



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

FCP/156582

PRELIMINARY RECITALS

Pursuant to a petition filed April 2, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Dodge County Department of Human Services in regard to Family Care (FC) cost share, a hearing was held on May 20, 2014, by telephone. A post-hearing submission, dated June 4, 2014, was received from the petitioner's father.

The issue for determination is whether the county economic support agency correctly determined the petitioner's FC cost share from January – March 2014.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
By: [REDACTED], father
[REDACTED]
[REDACTED]

Respondent:

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

By: Heather Ehrlich, ES Spec.

Dodge County Department of Human Services
143 E. Center Street
Juneau, WI 53039-1371

and

Rebecca Schmidt, program mgr.
Care Wisconsin

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County.
2. The petitioner has an ongoing FC case, with her last annual review occurring on July 1, 2013. The petitioner, age 39, is mentally retarded and has some physical limitations. She was employed, and her earned income caused her to have a FC cost share. The cost share was \$320.00 monthly from January 2014 through the present.
3. The petitioner's earned income was interrupted because she had to stop working to receive medical treatment. She had surgery on December 2, 2013, and returned to work on February 5, 2014.
4. The petitioner's parents advised the FC program in or about December 2013 that the petitioner was about to have surgery, and that she would miss work for two months. The FC program did not relay this information to the Dodge County Human Services Department – Economic Support Division.
5. Prior to April 2014, the petitioner did not advise the DCHS Department-Economic Support Division or other Department agent (website or call center), that her income would drop to zero for the two months in question, prior to April 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>.

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, *MEH*, § 29.3. A recipient may request a hearing on the determination of the cost share amount.

There is no dispute that the petitioner's earned income dropped to zero for an 8-week span beginning in December 2013. The petitioner made the FC program, operated by the contractor Care Wisconsin, aware of her surgery and resulting absence from employment. Care Wisconsin did not forward that information to the county economic support office (for example, Ms. Ehrlich). It would have been a nice thing if Care Wisconsin had forwarded that information to the county economic support office, but it was not required to do so. State code identifies the minimum obligations of a FC case management team to the enrollee, and serving as a conduit for income information to the county agency is not among those obligations. Wis. Admin. Code § DHS 10.44; see also, Exhibit 2, Care Wisconsin's *Family Care Member Handbook*, p. 26, "Cost Share." The *Handbook* was approved by the Department, per Wis. Admin. Code § DHS 10.51(intro).

The petitioner did not timely report the interruption of her income to the county economic support office, or the Department's change reporting website, or the Department's change reporting call center. The economic support agency's notice to the petitioner, dated December 9, 2013, (a) continued to show income from employment, (b) show the \$320 cost share, (c) reminded her to report income changes in 10 days, and (d) listed the call center number for reporting changes (on the first page) of 1-[REDACTED]. She is required by state code to report significant changes to income within 10 days of their occurrence. Wis. Admin. Code §§ DHS 10.32(3), 10.34(3)(f)3, & 104.02(6); see also *MEH*, 12.1. When an income

decrease is not reported, the county agency does not act upon it. The county agency does not make retroactive changes upon receiving a late report of an income decrease.

The petitioner's father expressed displeasure at the FC contractor's failure to relay information to the county economic support agency. However, I can find no legal basis for re-doing the cost share amount in a situation where the petitioner or her representative did not timely report the income change to the economic support agency. I also note that there is a 45-day appeal period limit for FC cases, so this appeal (filed in April) cannot reach back to provide a remedy for cost shares imposed on January 1 and February 1. The 45-day appeal period was identified on page 5 of the December 9, 2013 economic support agency notice.

CONCLUSIONS OF LAW

1. Where the petitioner did not report decreased income for the December 2013 to early February 2014 period to the economic support agency until April 2014, no remedy exists to retroactively reduce her FC cost share amounts.

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 2nd day of July, 2014

\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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 2, 2014.

Dodge County Department of Human Services
Office of Family Care Expansion