



FH
[REDACTED]

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

In the Matter of:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/160539

PRELIMINARY RECITALS

Pursuant to a petition filed September 2, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Wood County Human Services - WI Rapids ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on November 19, 2014. At petitioner's request a Hearing scheduled for October 28, 2014 was rescheduled.

The issue for determination is whether the maintaining a home income deduction was properly not allowed when calculating petitioner's patient liability amount under MA for institutional persons.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] (not present at November
19, 2014 Hearing)
c/o [REDACTED]
[REDACTED]
[REDACTED]

Represented by:

[REDACTED] petitioner's daughter &
Power of Attorney ["POA"]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
BY: Beulah Garcia, Resolution Coordinator
Wood County Human Services - WI Rapids
320 West Grand Avenue
PO Box 8095
Wisconsin Rapids, WI 54495-8095

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Forest County.
2. Petitioner resides in a nursing home and is an institutionalized MA recipient.
3. Petitioner is not able to care for herself and is not expected to return to live in her house.
4. When calculating petitioner's MA patient liability amount the County did not allow petitioner an income deduction for the purpose of maintaining her house.

DISCUSSION

The law is clear that, with only certain very limited deductions, all of the income of an MA recipient who is in an institution must be applied to the cost of the institution. Wis. Stat. § 49.45(7)(a) (2011-12); Wis. Admin. Code § DHS 103.07(1)(d) (December 2008); *Medicaid Eligibility Handbook* ["MEH"] 27.7. The amount that the recipient is required to pay for the cost of the institution is known as the "patient liability amount" or "cost of care". MEH 27.7.1.

The amount of the patient liability depends on the recipient's income, less certain deductions. For purposes of computing the patient liability amount the only allowed deductions are the following: personal needs allowance; if employed, the first \$65 and one-half the remainder of gross earnings; the cost of health insurance; amounts incurred for necessary medical or remedial care recognized under state law but not covered by MA; the actual amount (subject to a maximum) paid for the support of a person for whom the institutionalized person is legally responsible; expenses for establishing and maintaining a court-ordered guardianship or protective placement, including court-ordered attorney and/or guardian fees; and, the monthly cost of maintaining a home -- but only up to a certain maximum amount and only if the following 2 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. 42 C.F.R. § 435.725(d) (2012); MEH 27.7.1. & 15.7.1.; DHA Case No. MED-53/97033 (Wis. Div. Hearings & Appeals; Proposed Decision October 8, 2008; Final Decision December 8, 2008 (DHS); See also, Wis. Admin. Code §§ DHS 103.07(1)(d) & 103.06(1)(b)2. & 3. (December 2008)

In this case petitioner is not able to care for herself and is not expected to return to live in her house. There is no dispute concerning this and petitioner acknowledges it. Therefore, the maintaining a home income deduction was properly not allowed when calculating petitioner's patient liability amount under MA for institutional persons.

Petitioner's daughter argues that she was not told about the patient liability and that the money that she would have used to pay the patient liability was, instead, used to pay utilities. She states that petitioner now has no way of paying the patient liability amount for June and July 2014. However, *Case Comment* computer notes for June 30, 2014 state that petitioner's daughter was told about the patient liability. Further, even if she was not told about it, it still exists and must be paid. As an Administrative Law Judge ["ALJ"] I have no power to order that the patient liability be reversed for June and July 2014 even if petitioner was not informed of it. To do so would require equitable powers. ALJ's do not possess any equitable powers and must apply the law as it is written.¹

¹ Final Decision Case No. A-40/44630 [Department of Health and Social Services (DHSS) December 30, 1987] adopting Proposed Decision Case No. A-40/44630 [Office of Administrative Hearings (OAH) October 19, 1987]; "An

CONCLUSIONS OF LAW

For the reasons explained above, the maintaining a home income deduction was properly not allowed when calculating petitioner's patient liability amount under MA for institutional persons.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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).

administrative agency has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates. [citation omitted]" *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). "No proposition of law is better established than that administrative agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds." *American Brass Co. v. State Board of Health*, 245 Wis. 440, 448 (1944); See also, *Neis v. Education Board of Randolph School*, 128 Wis.2d 309, 314, 381 N.W.2d 614 (Ct. App. 1985). "As a general matter, an administrative agency has only those powers as are expressly conferred or necessarily implied from the statutory provisions under which it operates [citation omitted]". *Brown County v. DHSS Department*, 103 Wis.2d 37, 43, 307 N.W.2d 247 (1981). "An agency or board created by the legislature has only those powers which are expressly or impliedly conferred on it by statute. Such statutes are generally strictly construed to preclude the exercise of power which is not expressly granted. [citation omitted]" *Browne v. Milwaukee Board of School Directors*, 83 Wis.2d 316, 333, 265 N.W.2d 559 (1978).

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 4th day of December, 2014

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 4, 2014.

Wood County Human Services - WI Rapids
Division of Health Care Access and Accountability