



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

In the Matter of

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

DECISION

MGE/156601

PRELIMINARY RECITALS

Pursuant to a petition filed April 02, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waupaca County Department of Social Services in regard to Medical Assistance, a hearing was held on May 19, 2014, at Waupaca, Wisconsin.

The issue for determination is whether the agency erred in denying petitioner’s request for a retroactive patient liability adjustment to October 2013.

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: Jane Voelker

Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waupaca County.
2. Petitioner has been receiving LTC-MA. Petitioner’s patient liability was calculated based on her income including Social Security.

3. In October 2013, petitioner's social security was reduced or terminated. Petitioner did not notify the agency until December when she requested a recalculation of patient liability.
4. In December the patient liability was reduced. Petitioner requested a retroactive adjustment back to October when the income dropped. The agency denied the request.
5. Petitioner appealed that denial.

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.

In this case, the petitioner had a reduction in her income. Social Security was reduced significantly or terminated in October. But, petitioner and her agents did not realize this until December. In December, the institution notified the agency and the agency recalculated patient liability for December going forward. This appeal was filed by petitioner because the agency denied a request to backdate the reduction to when the Social Security was changed in October. But, a retroactive adjustment is not permitted under program rules:

27.10 ILTC Liability Effective Dates

Nursing homes, State centers, and State mental hospitals receive a CARES weekly paper report, #CCN150RA, that lists the patient liability amounts for their Medicaid residents. The report includes case number, primary person name, patient liability status (approval, closure, increase, decrease, unchanged), the date the action was confirmed on AGECE, prior patient liability amount, current patient liability amount, effective begin date, and effective end date. Income changes which are reported timely and result in an increased patient liability have the following effective dates:

1. Before [cutoff](#), effective the first of the following month.
2. After cutoff, effective the first of the month after the following month.

Do not complete [F-10110](#)'s (formerly DES 3070) for retroactive patient liability increases since the *member* must receive timely notice.

Decreases in patient liability are always effective the first of the month in which the decrease in income occurs or the decrease is reported, whichever is later.

(Emphasis added). Given this rule in boldface above, the agency did not err. The failure was petitioner's or petitioner's agents for not realizing the loss of income for a period of months. It is unfortunate, but it is not the agency's error. It is also not the agency's error if petitioner did not receive notice from the Social Security Administration. Again, unfortunate – but the critical failure was petitioner's or whomever manages her finances for failing to notice that income ceased or was reduced.

CONCLUSIONS OF LAW

The agency did not err in denying the request to backdate the patient liability change for October and November 2013.

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 6th day of June, 2014

\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 June 6, 2014.

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