



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/159802

PRELIMINARY RECITALS

Pursuant to a petition filed August 13, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on September 23, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's patient liability for institutional Medicaid for August and September, 2014 and whether the agency properly determined the Petitioner's cost share for Family Care.

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: Julie Salmeron
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. On May 9, 2014, the Petitioner submitted an application for health care benefits. He did not report a rent expense on the application. was enrolled in the Family Care program. On May 12,

2014, the agency issued a Notice of Decision to the Petitioner informing him that his monthly cost share for Family Care is \$731.33.

3. Petitioner entered a skilled nursing facility on June 7, 2014. The agency was notified of the Petitioner's placement on July 10, 2014. The facility also received verification from the Petitioner's physician that the Petitioner was expected to return home within six months.
4. On July 18, 2014, the agency received verification that the Petitioner pays rent of \$633/month for his apartment. His homeowner/rental insurance is \$34.67/month.
5. On July 31, 2014, the agency issued a Notice of Decision informing the Petitioner that his monthly cost share for the Family Care program effective May, 2014 was \$413.66 (home care). It further informed him that he was eligible for nursing home long-term care coverage for July, 2014 with a patient liability of \$919.66. In addition, it informed the Petitioner that he is eligible for Family Care (care facility) effective August 1, 2014 with a patient liability of \$919.66/month.
6. On August 4, 2014, the agency issued a Notice of Decision informing the Petitioner that his monthly patient liability for nursing home long-term care for July, 2014 was \$919.66. It also informed the Petitioner that his monthly cost share for the Family Care program effective August 1, 2014 was \$919.66.
7. On September 22, 2014, the agency removed the patient liability of \$919.66 for July, 2014.
8. Petitioner has Social Security and pension income of \$1,632.33/month. His Medicare premium is \$104.90/month.
9. On August 13, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A. Patient Liability for Institutional MA

Medical assistance rules require nursing home residents to "apply their available income toward the cost of their care." Wis. Admin. Code § DHS 103.07(1)(d). Those rules allow some exemptions, including a \$45 personal needs allowance and home maintenance. Wis. Admin. Code § DHS 103.07(1)(d)1 and 6 and Medicaid Eligibility Handbook (MEH), § 27.7.1.

The cost of care or patient liability for a recipient in an institution is calculated in the following way:

1. For a Medicaid member in a medical institution who does not have a community spouse, subtract the following from the person's monthly income:
 - a. \$65 and ½ earned income disregard.
 - b. Monthly cost for health insurance.
 - c. Support payments.
 - d. Personal needs allowance.
 - e. Home maintenance costs, if applicable.
 - f. Expenses for establishing and maintaining a court-ordered guardianship or protective placement, including court-ordered attorney and/or guardian fees.
 - g. Medical Remedial Expenses.

MEH, § 27.7.1

In this case, the agency initially calculated the patient liability beginning July, 2014. The agency acknowledged this was done in error. Because the agency was notified in July, 2014 of the Petitioner's

residency at a skilled nursing facility, the patient liability became effective for the next month of August, 2014.

I reviewed the agency's calculations for determining the patient liability. The agency calculated total gross income of \$1,632.33/month. A deduction of \$45 for personal needs allowance was given as well as a deduction of \$667.67 for home maintenance which includes the Petitioner's rent expense and insurance expense. I find the agency's calculation of a patient liability of \$919.66 to be in accordance with the regulations.

B. Cost Share for Family Care

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 in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

A Family Care recipient must pay a cost share based upon income and certain expenses. Wis. Stat., §46.286(2)(a). The cost of care is determined by taking the individual's income, then making several deductions. Wis. Adm. Code, §DHS 10.34(3)(b) The first deduction is a personal needs allowance as provided under 42 C.F.R. §435.726(c). That personal needs allowance was \$890, as set out in the MA Handbook, App. 39.4.2. Another deduction is special housing expenses for costs above \$350 per month. MA Handbook, App. 28.8.3.1. A third deduction is for out-of-pocket medical/remedial expenses. Handbook, App. 15.7.3.

The Petitioner questioned whether the rent expense was properly applied to the Petitioner's cost share beginning in May, 2014. The agency did apply the Petitioner's rent expense retroactively to his cost share calculation, per the notice of July 31, 2014 that his cost share is \$413.66. Based on the Petitioner's income and the deductions for personal needs and housing expenses, I conclude the agency properly determined the cost share.

I note that the Petitioner was discharged from the facility in September and the agency has since calculated the Petitioner's cost share for home-based Family Care services. If the Petitioner has disputes with regard to that calculation, he must file a new request for hearing on that issue.

CONCLUSIONS OF LAW

The agency properly determined the Petitioner's patient liability for institutional MA as \$919.66 effective August 1, 2014.

The agency properly determined the Petitioner's cost share as \$413.66 effective May – July 31, 2014.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

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 21st day of October, 2014

\sDebra Bursinger
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 21, 2014.

Milwaukee Enrollment Services
Office of Family Care Expansion