



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

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In the Matter of

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

DECISION

MGE/156087

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 13, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Manitowoc County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on April 23, 2014, at Manitowoc, Wisconsin.

The issue for determination is whether the petitioner’s institutional MA patient liability cost amount has been correctly calculated.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
448 Harvest Rd  
Green Bay, WI 54302

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Tammy Hammerschmidt, ES worker  
Manitowoc County Department of Human Services  
3733 Dewey Street  
Manitowoc, WI 54221-1177

**ADMINISTRATIVE LAW JUDGE:**

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

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County.
2. The petitioner, age 48, applied for MA in September 2013. Although the Wisconsin Disability Determination Bureau (DDB) initially found the petitioner to be “not disabled” in October 2013,

it reversed itself and found him disabled in December 2013. On December 27, 2013, the application was clarified for the agency as a request for Institutional/Long-Term Care, because the petitioner has been continuously staying in hospitals and nursing homes for some time.

3. The agency subsequently requested verification pertaining to the petitioner's assets and the listing status of his residence. The verification was received on February 21, 2014.
4. On February 24, 2014, the Department issued written notice to the petitioner advising that his monthly Institutional MA patient liability amount would be \$2,442.33 for September 2013 through March 2014. On March 17, 2014, the Department issued written notice to the petitioner advising that his patient liability amount would be \$2,954.30 beginning with April 2014.
5. The petitioner's income consists of a gross tribal payment of \$5,702.38 monthly. From that income, the tribe subtracts a mortgage payment of \$97.22, a second mortgage (HUD) payment of \$202.10, and an "escrow deduction" of \$210 monthly. The petitioner pays child support of \$2,823.08 monthly.
6. There has been no physician certification that the petitioner is likely to return home within a 6-month period.
7. In calculating the patient liability amount, the county agency subtracted the child support, a \$45 statutory personal needs allowance, and an \$80 home maintenance amount from income to arrive at the liability. For April 2014, that computation looked like this:

Gross income	5902.38
-personal allowance	- 45.00
-child support	-2823.08
-home maintenance	- <u>80.00</u>
Patient Liability	\$2954.30

### **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. This is referred to as the person's "patient liability." The calculation begins with gross income, and only a few items may be subtracted as deductions. These include the statutory \$45 personal deduction and, in some cases, a home maintenance deduction. Wis. Admin. Code §DHS 103.07(1)(d), and the federal rule at 42 C.F.R. §435.725. The formula for calculating the patient liability amount is set out at *Medicaid Eligibility Handbook (MEH)*, §27.7.1, found online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

The petitioner does not contest his \$5,902.38 gross income amount, or his child support deduction. He does question why his mortgage expense was not subtracted in the patient liability computation.

The mortgage expense can be subtracted in limited circumstances:

#### **15.7.1 Maintaining Home or Apartment**

If an institutionalized person has a home or apartment, deduct an amount from his/her income to allow for maintaining the home or apartment that does not exceed the SSI  payment level plus the E supplement for one person (See 39.4.1). The amount is in addition to the personal needs allowance (See 39.4.2 EBD Deductions and Allowances). It should be enough for mortgage, rent, property taxes (including special assessments),

home or renters insurance, utilities (heat, water, sewer, electricity), and other incidental costs.

Make the deduction only when the following conditions are met:

1. A physician certifies (verbally or in writing) that the person is likely to return to the home or apartment within six months, and
2. The person's **spouse** is not living in the home or apartment.

Deduct this amount for no more than six months. ...

*MEH*, §15.7.1.

The controlling federal rule provision reiterates the six-month deduction limitation:

(d) *Optional deduction: Allowance for home maintenance.* For single individuals and couples, an amount (in addition to the personal needs allowance) for maintenance of the individual's or couple's home if—

- (1) The amount is deducted for not more than a 6-month period; and
- (2) A physician has certified that either of the individuals is likely to return to the home within that period.

42 C.F.R. § 435.725(d). Nothing in the rule language persuades me that the agency has erred here.

The petitioner has not provided a physician statement that he was likely to return to his home for six months. Because the petitioner did not provide the agency with written confirmation that he was expected to return to his home within six months, the agency correctly followed policy in declining to subtract his home mortgage expense in the patient liability computation. The policy language regarding treatment of the mortgage expense is as follows:

### **16.2.2 Real Property**

... [real estate that you don't live in is an asset that counts against the \$2,000 asset limit, which makes the applicant ineligible. The applicant can become eligible by listing the property for sale, which makes it "unavailable," and therefore not counted against the asset limit]

If an institutionalized person owns property that's unavailable because it's listed for sale, s/he can use some of her income to maintain the property until it is sold. Allow minimal heat and electricity costs so as to avoid physical damage to the property while it is waiting to be sold. Also allow a minimum amount of property insurance coverage. Do not allow taxes and mortgage payments; they must be paid from the proceeds of the sale.

Allow these minimal maintenance costs for as long as the person is making a good faith effort to sell the property at current market value.

*MEH*, § 16.2.2.

**CONCLUSIONS OF LAW**

1. The county agency correctly declined to subtract the petitioner's home mortgage expense in his patient liability computation because the petitioner did not supply certification of his likely return home within six months of institutionalization.

**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 June, 2014

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 11, 2014.

Manitowoc County Department of Human Services  
Division of Health Care Access and Accountability