



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FCP/161584

PRELIMINARY RECITALS

Pursuant to a petition filed October 29, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Department of Family Care - MCO in regard to Medical Assistance, a telephonic hearing was held on November 18, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Milwaukee County Family Care program correctly discontinued the petitioner's participation in the Family Care (FC) effective December 1, 2014, due to ongoing non-payment of her cost share since September, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact, quality improvement coordinator
Milwaukee County Department of Family Care - MCO
901 N 9th Street
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a 76 year old female resident of Milwaukee County who lives alone in a lower flat.
2. The petitioner has the following medical issues: diabetes, retinopathy, renal insufficiency, depression, anxiety, and osteoporosis.

3. Petitioner enrolled in and has received services from the Family Care Plan since at least 2010. Since 2010, petitioner did not meet the financial qualifications for Medical Assistance (MA), she was assessed a monthly patient cost share.
4. The petitioner has a long history of problems with payments of her cost share since 2010, and has received assistance and counseling from Milwaukee FCP case managers and money managers. The petitioner has a few times been on the verge of disenrollment from FCP for failure to pay her cost share since 2010. See Exhibit 3.
5. In the past, FCP attempted to obtain a representative payee for the petitioner to help her with her cost share payment issues, but petitioner has refused such payee.
6. The petitioner received monthly Social Security of \$1,392.00 from May, 2014 through 2014.
7. Family Care Program sent notices to the petitioner informing of her required monthly cost share, but has failed to pay her cost share payments since September, 2014. The petitioner has been assigned a money manager. The petitioner's monthly cost share was \$368 as of May, 2014. Petitioner has refused to allow her money manager to obtain a representative payee for her. The petitioner has also refused to agree to any automatic withdrawals or payment arrangement for the payment of the cost share obligation.
8. On October 29, 2014, the county agency sent petitioner a Notice of Decision advising her that she would be discontinued from the Family Care Plan effective December 1, 2014, due to failure to pay her monthly cost share. That notice also indicated petitioners' cost share was \$297 as of December 1, 2014. See Exhibit 1.
9. As of November 6, 2014, petitioner owed total unpaid cost shares of \$3,585.24 to the Milwaukee Family Care Program. See Exhibit 3, page 20.
10. The petitioner filed an October 29, 2014 appeal with the Division of Hearings and Appeals (DHA).
11. During the November 18, 2014 hearing, the FCP representative offered to withdraw petitioner's December 1, 2014 FCP discontinuance, if petitioner agreed to the assignment of a representative payee as part of a stipulated agreement.
12. On November 24, 2014, DHA received a statement from FCP that petitioner has refused to agree to any stipulation as set forth in Finding of Fact #11 above.

DISCUSSION

The Family Care Program is a subprogram of Wisconsin's Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* §DHS 10.11. An individual who meets the functional and financial requirements for Family Care, *Wis. Stats.* §46.286(1) participates in Family care by enrolling with a Care Management Organization (CMO), *Wis. Admin. Code* §DHS 10.41 which, in turn, works with the participant and his/her family to develop an individualized plan of care. The CMO implements the plan by contracting with one or more service providers.

Individuals who wish to participate in Family Care but who do not meet the financial requirements for coverage under the MA program may receive Family Care coverage upon payment of a cost-share, *Wis. Stats.* §46.286(2); *Wis. Admin. Code* §DHS 10.34(3). An individual who is enrolled in Family Care under a cost-share is required, as a condition of continued eligibility, to make the appropriate payments:

A person who is required to contribute to the cost of his or her care but who fails to make the required contribution is ineligible for the family

care benefit unless he or she is exempt from the requirement under rules promulgated by the department.

Wis. Stats. §46.286(2)(c).

Petitioner enrolled in Family Care since at least 2010. At the time of enrollment, she was assigned a cost-share. There is nothing on record to indicate that petitioner raised any objection to the program, the cost-share or any of the details of the individual service plan that was developed with her, even though the Family Care program provides ample opportunity for consultation with the participant and a wide range of complaint and grievance procedures, *Wis. Stats.* §46.287; *Wis. Admin. Code* §§DHS 10.51-10.55. Over the next about five years, petitioner's payment of the cost-share fell significantly into arrears (to the total amount of \$3,585.24 as of November 6, 2014). The CMO requested that the petitioner authorize automatic withdrawal of the monthly cost-share amount from some account, but the petitioner refused to agree to such authorization and refused to the assignment of a representative payee. The county did attempt to work with the petitioner on her ongoing arrearage of cost share. On October 29, 2014, the county agency sent petitioner a notice of decision advising her that her participation in Family Care would end as of December 1, 2010, due to her ongoing failure to pay her required monthly cost-share payments.

When it comes to cost-sharing, the statute which creates the Family Care Benefit and the regulations adopted to implement the plan are quite explicit: in the absence of an exemption, an individual who fails to pay the cost-share is ineligible for Family Care services, *Wis. Stats.* §46.286(2)(c). Regulations allow a waiver for individuals who can demonstrate that payment of the cost-share would result in "undue financial hardship, *Wis. Admin. Code* §DHS 10.34(4)(b); the record is void of any request for a waiver or any communication that could be interpreted as a request for a waiver. The petitioner does receive monthly Social Security of about \$1,392.

During the November 18, 2014 hearing, petitioner was quite argumentative, but she was unable to demonstrate or indicate any good faith effort she made to pay her outstanding cost share arrearage. What the record does show is a series of excuses and justifications. Petitioner explained repeatedly that she has many bills and that she can not afford her cost share payments. Such explanation is understandable. However, it is not understandable that petitioner has simply refused to agree to any payment arrangement (or a representative payee) whereby her monthly payments could be adjusted to what she is able to pay with her monthly \$1,392 Social Security.

State law provides that an individual who fails to pay the Family Care cost-share is ineligible for Family Care benefits. The county agency has the authority to remove such an individual from the plan and it correctly exercised that authority in this case.

CONCLUSIONS OF LAW

The county agency properly terminated petitioner's participation in the Family Care Program as of December 1, 2014, because petitioner failed to pay or make reasonable arrangements to pay her monthly cost-share obligations.

THEREFORE, it is

ORDERED

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).

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 9th day of February, 2015

\sGary M. Wolkstein
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 February 9, 2015.

Milw Cty Dept Family Care - MCO
Office of Family Care Expansion