



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/158303

PRELIMINARY RECITALS

Pursuant to a petition filed June 10, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by Milwaukee Enrollment Services in regard to Family Care (FC) cost share, a hearing was held on August 06, 2014, at Milwaukee, Wisconsin.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner has an ongoing FC case. Following a renewal in April, 2014, petitioner was notified that his cost share would be \$178.51, effective May 1, 2014. Exhibit 8.
3. Petitioner timely appealed the cost share determination on June 10, 2014.

4. Respondent's review of the matter following notification of petitioner's request for a fair hearing indicated an error in calculation of petitioner's cost share. The error was corrected, and the respondent issued notice to the petitioner on June 18, 2014, indicating that the correct cost share would be \$122.66.
5. The respondent provided testimony at hearing indicating that ForwardHealth's records show that the cost share of \$122.66 was assessed from May 1, 2014 going forward. The incorrect cost share was never charged to petitioner.

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.

The respondent testified that the cost share amount increased due to an increase in petitioner's income and a decrease in his medical remedial expenses. The petitioner did not challenge the income that the respondent budgeted for him, nor did he indicate any error in the medical remedial expenses counted by the respondent.

The petitioner argued that the respondent should not use his gross income in determining cost share. The *Medicaid Eligibility Handbook* explains what income an agency is to count in determining an individual's eligibility. The general section on income availability states as follows:

15.1.5 Availability

General Rules:

1. Only count income when it is available (see 15.1.1 Availability)
2. Some income is disregarded (see 15.3 Disregarded Income)
3. Always use gross income when calculating income.
4. Some income, even though it is unavailable income must be counted. (e.g. garnishments)

Income is available when:

1. It is actually available, and
2. The person has a legal interest in it, and
3. The person has the legal ability to make it available for support and maintenance.

Note: Available income can include more than a person actually receives if amounts are withheld from earned or unearned income because of a garnishment, or to pay a debt or any other legal obligation.

MEH § 15.1.5.

The petitioner has not identified any error on the part of the respondent in determining his cost share to be \$122.66. I have reviewed the respondent's calculations and found no error.

CONCLUSIONS OF LAW

The petitioner has not established any error on the part of the respondent in calculating petitioner's cost share effective May 1, 2014.

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 22nd day of September, 2014.

\sPeter McCombs
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 September 22, 2014.

Milwaukee Enrollment Services
Office of Family Care Expansion