



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MQB/160917

PRELIMINARY RECITALS

Pursuant to a petition filed September 29, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on October 28, 2014.

The issue for determination is whether the agency correctly denied petitioner from Medicare Premium Assistance due to excess income.

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: Rhonda Kramer, ESS
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Racine County.
2. The petitioner is in an MA group of one person.

3. The petitioner's current household monthly gross income consists of \$3049.90 in SSDI, earned income through her internship (██████████), and earned income from (██████████).
4. On September 23, 2014, the agency issued written notice to the petitioner advising that her SLMB would be ending effective October 1, 2014. The basis for discontinuance was excess income.

DISCUSSION

Qualified Medicare Beneficiary (QMB), Special Low Income Medicare Beneficiary (SLMB), and SLMB Plus are MA programs which provide assistance with Medicare Part B premiums for persons whose incomes are over the regular Medical Assistance limits. All three Medicare Savings Programs pay the entire Part B premium. See the [Medicaid Eligibility Handbook \(MEH\)](#), §32.1.1 for a full description of the programs. It is available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

The Medicare Savings Programs have progressively higher income limits and use the same rules for determining financial eligibility as is done for Medicaid. The SLMB income limit – the program at issue here - is at least 100% of the FPL, but less than 120%, which is \$1167. *MEH*, §§32.3.2 and 39.5. Gross income is used in income testing. *MEH*, §§15.5 & 32.2.3. The petitioner did not dispute the income calculated for her, but had thought that her internship income would not be counted. However, there are no exceptions of this kind for petitioner. See *MEH* §15.5. Because the petitioner's income exceeds the SLMB amount, the agency discontinued that Medicare Premium Assistance. Thus, the agency acted correctly here.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, [Wisconsin Socialist Workers 1976 Campaign Committee v. McCann](#), 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

Petitioner is reminded that she may want to apply for other MA programs that she may be eligible for, or continue the process of application with the Federal Marketplace. If petitioner's finances change, she can always reapply for the Medicare Savings Programs.

CONCLUSIONS OF LAW

1. The agency correctly determined that the petitioner was not eligible for Medicare Premium Assistance, due to excess income.

THEREFORE, it is

ORDERED

That the petition 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 26th day of November, 2014

\sKelly Cochrane
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 November 26, 2014.

Racine County Department of Human Services
Division of Health Care Access and Accountability