



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/163509

PRELIMINARY RECITALS

Pursuant to a petition filed January 27, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on March 19, 2015, at Waukesha, Wisconsin.

Issues:

- 1. There remains no issue for determination with respect to the petitioner's continued eligibility for Long-Term Care and the Family Care Program effective March 1, 2015.
2. The remaining issue for determination is whether the agency correctly discontinued a deduction from the petitioner's income for her monthly mortgage payment and home maintenance costs after allowing this deduction for a six month period.

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: Karen Pearson
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. The petitioner has nursing home long term care coverage and has been enrolled in the Family Care program.
3. The petitioner owns a home with a monthly mortgage payment of \$1176. The petitioner's daughter is a co-owner of the home, and lives in the home. The agency allowed a deduction from the petitioner's income for her monthly mortgage and home maintenance costs for a six month period.
4. On December 18, 2014 the agency sent the petitioner a Notice stating that they needed verification of the petitioner's living arrangements and shelter costs. Shelter costs included the amount of mortgage and utilities for the home. The listed due date for this verification was December 29, 2014. The agency did not timely receive this requested verification.
5. On January 20, 2015 the agency sent the petitioner a notice stating that effective March 1, 2015 her nursing home long-term care coverage would be terminated for failing to provide the requested verification.
6. On January 29, 2015 the Division of Hearings and Appeals received the petitioner's Request for fair hearing.
7. The record was held open following the hearing. The petitioner's daughter provided proof that she was co-owner of the home. The agency considered the home an exempt asset, and no longer sought termination of the petitioner Family Care benefits. The agency also recalculated the petitioner's monthly cost share amount. The petitioner's daughter reported that she was no longer paying her mother \$500 per month. Based upon that report the agency reduced the petitioner's monthly gross income, which reduced the petitioner's monthly cost share amount.
8. On March 26, 2015 the agency sent the petitioner a notice stating that as of March 1, 2015 she had Nursing Home Long-Term Care coverage. This allowed the petitioner to remain enrolled in the Family Care Program. The notice further stated that effective March 1, 2015 the petitioner's monthly cost share amount is \$1,494.88.

**DISCUSSION**

The Family Care Program (FCP), 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.

FCP, like regular Medical Assistance (MA), has an asset limit of \$2,000 for a one-person household. Wis. Stat., §46.286(1)(b)2m.a; Wis. Admin. Code, §DHS 10.34(2). In this case the agency originally sought to terminate the petitioner from the program for failing to provide verification that she was under this asset limit. Following the hearing, the petitioner's daughter provided proof that she and the petitioner were co-owners of the home. This caused the home to be an exempt asset. Following the hearing the agency sent the petitioner a new notice stating that she was eligible for long term care coverage as of March 1, 2015. This allowed the petitioner to remain enrolled in the FCP. The petitioner was previously eligible until March 1, 2015, and thus has remained open with no gaps in coverage.

Wis. Stat., §46.286(2)(a), provides that an FCP recipient must pay a cost share based upon income and certain expenses. Wis. Admin. Code, §DHS 10.34(3)(b) provides that cost of care is determined by taking the institutionalized person's income, then making several deductions. In this case the petitioner's daughter disputed that she paid the petitioner \$500 each month. The daughter testified that she had

previously reported to the agency that she paid her mother this amount each month, but she was believed that she had to report this for her mother to be eligible. After the hearing, the petitioner's daughter spoke to the agency, and explained that effective March 1, 2015 she no longer paid her mother \$500 each month. Based upon that report, the agency no longer included this \$500 in the petitioner's monthly gross income, and sent a new notice.

The remaining issue with respect to the cost share amount is whether the petitioner gets a reduction in her cost share amount equal to her monthly mortgage payment and home maintenance costs. If a person intends to return to their home following their institutionalization the person is allowed a deduction for the cost of maintaining a home or apartment. Medicaid Eligibility Handbook (MEH) §15.7.1. The maximum amount of time that a person is allowed this deduction is six months. *Id.*

In this case the agency testified that they allowed this deduction for the maximum period of time, six months. The petitioner's daughter did not dispute that testimony, but rather was concerned that she would not be able to pay both the cost share amount and the mortgage. The petitioner's daughter stated that she did not intend to sell the home either. Based upon the above-stated policy the agency correctly stopped the home maintenance deduction after six months.

### CONCLUSIONS OF LAW

1. There remains no issue for determination with respect to the petitioner's eligibility for the FCP because the petitioner has remained open and eligible for the Family Care Program.
2. The agency correctly discontinued the home maintenance deduction after allowing this deduction for the six-month maximum allowable time period.

**THEREFORE, it is**

**ORDERED**

That the petition is 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 Milwaukee,  
Wisconsin, this 19th day of May, 2015

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\sCorinne Balter  
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 May 19, 2015.

Waukesha County Health and Human Services  
Office of Family Care Expansion