



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

MGE/164375

PRELIMINARY RECITALS

Pursuant to a petition filed February 26, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Marathon County Department of Social Services in regard to Medical Assistance (MA), a hearing was held on March 18, 2015, at Wausau, Wisconsin.

The issue for determination is whether the Department correctly determined the amount of the petitioner's patient liability beginning January 1, 2015.

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, ES Worker
Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of a nursing home in Marathon County.
2. The petitioner applied for Long-Term Care/Institutional MA on January 6, 2015. On January 19, 2015, the Department issued written notice to the petitioner advising that she was eligible with a

patient liability amount of \$4,070.51 for January 2015. A subsequent notice advised that her patient liability for February would be \$3,271.94, but that it would return to \$4,070.51 for March 2015 onward.

3. The petitioner's gross income consists of \$1,808.00 in Social Security, and \$2,672.51 in WRS pension, for a gross total of \$4,480.51.
4. In calculating the petitioner's patient liability, the agency subtracted the statutory \$45 personal needs allowance and a \$365 health insurance cost from gross income. The difference of \$4,070.51 was the patient liability. The unpaid nursing home bill above the patient liability amount is then paid for by Medicaid. For February only, the agency also subtracted one-time nursing home charges of \$798.57, to bring that month's liability down to \$3,271.94.
5. The petitioner pays income taxes on her pension and on a portion of her Social Security. In December 2014, the WRS withheld \$443 for federal income tax and \$167.20 for state income tax. Social Security withholds \$126.60 monthly for federal taxes from the Social Security payment.

DISCUSSION

After an institutionalized person is determined eligible for MA, a county agency must calculate the amount of income the institutionalized person must contribute to defray the cost of care incurred by MA on his or her behalf on a monthly basis. This is referred to as the person's "patient liability." The calculation begins with gross income, and only a few items may be subtracted as deductions. These include the statutory \$45 personal deduction, a health insurance expense deduction and, in some cases, a home maintenance deduction. Wis. Admin. Code §DHS 103.07(1)(d), and the federal rule at 42 C.F.R. §435.725 - .832. The formula for calculating the patient liability amount is set out at *Medicaid Eligibility Handbook (MEH)*, §27.7.1, found online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

The petitioner does not contest the date of her nursing home admission or her \$4,480.51 gross income amount. She does question why her federal and state income tax liability cannot be subtracted from income, as payment of these taxes is not optional. She asserts that she cannot survive financially, and she may be right. The agency cites its *MEH* instructions, which advise that gross income must be counted. *See, MEH*, §§ 15.1, 15.4, 27.5.2.

The controlling federal MA rule directs that agency to begin with gross income. It then contains this instruction, which allows for several specific deductions for a nursing home patient:

§435.832 Post-eligibility treatment of income of institutionalized individuals: Application of patient income to the cost of care.

(a) *Basic rules.* (1) The agency must reduce its payment to an institution, for services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraphs (c) and (d) of this section, from the individual's total income.

(2) The individual's income must be determined in accordance with paragraph (e) of this section.

(3) Medical expenses must be determined in accordance with paragraph (f) of this section.

(b) *Applicability.* This section applies to medically needy individuals in medical institutions and intermediate care facilities.

(c) *Required deductions.* The agency must deduct the following amounts, in the following order, from the individual's total income, as determined under paragraph (e) of this section. Income that was disregarded in determining eligibility must be considered in this process.

(1) *Personal needs allowance.* A personal needs allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution. This protected personal needs allowance must be at least—

(i) \$30 a month for an aged, blind, or disabled individual, ...

(ii) \$60 a month for an institutionalized couple...

(2) *Maintenance needs of spouse.* For an individual with only a spouse at home, an additional amount for the maintenance needs of the spouse. This amount must be based on a reasonable assessment of need but must not exceed ...

(iii) The amount of the medically needy income standard for one person established under §435.811.

(3) *Maintenance needs of family.* For an individual with a family at home, ...

(4) Expenses not subject to third party payment. Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) Necessary medical or remedial care ...

(d) *Optional deduction: Allowance for home maintenance.* For single individuals and couples, an amount (in addition to the personal needs allowance) for maintenance of the individual's or couple's home if—

(1) The amount is deducted for not more than a 6-month period; ...

(e) *Determination of income—(1) Option.* In determining the amount of an individual's income to be used to reduce the agency's payment to the institution, the agency may use total income received or it may project total monthly income for a prospective period not to exceed 6 months.

(2) *Basis for projection.* The agency must base the projection on income received in the preceding period, not to exceed 6 months, and on income expected to be received. ...

(f) *Determination of medical expenses—(1) Option.* In determining the amount of medical expenses to be deducted from an individual's income, the agency may deduct incurred medical expenses, or it may project medical expenses for a prospective period not to exceed 6 months. ...

[45 FR 24886, Apr. 11, 1980, as amended at 46 FR 47988, Sept. 30, 1981; 48 FR 5735, Feb. 8, 1983; 53 FR 3596, Feb. 8, 1988; 53 FR 5344, Feb. 23, 1988; 56 FR 8850, 8854, Mar. 1, 1991; 58 FR 4933, Jan. 19, 1993]

42 C.F.R. § 435.832 (May 2015). There is no stated deduction for income tax liability. Nothing in the rule language persuades me that the agency has erred here. Past decisions of this office have reached the same conclusion. *See*, DHA Decision Nos. MED-67/79919 (November 24, 2006); MED-40/86088 (October 16, 2007); MED-40/91300 (May 5, 2008).

CONCLUSIONS OF LAW

1. The county agency correctly calculated the petitioner's patient liability amounts for January 2015 forward.

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 Madison,
Wisconsin, this 8th day of May, 2015

\sNancy J. Gagnon
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 8, 2015.

Marathon County Department of Social Services
Division of Health Care Access and Accountability