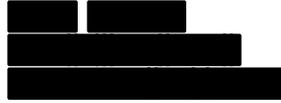




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/158352

PRELIMINARY RECITALS

Pursuant to a petition filed June 16, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to the Family Care (FC) program, a hearing was held on August 6, 2014, at Milwaukee, Wisconsin.

The issues for determination are (1) whether the Administrative Law Judge has jurisdiction to review cost share determinations for months prior to May 2014, and (2) whether the agency correctly determined the petitioner's monthly FC cost share.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Ms. Chris Sobczak, HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. The petitioner has an open, ongoing case for the Family Care (FC) program. Her case was reviewed in January 2014. The agency entered zero medical/remedial expenses in in budgeting

calculation. On January 22, 2014, the Department issued written notice to the petitioner advising that her cost share would be \$260.52 for January and February 2014, and \$609.52 from March 1, 2014, forward. The notice identified an appeal deadline of March 10, 2014.

3. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on June 16, 2014.
4. The petitioner submitted updated, additional medical remedial expenses to the agency on April 8, 2014. The allowed monthly medical/remedial expenses totaled \$180. On April 21, 2014, the Department issued another written notice to the petitioner, advising that her cost share would be \$429.52 effective May 1, 2014.
5. The petitioner receives monthly gross income of \$2,020.50 (all unearned). She pays rent of \$800.00, homeowner's insurance of \$60.00, a water bill of \$136.00, a heat/electricity bill of \$213.00, and has documented medical/remedial expenses of \$180.00 monthly. The rent, insurance, water, and heat/electricity expenses were identified in these amounts on the petitioner's January 2014 review document.
6. In August 2014, the agency looked at this case in preparation for hearing. The agency realized that it had inexplicably omitted the petitioner's water and heat/electricity expenses in the cost share calculations for March 2014 forward. On the date of hearing, the agency voluntarily corrected its calculations for March 2014 to the present to include these expenses. The result was that the petitioner's cost share dropped to \$80.52 monthly from March 2014 to the present.

DISCUSSION

I. THE PETITIONER'S APPEAL IS NOT TIMELY FOR THE PURPOSE OF CHALLENGING THE COST SHARE FOR JANUARY THROUGH APRIL.

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 the Department/county agency concerning Medicaid or its Family Care derivative must be filed within **45** days of the date of the action. Wisconsin Stat. § 49.45(5); *Income Maintenance Manual*_§ 3.3.1. A negative action can be the denial of an application, imposition of a cost share, or the reduction or termination of an ongoing case. The petitioner's appeal was filed more than 45 days after the effective dates of the cost share determinations for January through April 2014. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case for the months of January through April 2014. The petitioner's appeal is timely for the purpose of the challenging the cost share amounts for May 2014 onward.

I. MAY 2014 COST SHARE.

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 Statutes, § 46.286, and is described in the Wisconsin Administrative Code, Chapter DHS 10. See also, *Medicaid Eligibility Handbook* 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. Wis. Stat. §46.287(2)(a)1b.

A person who receives both a Medical Assistance card and Family Care, and is not on “regular MA” because of excess income, is classified as being in Group A, Group B, or Group C. Group A is for person who receives SSI or certain other benefits that are not relevant here. The petitioner does not fit within Group A. Group B status is available to a person who has gross income below the Community Waivers MA income limit of \$2,163 in 2014. *MEH*, § 39.4.1. A Group B recipient may have health insurance premiums, certain medical/remedial expenses and a \$901 Basic Needs Allowance (possibly including housing expenses) subtracted from her income before a cost share is computed. 42 C.F.R. §435.726; Wis. Admin. Code §DHS 103.07(1)(d). The petitioner’s undisputed gross income of \$2,020 places her in Group B. (Group C is for a person with more than \$2,163 in monthly income).

Per the April 21, 2014 notice (for May), the agency was correctly subtracting the identified medical/remedial expenses in the cost share calculation. It was also subtracting a \$510 special housing deduction from the petitioner’s income, which was based on an undisputed \$800 rent expense and \$60 insurance expense. This deduction was supposed to be premised on a rent *and* utilities cost, minus a shelter cost threshold of \$350. In August, the agency realized its error, and tallied all of the countable shelter costs (\$800 + \$60 + 136 + \$213 = \$1,209). After subtracting the \$350 threshold from \$1,209, an \$859 special housing deduction was the result. Insertion of the \$859 special housing deduction in the cost share calculation results in an \$80.52 cost share:

Gross income	2020.62
-Basic Needs Allowance	-901.00
-Special Housing Deduction	-859.00
-Medical/Remedial Deduction	<u>-180.00</u>
Cost Share	80.52

The petitioner does not contest her gross income or the housing expenses identified above. She asserts that the agency apparently shorted her a \$100 credit in 2013. Her hearing request is not timely with respect to an agency action taken in 2013. She also observed that her cost share was lower in 2013, that her financial circumstances have not changed, and that she therefore finds imposition of the \$80.52 cost share to be surprising. The agency was understandably not prepared to discuss the calculation of the petitioner’s 2013 cost share. Post-hearing, I reviewed a notice copy in the Department’s notice database from September 30, 2013. That notice imposed no cost share. The petitioner’s income was nearly identical to her current amount, and her rent was again at \$800. Significantly, however, medical/remedial expenses were at \$610.41 monthly, rather than the current \$180.

In any event, the agency had acted to correct the petitioner’s cost share downward to \$80.52 by the time of hearing, for all of the months over which I have jurisdiction. Thus, there is nothing further for me to order to be done here.

CONCLUSIONS OF LAW

1. There is no jurisdiction for this Judge to review the cost share computation for January through April 2014, as the appeal is untimely for those months.
2. The agency stipulated to a revision of the petitioner’s cost share amount downward to \$80.52 from March 2014 through August 2014.
3. With the revision downward to \$80.52, the agency correctly computed the petitioner’s FC cost share for May through August 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 9th day of September, 2014

\sNancy J. Gagnon
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 9, 2014.

Milwaukee Enrollment Services
Office of Family Care Expansion