



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/159808

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 11, 2014, under Wis. Admin. Code, §DHS 10.55, to review a decision by the Milwaukee County Dept. of Family Care in regard to the Family Care Program (FCP), a hearing was held on September 18, 2014, by telephone.

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

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Lillian Alford  
Milwaukee County Dept. of Family Care  
901 N. 9th St., Room 307C  
Milwaukee, WI 53233

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who receives services within the FCP.
2. Effective January 1, 2014, petitioner's social security income increased. When it increased petitioner lost eligibility to have her Medicare Part B premium paid by the Medical Assistance program. However, in determining petitioner's monthly FCP cost share, the agency did not initially deduct the premium from petitioner's income.

3. The agency later adjusted the cost share retroactive to February 1, 2014. As of that date the cost share was \$1,493.12.
4. In February, 2014, petitioner paid \$1,610.62 for her cost share. Then in March, she paid \$1,295.82. She paid the correct amount in the months thereafter.
5. Although the Part B premium change occurred February 1, the effective date was January 1. Petitioner's March, 2014 social security payment was reduced by two Medicare Part B premiums, with the second one being a back payment for January.

### **DISCUSSION**

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.

Wis. Stat., §46.286(2)(a), provides that an FCP recipient must pay a cost share based upon income and certain expenses. Wis. Adm. Code, §DHS 10.34(3)(b) provides that cost of care is determined by taking the institutionalized person's income, then making several deductions. The first deduction is a personal needs allowance as provided under 42 C.F.R. §435.726(c). That personal needs allowance is \$878, 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.

Petitioner's son filed this appeal saying that the agency did not adjust the cost share back far enough. He testified that petitioner's March, 2014 social security had a backdated Part B premium taken out as well as the current one. That was why he paid a reduced amount in March. The testimony makes sense. The social security changes occur as of January 1 each year, but the change in the state Part B payment likely was delayed because the change was not reported to the Social Security Administration until after the January social security payment was issued. See Exhibit 4, which shows that the last date the Part B premium was paid was 12/2013.

I conclude, therefore, that petitioner's cost share should have been changed to \$1,493.12 effective January 1, 2014, which will mean that in the end she is owed money. I will order the agency to make the change in this order.

### **CONCLUSIONS OF LAW**

Petitioner's cost share should have been adjusted to account for her Medicare Part B premium liability effective January 1, 2014 because that was the date she became liable for it even though the premium was not deducted from her social security until March.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the agency with instructions to reduce petitioner's monthly FCP cost share for January, 2014 from \$1,610.62 to \$1,493.12. The agency shall do so within 10 days of this decision.

## 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 19th day of September, 2014

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\sBrian C. Schneider  
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 19, 2014.

Milwaukee Enrollment Services  
Office of Family Care Expansion