



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

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In the Matter of

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

DECISION

MGE/159514

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 30, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Marathon County Department of Social Services in regard to Medical Assistance, a hearing was held on September 17, 2014, at Wausau, Wisconsin.

The issue for determination is whether the respondent correctly determined petitioner's home maintenance allowance.

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: Sherri Seubert

Marathon County Department of Social Services  
400 E. Thomas Street  
Wausau, WI 54403

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]), age 62, was a resident of Marathon County at all times relevant hereto.

2. The petitioner entered a nursing home on January 11, 2014, and has remained continuously institutionalized. He arrived on a ventilator, and was weaned from the ventilator on August 20, 2014.
3. The petitioner applied for Long-Term Care/Institutional MA as a single person and supplied a doctor's statement to the county agency stating that there was a reasonable expectation that he could return to his home. Therefore, the agency allowed him the maximum \$900.77 home maintenance deduction. Exhibit 3.
4. When a person on Medicaid is in the nursing home, his income after a few specified deductions must be paid to the nursing home. This amount is his "patient liability." The unpaid nursing home bill above the patient liability amount is then paid for by Medicaid.
5. On July 8, 2014, the Department issued written notice to the petitioner advising that he would be responsible for a \$1,139.62 monthly patient liability amount effective August 1, 2014. Exhibit 4. The petitioner's gross income had not changed; rather the change was due to an increase in *available* income, due to elimination of the home maintenance deduction.
6. Petitioner appealed the discontinuation of the home maintenance deduction and requested an increase in the home maintenance deduction. Exhibit 1.

### 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)*, §27.7.1, found online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

The petitioner contests the amount of, as well as the termination of, his home maintenance deduction. The respondent counters that the home maintenance deduction is specifically limited to six months and that the amount that can be deducted is capped at \$900.77. See, (*MEH*), §39.4.1.

Medicaid specifies that petitioner's home expenses can be subtracted in certain circumstances:

#### **15.7.1 Maintaining Home or Apartment**

If an institutionalized person has a home or apartment, deduct an amount from his/her income to allow for maintaining the home or apartment that does not exceed the SSI  payment level plus the E supplement for one person (See 39.4.1). The amount is in addition to the personal needs allowance (See 39.4.2 EBD Deductions and Allowances). It should be enough for mortgage, rent, property taxes (including special assessments), home or renters insurance, utilities (heat, water, sewer, electricity), and other incidental costs.

Make the deduction only when the following conditions are met:

1. A physician certifies (verbally or in writing) that the person is likely to return to the home or apartment within six months, and
2. The person's **spouse** is not living in the home or apartment.

Deduct this amount for no more than six months. If the person is re-admitted to the institution, grant a six month continuance. A physician must again certify that s/he is likely to return to the home or apartment within six months.

The home maintenance allowance can be granted at any time as long as the person is institutionalized. It is not limited to the first six months of institutionalization.

*MEH*, §15.7.1.

The petitioner provided a physician statement that he was likely to return to his home within the first six months that he was institutionalized. He now seeks an additional three months (see, handwritten notation at Exhibit 2). The petitioner provided a physician statement authorizing the additional three months. Exhibit 2. However, the *MEH* requires a re-admission in order to allow for a grant of additional months. The petitioner has not established that he was re-admitted following his initial 6-month institutionalization. As such, the agency correctly followed policy in declining to subtract his home expense in the patient liability computation as of August 1, 2014.

The controlling federal rule provision reiterates the six-month deduction limitation, in a curiously constructed passage:

(d) *Optional deduction: Allowance for home maintenance.* For single individuals and couples, an amount (in addition to the personal needs allowance) for maintenance of the individual's or couple's home if—

(1) The amount is deducted for not more than a 6-month period; and

(2) A physician has certified that either of the individuals is likely to return to the home within that period.

(3) For single individuals and couples, an amount (in addition to the personal needs allowance) for maintenance of the individual's or couple's home if—

(i) The amount is deducted for not more than a 6-month period; and

(ii) A physician has certified that either of the individuals is likely to return to the home within that period.

42 C.F.R. § 435.725(d). Nothing in the rule language persuades me that the agency has erred here.

The petitioner also contests the amount of the home maintenance deduction. While there may be an issue regarding the timeliness of such an appeal, I note that the respondent has already provided the maximum deduction permissible under the guidance of the *MEH*.

### **CONCLUSIONS OF LAW**

1. The county agency correctly declined to subtract the petitioner's home expense in his patient liability computation as of August 1, 2014, because the petitioner had already received the deduction for six months and the petitioner had not been re-admitted to institutionalized care.
2. The county agency allotted the maximum home maintenance deduction permissible, in accordance with *Medicaid Eligibility Handbook*, §27.7.1

**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 24th day of October, 2014.

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\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 October 24, 2014.

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