



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MAP/162322

PRELIMINARY RECITALS

Pursuant to a petition filed November 26, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Fond Du Lac County Department of Social Services in regard to Medical Assistance, a telephonic hearing was held on January 14, 2015, at Fond Du Lac, Wisconsin. At the request of the parties, the record was held open for two weeks for consecutive briefs to be submitted to DHA and to each other. Both parties timely submitted their briefs to DHA which are received into the hearing record.

The issue for determination is whether the county agency correctly increased the petitioner's MAPP premium from zero to \$300 for the month of December, 2014, due to an increase in his earned income resulting from new employment and income at [REDACTED].

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Steven R. Sorenson
Davis Kuelthau, Attorneys at Law
219 Washington Avenue
P.O. Box 1278
Oshkosh, WI 54903-1278

Respondent:

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

By: Molly Aird, ESS

Fond Du Lac County Department of Social Services
50 N Portland St
Fond Du Lac, WI 54935

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a disabled resident of Fond Du Lac County.
2. Petitioner has been eligible for the Medicaid Purchase Plan (MAPP) since 2013.
3. The MAPP is a subprogram of Medicaid for disabled people who are able to work with higher income and assets limit than regular Medicaid.
4. The petitioner received monthly Social Security Income of \$1,129.00 during the months of October, November, and December, 2014.
5. During his annual review on October 14, 2014, petitioner reported to the county agency that he began part-time employment at [REDACTED], Inc. During October, 2014, petitioner earned \$453.66 at his employment.
6. Based upon petitioner's paystubs dated 10/1/14 and 10/15/14, and allowable deductions, the petitioner was eligible for the MAPP program but with a monthly premium of \$300 as of December 1, 2014 based upon an average of 31.3 hours per two week period at \$7.25 per hour.
7. The county agency sent an October 27, 2014 Notice of Decision to the petitioner stating that his MAPP premium would increase from zero to \$300 effective December 1, 2014, due to an increase in his total household income. See Exhibit 2.
8. Based upon his paystubs dated 11/23/14 and 12/10/14, and allowable deductions, the petitioner was eligible for the MAPP program but with a monthly premium of \$300 as of December 1, 2014.
9. Based upon paystubs submitted 12/24/14 and 1/7/15, those paystubs reflect a reduction in his working hours to 20.87 hours per pay period, and reduced earned income which resulted in a reduction of his MAPP premium to zero as of January 1, 2015.
10. The only month in which petitioner owed a MAPP premium in this appeal is December, 2014.
11. The petitioner does not dispute the accuracy of the calculation of petitioner's \$300 MAPP premium for the month of December, 2014 based upon his relevant paystubs but asserts that the premium is unfair and unequitable.

DISCUSSION

The MAPP program allows disabled individuals to work, but to retain eligibility for MA. Wis. Stat., §49.472; MA Handbook, Appendix 26.1. If net income is below 250% of the federal poverty level, the person is eligible for the program. Wis. Admin. Code, §DHS 103.03(8)(b); Handbook, App. 26.4.2. 250% of the poverty level is \$2,431.25. Handbook, App. 39.5, as updated by BEPS/DFS Operations Memo no. 13-02, dated 2/4/13 and effective 3/1/13. Petitioner's income is well below that level.

If gross income is above 150% of the federal poverty level, the person is required to pay a monthly premium to receive MAPP benefits. Wis. Admin. Code, §DHS 103.087(1)(b); MA Handbook, App. 26.5.1. 150% of the federal poverty limit for one person is \$1,458.75. Handbook, App. 39.5. Petitioner's gross income of \$1,582.86 per month is over that limit.

To determine the premium, the agency deducts a \$20 disregard and an earned income deduction to get net income. Then a standard living allowance of \$824 is deducted from the unearned income. Handbook, App. 26.5.1 and 39.4.2. There are also deductions for work expenses, remedial medical expenses, and cost-of-living adjustments. Remedial medical expenses are anticipated expenses that include deductibles and co-payments, health insurance premiums, and bills for medical services that are not covered by the

MA program. Handbook, App. 15.7.3. In this case, as of the hearing date, petitioner did not submit to the county agency any medical expenses to apply as deductions in the calculation of his MAPP premium.

In petitioner's case, his net income for premium purposes was \$1,582.86, and the premium for income in that range is \$300. Handbook, App. 39.10. Petitioner basically requested that I make an exception because his net income of \$1,582.86 is only about \$120 over the MAPP limit of \$1,458.76 for a household of one. However, I can find no authority for doing so. It appears that the county correctly determined petitioner's monthly premium.

In the instant case, the petitioner received Medicaid Purchase Plan (MAPP) benefits as a household of one. During his annual review on October 14, 2014, petitioner reported to the county agency that he began part-time employment at [REDACTED]. Based upon verification of that new income, the county agency correctly re-determined his MAPP premium for a household of one. The county agency re-calculated the petitioner's MAPP eligibility and correctly determined that petitioner needed to pay a MAPP premium of \$300 for the month of December, 2014, because his gross income was \$1,582.86 (after \$20 disregard) was above the MAPP premium income limit of \$1,458.76. See Exhibit 4..

During the January 14, 2015 hearing and in his January 23, 2015 written closing argument, Attorney Sorenson made reasonable equitable arguments essentially that the high \$300 MAPP premium provided petitioner no incentive to continue working because it placed petitioner in a worse economic position than by not working (which appears to be against the intent of the MAPP program). However, the Department's Administrative Law Judges (ALJs) do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). I must limit my review to the law as set forth in statutes, federal regulations, and administrative code provisions. I lack any authority to grant the petitioner relief from MAPP premium calculation for the month of December, 2014. Furthermore, in its January 22, 2015 written closing argument and documentation, the county agency provided a detailed, thorough explanation confirming it correctly determined the petitioner's December, 2014 MAPP premium to be \$300 for that one month.

In any case, after reviewing petitioner's recent paystubs of 12/24/14 and 1/7/15, the county agency confirmed in its January 22, 2015 written argument that the agency re-calculated and reduced the petitioner's MAPP premium from \$300 to zero as of January 1, 2015. See Finding of Fact #9 above. Thus, petitioner needed to pay that \$300 MAPP premium only for one month. Accordingly, based upon the above, I must conclude that the county agency correctly increased the petitioner's MAPP premium from zero to \$300 for the month of December, 2014, due to an increase in his earned income resulting from new employment and income at [REDACTED].

CONCLUSIONS OF LAW

The county agency correctly increased the petitioner's MAPP premium from zero to \$300 solely for the month of December, 2014, due to an increase in his earned income resulting from new employment and income at [REDACTED].

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 4th day of March, 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 March 4, 2015.

Fond Du Lac County Department of Social Services
Division of Health Care Access and Accountability
Attorney Steven Sorenson