



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

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In the Matter of

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

DECISION  
  
FCP/155408

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 11, 2014, 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 April 02, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred in its calculation of the FCP cost share.

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: Chris Sobczak  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. Petitioner is a member of the Family Care Program (FCP).
3. Petitioner's 2013 cost share was \$1,628.33. A notice was sent from the Department on February 18, 2013 indicating this cost share based on income of \$2,508.38 (\$873.38 pension and \$1,635 Social Security).
4. Petitioner's gross income is \$2,534.38. This includes 2014 pension payment of \$873.38 and Social Security of \$1,661 per month. The increase in social security was due to a cost of living increase for 2014.
5. On December 9, 2013 the Department sent notice to petitioner informing her that her FCP cost share would be \$1,654.33 per month.
6. Petitioner filed a request for hearing.

### 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 comprehensively 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 at the comprehensive level. 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/2012/2012Contract.htm> (the FCP 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 \$2,094. *MEH*, § 39.4.1. A Group B recipient may have health insurance premiums, certain medical/remedial expenses and a Personal Maintenance 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 gross income places her over the income limit for Group B status. Therefore, the 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 will then be subject to a cost share for income that exceeds the \$591.67 "medically needy income limit of \$591.67, minus the \$20 unearned income disregard and the health insurance premium expense. *MEH*, 39.4.1 – "EBD Medically Needy Limits."

At hearing, petitioner claimed vaguely that the cost share had previously been roughly \$1,100. Petitioner alluded to a concern that medical remedial expenses were not being deducted. Petitioner's arguments were unspecific relating to the previous cost share but were based on a telephone conversation with an unidentified individual at Metastar.

Petitioner was unable to support a claim that previous years' cost share was significantly less than 2014. Petitioner's concern about the medical remedial expenses was also not articulated with any clarity. The Department had previously included medical remedial expenses of \$3,049.19 for 2013. The medical remedial expenses for 2014 are budgeted at \$1,697.81. This is a considerable decrease for 2014, but one

that does not matter. Petitioner is in Group C and medical remedial expenses do not factor into the cost share calculation.

In somewhat confusing fashion, the FCP allows for subtraction of medical/remedial expenses paid by the client as a deduction from her income to determine *eligibility* for the program. See the Department’s form F-20919. However, the Department’s instructions go on to direct the agency to *then* compute the *cost share/spend-down* amount by only subtracting the \$20 unearned income disregard, a health insurance premium, and the \$591.67 medically needy income limit from her income. That is what the agency did, as shown in the calculation below:

Gross Income	\$2534.38
Minus unearned income disregard	- 20.00
Minus health insurance premium	-268.38
Minus “medically needy” income limit	<u>- 591.67</u>
Cost Share/monthly spend-down	\$1,654.33

The petitioner argues that medical remedials may not have been considered in the cost share calculation. That is correct, as under the rules those deductions only go toward a determination of eligibility for a Group C member. Petitioner is already eligible so an increase in this deduction will not affect the cost share. I find no error in the calculations by the agency. I therefore conclude that the cost share was correctly calculated.

**CONCLUSIONS OF LAW**

The Department did not err in its calculation of the 2014 cost share.

**THEREFORE, it is** **ORDERED**

That this appeal 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 1st day of May, 2014

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\sJohn P. Tedesco  
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 May 1, 2014.

Milwaukee Enrollment Services  
Office of Family Care Expansion