receives MA Nursing Home Long Term Care benefits.
3. The petitioner receives monthly Social Security Disability Income (SSDI) benefit of \$1,646.00 as of January 1, 2014.
4. The petitioner was unable to establish with any reliable evidence that he had any Court ordered expenses which should be a deduction in the calculation of his nursing home cost share.
5. The petitioner was unable to establish with any reliable evidence any medical or non-medical expenses which would be allowable expenses from his MA patient liability cost share.
6. The county agency sent December 9, 2013 Notice of Decision to the petitioner stating that his nursing home cost share was \$1,601 as of January 1, 2014.

DISCUSSION

After an institutionalized person is determined eligible for MA, a county agency must calculate the amount of income the institutionalized person must contribute to defray the cost of care incurred by MA on his or her behalf on a monthly basis. See *MA Eligibility Handbook (MEH)*, 27.7.1., viewable online at www.emhandbooks.wi.gov/meh-ebd/. The amount to be paid by the institutionalized person is his/her "patient liability."

The Wisconsin Administrative Code provision that controls the patient liability computation reads as follows:

(d) *Computing income available towards cost of care.*

Institutionalized recipients of MA who are determined eligible under s. HFS 103.06 and this section shall apply their available income toward the cost of their care after deducting the income disregards in this paragraph. In this paragraph, "available income" means any remaining income after the following reductions are made:

1. A personal needs allowance, as provided under s.49.45(7) (a), Stats., and
2. If employed, the first \$65 and one-half of the remainder of gross earnings;
3. The cost of health insurance;
4. Necessary medical or remedial care recognized under State of Wisconsin law but not covered by MA;
5. The actual amount paid by the institutionalized person for support of a person for whom the institutionalized person is legally responsible ...
6. The monthly cost of maintaining a home when the conditions of DHS 103.06(1)(b)3 are met, but not to exceed the SSI payment level for one person living in that person's own household.

Wis. Admin. Code §DHS 103.07(1)(d). See, in accord, the federal rule at 42 C.F.R. §435.725.

For a Medicaid member in a medical institution who does **not** have a [community spouse](#) , subtract the following from the person's monthly income:

- a. \$65 and ½ earned income [disregard](#)  ([15.7.5 \\$65 and ½ Earned Income Deduction](#)).
- b. Monthly cost for health insurance ([27.6.4 Health Insurance](#)).
- c. Support payments ([15.7.2.1 Support Payments](#)).
- d. Personal needs allowance ([39.4 EBD Assets and Income Tables](#)).
- e. Home maintenance costs, if applicable ([15.7.1 Maintaining Home or Apartment](#)).
- f. Expenses for establishing and maintaining a court-ordered guardianship or protective placement, including court-ordered attorney and/or guardian fees ([27.6.6 Fees to Guardians or Attorneys](#)).
- g. Medical Remedial Expenses. See [27.7.8 Payment for Non-Covered Services](#).

During the March 24, 2014 hearing, ESS Manager   and ESS  , provided reliable testimony and evidence to establish that the county correctly calculated the petitioner's patient liability as of January 1, 2014 based upon the above law and policy. During that hearing, petitioner was argumentative, and alleged that he was legally required to pay for his 17 year old son's life insurance policy based upon a Court Order. However, despite the record being held open and multiple opportunities to produce a signed Court Order, petitioner failed to do so. See above Preliminary Recitals.

The county agency was very cooperative with the petitioner, and explained to him several times during conversations prior to and after the hearing that only certain deductions were allowable from patient liability in Institutional Medicaid cases. The county agency explained that court-ordered obligations could be allowed as a deduction from his patient liability, if he could establish a signed Court Order and made payments based upon the Court Order. However, ES Manager  confirmed during the hearing and in her two updates (after the hearing) to DHA (and petitioner) that petitioner failed to verify any Court Order signed by a Judge that ordered any life insurance payments or any other payments by the petitioner. Petitioner also failed to document any payments on behalf of his son.

Petitioner also alleged he had expenses for eye and dental care. However, petitioner was unable to establish that he has any current eye or dental bill, or that he was unable to see a dentist or eye doctor who accepted Medicaid payments. The petitioner is upset that he is only allowed a \$45 personal needs allowance out of his SSDI check, and that his patient liability takes the remaining amount. However, despite petitioner's insistence, he was unable to establish any error in the county agency's calculation of his patient cost share liability to be \$1,601 as of January 1, 2014, as explained in the above policy and law. Accordingly, based upon the above, I conclude that the county agency correctly calculated the petitioner's nursing home cost share to be \$1,601 effective January 1, 2014.

CONCLUSIONS OF LAW

The county agency correctly calculated the petitioner's nursing home cost share to be \$1,601 effective January 1, 2014.

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 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 18th day of June, 2014

\sGary M. Wolkstein
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 June 18, 2014.

Door County Department of Social Services
Division of Health Care Access and Accountability