



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
c/o [Redacted] Inc.
[Redacted]

DECISION

FCP/158018

PRELIMINARY RECITALS

Pursuant to a petition filed May 29, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Jefferson County Department of Human Services in regard to Medical Assistance, a telephonic hearing was held on July 23, 2014, at Jefferson, Wisconsin. At the request of the parties, the record was held open for the submission of consecutive closing arguments and documents to the Division of Hearings and Appeals (DHA). Both parties timely submitted their closing arguments to DHA which are received into the hearing record.

The issue for determination is whether the county agency correctly determined the petitioner's Family Care Program (FCP) cost share remains at \$825.93 as of June 1, 2014 based upon petitioner's prior DHA decision, or should be further reduced due to increased allowable FCP cost share deductions due to continued undue financial hardship.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
c/o [Redacted]
[Redacted] Inc.
[Redacted]

Representative:

[Redacted] guardianship specialist
[Redacted] Inc.
[Redacted]

Respondent:

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

By: Mary Springer, ESS
Jefferson County Department of Human Services
Workforce Development Center
874 Collins Rd.
Jefferson, WI 53549

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Jefferson County.
2. Petitioner has been an ongoing participant in FCP. On November 3, 2011, the Department issued written notice to petitioner advising that her FCP monthly cost share would be \$2,199.15 from November 1, 2011, onward. Petitioner's guardian appealed the cost share, and in case no. FCP/137094, the Division of Hearings and Appeals ordered that the cost share be reduced to \$1,307.20 due to financial hardship.
3. Petitioner had a prior hearing on June 19, 2012 in DHA Case No. FCP/140990 regarding whether petitioner's Family Care Program (FCP) cost share could be reduced due to financial hardship created by an IRS garnishment.
4. In his decision, Judge Brian Schneider in FCP/140900 concluded that the county agency should reduce petitioner's Family Care monthly cost share to \$825.93 due to financial hardship effective June 1, 2012.
5. During 2014, petitioner has total monthly gross income of \$3,476.90, which consists of a pension and Social Security. Since the prior 2012 decision in FCP/140900, the petitioner's garnishment from her pension has increased from **\$211.22 in 2012 to \$499.85 + \$147.91 (IRS tax levy deduction) in 2014**. The IRS garnished \$779.80 monthly from the Social Security benefit which **increased to \$827.80 in 2014**. In addition \$185.42 was taken from the pension for health insurance which **increased to \$186.14**, and her social security deduction increased from **\$99.90 to \$104.90** for her Medicare Part B premium deduction. Petitioner also pays an **increase from \$158 to \$160** per month in guardianship fees.
6. Petitioner ran up her debts to the IRS before the current guardian was assigned. Petitioner has mental health issues, and did not prioritize her spending during manic episodes.
7. Petitioner's current living expenses include about \$700 for rent and food, \$40 for prescriptions and medical co-pays, and \$100 in other miscellaneous expenses.
8. The county agency sent a May 5, 2014 Notice of Decision to the petitioner's (c/o her guardian) indicating that her Family Care Program cost share would remain at the same amount of \$825.93, as ordered by Judge Schneider in petitioner's prior decision in FCP/140900.

DISCUSSION

In petitioner's prior discussion section in FCP/140900, Judge Schneider explained the following:

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 Statute, §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 www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm.

Petitioner is eligible for FCP. 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." Handbook, § 29.3. There is no dispute that the petitioner's income levels at all times relevant herein have caused her to be subject to a cost share liability. Also, it is clear that a recipient may request a hearing on the determination of the cost share amount. Wis. Stat., §46.287(2)(a)1b.

The issue is whether petitioner's cost share can be reduced again to account for the higher garnishment amounts. With the reduction for the garnishments the only deductions in determining the cost share are the standard \$20 disregard, the guardianship fees, and the health insurance premiums (both the private insurance and the Medicare Part B). The life insurance premium is not deducted. Thus without the garnishment reductions petitioner's monthly cost share would be \$2,332.91.

As noted in the prior decision, the administrative code contains a provision regarding waiver of current cost share amounts:

(4) PAYMENT OF COST SHARE REQUIRED.

(a) Except as provided in par. (b), a person who is required to contribute to the cost of his or her care but who fails to make the required contributions is ineligible for the family care benefit.

(b) If the department or its designee determines that the person or his or her family would incur an undue financial hardship as a result of making the payment, the department may waive or reduce the requirement. Any reduction or waiver of cost share shall be subject to review at least every 12 months. A reduction or waiver under this paragraph shall meet all of the following conditions:

1. The hardship is documented by financial information beyond that normally collected for eligibility and cost-sharing determination purposes and is based on total financial resources and total obligations.
2. Sufficient relief cannot be provided through an extended or deferred payment plan.
3. The person is notified in writing of approval or denial within 30 days of providing necessary information to the department or its designee.

Wis. Admin. Code, §DHS 10.34(3)(4)(a),(b). See also, *FCP contract*, III-E. The code says that the department "may" waive/reduce the cost share requirement—it is not required to do so.

After subtraction of petitioner's \$285.32 in health insurance premiums, the \$158 guardianship fee, the \$20 standard deduction, \$820 in essential expenses, and \$1,279.65 in garnishments from petitioner's \$3,368.90 income, only \$825.93 is available for cost share payments beginning June, 2012 onward. The petitioner has no discretion regarding payment of the garnishments. Therefore, the cost share will be adjusted downward to \$825.93 monthly.

In the instant case of FCP/158018, county representative, ESS Mary Springer explained that she was following the 2012 decision by ALJ Schneider and continuing to honor petitioner reduced cost share of \$825.93 based upon that decision. Petitioner's representative and guardian, [REDACTED] [REDACTED] presented reliable evidence of increases in petitioner's allowable deductions for garnishments from her pension and her Social security and other deductions. See Finding of Fact #5 above. ESS Springer argued correctly that petitioner's life insurance premium was not an allowable deduction for the Family Care Program. However, the county agency representative was unable to refute that petitioner's allowable FCP deductions increased as set forth in Finding of Fact #5. As a result, the county agency needs to re-calculate the petitioner's FCP cost share based upon the increases in those allowable deductions. According, based upon the above, I conclude that the county agency incorrectly determined the petitioner's Family Care cost share remains at \$825.93 as of June 1, 2014, and should re-calculate the petitioner's reduced cost share retroactive to June 1, 2014 based upon Findings of Fact #5 above.

CONCLUSIONS OF LAW

The county agency incorrectly determined the petitioner's Family Care cost share remains at \$825.93 as of June 1, 2014, and should re-calculate the petitioner's reduced cost share retroactive to June 1, 2014 based upon Findings of Fact #5 above.

THEREFORE, it is

ORDERED

The matter is remanded to the county agency with instructions to: a) re-calculate the petitioner's reduced cost share retroactive to June 1, 2014 based upon Findings of Fact #5 above; and b) issue to the petitioner a new notice indicating the petitioner's FCP cost share retroactive to June 1, 2014, within 10 days of the date of this Decision.

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 7th day of November, 2014

\sGary M. Wolkstein
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 November 7, 2014.

Jefferson County Department of Human Services
Office of Family Care Expansion