



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/156399

PRELIMINARY RECITALS

Pursuant to a petition filed March 25, 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 August 12, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner’s cost share effective April 1, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



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:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. On October 31, 2013, a renewal MA application was submitted on the Petitioner’s behalf. Income was reported as \$219.43/month from a retirement/pension account, \$286.33/month from a

pension account and \$1,149/month from Social Security. Shelter/utility expenses were reported as \$225/month for WE, \$250/quarter for water, \$40/month for telephone and \$200/month rent. Additional expenses reported were \$323.75/month for cost share and \$745/month for caregiver. Medical insurance expenses of \$104.90/month for Medicare and \$20/month for private insurance were reported.

3. On November 22, 2013, the agency issued a Notice of Decision informing the Petitioner that her cost share for December, 2013 was \$447.97 and effective January 1, 2014 was \$567.97/month. The agency budgeted income of \$510.15/month from pension accounts and \$1,166/month from Social Security. For December, 2013, the agency budgeted medical expenses of \$120 and medical insurance premiums of \$104.90. It also budgeted rent of \$200/month. Effective January, 2014, the agency did not budget the \$120 medical expense. The notice informed the Petitioner of the right to appeal the agency's determination by filing an appeal with the Division of Hearings and Appeals by January 16, 2014.
4. On November 26, 2013, a Medical Remedial expense form was submitted indicating a one-time expense of \$120. This was applied to Petitioner's December, 2013 cost share.
5. Prior to December 1, 2013, the agency applied a deduction for Special Exempt Income of \$344.22 in determining the Petitioner's cost share. The Petitioner no longer has any special exempt income effective December 1, 2013.
6. On December 9, 2013, the agency issued a Notice of Decision to the Petitioner informing her of the cost share of \$574.97/month effective January 1, 2014. This was due to an increase in Social Security income to \$1,184/month. The notice informed the Petitioner of the right to appeal the agency's determination by filing an appeal with the Division of Hearings and Appeals by February 17, 2014.
7. On March 12, 2014, the agency issued a Notice of Decision to the Petitioner informing her that her healthcare benefits would end on April 1, 2014 for failure to pay the cost share. The notice informed the Petitioner of the right to appeal the agency's determination by filing an appeal with the Division of Hearings and Appeals by May 15, 2014.
8. On March 25, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.
9. Upon the agreement of the Petitioner's representative to pay the Petitioner's monthly cost share and arrears, on April 4, 2014, the agency issued a Notice of Decision to the Petitioner informing her that her cost share for healthcare benefits would be \$574.97 effective April 1, 2014. The notice also informed the Petitioner of the right to appeal the agency's determination by filing an appeal with the Division of Hearings and Appeals by May 20, 2014.

DISCUSSION

The Family Care program, which is supervised by the Wisconsin 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 Wisconsin Administrative Code Chapter DHS 10. See also, Medicaid Eligibility Handbook (MEH) at §29.1 et seq., available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

A person who receives both a Medical Assistance card and FCP, 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. 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 that currently is \$2,130. Handbook, §39.4.1. Petitioner is in Group B. Group C is for a person whose income is above \$2,130.

A Group B recipient must pay a cost share based upon income and certain expenses. Wis. Admin. 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 personal needs allowance as provided under 42 C.F.R. §435.726(c), if the person is an FCP recipient. That personal needs allowance currently is \$901, as set out in the MA Handbook, App. 39.4.2.

Another deduction is special housing expenses. If the applicant's housing costs are over \$350, deduct the total expenses that exceed \$350 for the following costs:

- a. Rent.
- b. Home or renters insurance.
- c. Mortgage.
- d. Property tax (including special assessments).
- e. Utilities (heat, water, sewer, electricity).
- f. "Room" amount for members in a Community Based Residential Facility (CBRF Community Based Residential Facility), Residential Care Apartment Complex (RCAC) or an Adult An adult is anyone age 18 or older. Family/Foster Allowance.) Home (AFH). The case manager determines and provides this amount.

MA Handbook, App. 28.8.3.1.

A third deduction is for out-of-pocket medical/remedial expenses. Medical expenses are anticipated incurred expenses for services or goods that have been prescribed or provided by a professional medical practitioner (licensed in Wisconsin or another state). The expense is for diagnosis, cure, treatment, or prevention of disease or for treatment affecting any part of the body. 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. 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. The applicant must submit a Medical/Remedial expense form with allowable expenses in order to get a deduction. MA Handbook, App. 15.7.3.

An additional deduction is allowed for special exempt income. Special exempt income includes:

1. Income used for supporting others (15.7.2.1 Support Payments).
2. Court-ordered attorney fees (15.7.2.3 Fees to Guardians or Attorneys).
3. Court-ordered guardian and guardian ad litem fees (15.7.2.3 Fees to Guardians or Attorneys).
4. Expenses associated with establishing and maintaining a guardianship. (15.7.2.3 Fees to Guardians or Attorneys)
5. Expenses associated with a Self-Support Plan (15.7.2.2 Self-Support Plan).
6. Impairment Related Work Expenses (IRWE) (15.7.4 Impairment Related Work Expenses (IRWE))
7. Maintaining a home or apartment (15.7.1 Maintaining Home or Apartment)
8. Costs associated with real property Real property means land and most things attached to the land, such as buildings and vegetation. listed for sale (16.2 Assets Availability)

MA Handbook, App. 15.7.2.

A person who is required to contribute to the cost of his care but who fails to make the required contributions is ineligible for FCP. Wis. Stat., §49.286(2)(c); Wis. Admin. Code, §§DHS 10.32(1)(f) & 10.34(4)(a). There is little or no written policy on when an agency may or should discontinue eligibility due to failure to pay a cost share. In researching the issue, I found several earlier decisions written by the

Division of Hearings and Appeals. It appears that, for practical purposes, two scenarios lead to termination actions. First, the person simply refuses to pay the cost share. Second, the person falls behind in payments and fails to agree to a plan to make payments up.

In this case, the Petitioner's representative concedes that she did not pay the cost share as required. She testified that she believes that previous cost share requirements back to 2011 are incorrect and that Petitioner's cost share has been too high. She requested that a complete review of the Petitioner's cost share be conducted back to 2011 to determine the correct amount of arrears. It was explained at the hearing that the Division of Hearings and Appeals does not have jurisdiction to review every cost share determination back to 2011 and that, based on the Petitioner's appeal date, DHA has jurisdiction to review the agency's determination to close the Petitioner's case effective April 1, 2014 and any subsequent cost share determinations.

Because the Petitioner concedes that she did not pay the cost share, I conclude the agency properly took action to end the Petitioner's healthcare benefits effective April 1, 2014. The agency re-opened the Petitioner's case effective April 1, 2014 upon the agreement of her representative to pay the cost share and arrears.

I have reviewed the agency's cost share determination effective April 1, 2014. The agency calculated a cost share of \$574.97/month. This was based on unearned income of \$1,694.15 and the following deductions: \$901 special needs allowance, \$198.18 special housing amount and \$20 health insurance premium. The Petitioner's representative testified that the cost share is too high but did not provide specific evidence to rebut the agency's calculations. She requested clarification of the expenses that were allowed. The agency explained that the utility expenses were included with the exception of the phone expense which is not included. The Petitioner questioned the Special Exempt Income deduction previously allowed but removed by the agency as a deduction. The agency was unable to state specifically why the Petitioner had received this deduction in the past. However, the application contains no information to indicate that the Petitioner is eligible for this deduction and the Petitioner presented no evidence that Petitioner has any special exempt income that would allow for this deduction. The agency noted that no medical remedial expense form was submitted and no deductions allowed for medical remedial expenses.

Effective July 1, 2014, the agency revised the cost share based on rent expense information submitted by the Petitioner as part of her FS renewal in July. The agency allowed a special housing amount deduction of \$483.33 based on increased rent and housing expenses reported by the Petitioner. The cost share effective July 1, 2014 is \$289.82. The agency representative explained at the hearing that the agency had not yet sent a notice of decision informing the Petitioner of this decrease in the cost share. The Petitioner's representative was advised that she will have a separate appeal right concerning that cost share determination.

Based on the evidence presented, the agency properly took action to discontinue the Petitioner's benefits effective April 1, 2014 for failure to pay the cost share. The agency properly re-opened the Petitioner's case with a cost share of \$574.97/month effective April 1, 2014 based on the information submitted by the Petitioner.

CONCLUSIONS OF LAW

The agency properly took action to discontinue Petitioner's healthcare benefits effective April 1, 2014 for failure to pay the cost share. The agency properly re-opened the Petitioner's case with a cost share of \$574.97/month effective April 1, 2014 based on information submitted by the Petitioner.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of August, 2014

\sDebra Bursinger
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 August 14, 2014.

Milwaukee Enrollment Services
Office of Family Care Expansion