



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MGE/158107

PRELIMINARY RECITALS

Pursuant to a petition filed June 02, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on July 03, 2014, at Milwaukee, Wisconsin.

Note the record was held open for the Petitioner to supplement the record. On July 8, 2014, the Petitioner faxed a packet that included a notice dated May 2, 2014, indicating effective June 1, 2014, the Petitioner would be receiving Nursing Home Long Term Care benefits with a patient liability of \$1,119.00 per month; Notices from the Social Security Administration indicating the Petitioner would be receiving \$1,164.00 for the month of March on or about April 3, 2014 and that thereafter she would receive \$1,164.00 per month on the 3rd of each month, and pages 1-6 of 12 of some Six Month Report Form Instructions sent to the Petitioner on September 23, 2013. The packet has been marked as Exhibit 4 and entered into the record.

The issues for determination are whether Petitioner's appeal is timely and whether Petitioner's Patient Liability should have begun in March 2014.

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: Chris Sobczek, HSPC
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
 Mayumi M. Ishii
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On September 24, 2013, the Petitioner applied for Nursing Home Long Term Care Medicaid benefits. The application indicated that the Petitioner had an authorized representative named Scott [REDACTED] (Exhibit 2)
3. On November 5, 2013, the Milwaukee County Circuit Court found the Petitioner to be incompetent and appointed her daughter to be her guardian. (Exhibit 3, pgs. 10-13) Milwaukee Enrollment Services did not receive the court order until May 1, 2014. (Exhibit 3, pg. 2)
4. On January 27, 2014, Milwaukee Enrollment Services (the agency) sent directly to Petitioner a notice indicating that as of March 1, 2014, she would be enrolled in Nursing Home Long Term-Care Medicaid with a patient liability of \$1,119.00 per month. The notice further indicated that the patient liability was calculated based upon income of \$1,164.00 per month from Social Security. (Exhibit 3, pgs. 14-18)
5. The agency's income determination was based upon information from the Social Security Data Exchange that auto-populated into the Petitioner's case. (Testimony of Ms. Sobczek; Exhibit 3, pg. 5)
6. On February 25, 2014 and again on March 11, 2014, the Social Security Administration sent the Petitioner notices indicating that she would receive her March payment of \$1,164.00 on April 3, 2014, and that thereafter, she would receive payments of \$1,164.00 on the third of each month. (Exhibit 4, pgs. 11-14)
7. On May 2, 2014, the agency sent a notice to Petitioner's daughter/guardian, indicating that as of June 1, 2014, the Petitioner would be enrolled in Nursing Home Long-Term Care Medicaid Benefits with a Patient Liability of \$1,119.00 per month. (Exhibit 4, pgs. 5-10)
8. On May 19, 2014, the Petitioner's daughter/guardian called the agency to inquire which date was correct, with regard to when Petitioner's patient liability would begin and was informed that the patient liability began in March 2014. (Exhibit 3, pg. 2)
9. The Petitioner's daughter/guardian filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 2, 2014. (Exhibit 1)

DISCUSSION

The Petitioner's guardian did not dispute the agency's calculation of the patient liability. Petitioner's guardian filed an appeal because she feels the agency erroneously started the patient liability in March 2014.

The agency asserts that Petitioner's dispute concerning the March 2014 patient liability is untimely.

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA must be filed within 45 days of the date of the action. Wisconsin Stat. § 49.45(5); Medicaid Eligibility Handbook (MEH) § 3.3.2. A negative action can be the denial of an application, the reduction of benefits or the termination of an ongoing case.

However, the Income Maintenance Manual (IMM) §3.2.1 states that a client must be given both adequate and timely notice of adverse action.

In the case at hand, the agency sent directly to the Petitioner, a notice advising her that she incurred a patient liability effective March 1, 2014. Ordinarily, this would render the appeal filed by Petitioner's guardian on June 2, 2014, untimely. However, Petitioner's application stated that she had an authorized representative named Scott Horn.

According to MEH §2.5, the authorized representative is responsible for acting on behalf of the Petitioner and submitting all required documentation to the agency. As such, notice of the patient liability should have been sent to Petitioner's authorized representative.

In addition, a court found the Petitioner to be incompetent in November 2013. While the agency might not have been notified of this until May 2014, the fact remains that the agency sent notice to an incompetent party. It is unreasonable to expect an incompetent party to read, understand and act upon a notice of decision.

Because the agency did not send notice of the patient liability to Mr. Horn, Petitioner's authorized representative and because the agency sent notice directly to the Petitioner who is not competent, the notice of the March 2014 patient liability was not adequate.

Based upon the foregoing, it is found that the Petitioner's appeal is timely.

With regard to when Petitioner's patient liability should have begun, the record makes clear that the Petitioner received her first Social Security payment of \$1,164.00 on April 3, 2014. Petitioner had notice as early as February 25, 2014, that she would receive the April 3, 2014 payment. As such, Petitioner's patient liability should have begun in April 2014.

CONCLUSIONS OF LAW

- 1) Petitioner's appeal is timely.
- 2) Petitioner's patient liability should have begun in April 2014 NOT March 2014.

THEREFORE, it is

ORDERED

That the agency restore Petitioner's benefits for March 2014, without the \$1,119.00 patient liability. The agency shall take all administrative steps necessary to complete this task within 10 days of this decision.

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 6th day of August, 2014.

\sMayumi M. Ishii
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 August 6, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability