



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

FCP/164818

PRELIMINARY RECITALS

Pursuant to a petition filed March 19, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on April 23, 2015, at Milwaukee, Wisconsin.

The issue for determination is how a payment from Petitioner's tribe received once per year should be budgeted for Family Care purposes – annually or monthly.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted name and address]

Respondent:

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

By: Ben Eyers
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. Petitioner is a participant in the Family Care Program.

3. Petitioner is a member of the Oneida Tribe.
4. Petitioner receives an annual per capita payment from the Oneida tribe, usually in October. The amount varies from year to year. In 2013 that amount was \$3818.14 per the 2013 1099 issued by the tribe. The 2014 1099 is not in the record. The 1099 from the tribe does not indicate the source of the revenue that leads to the per capita.
5. The agency has divided the per capita by 12 and used that monthly amount in the calculation of Petitioner's income.

DISCUSSION

Petitioner filed this appeal to contest the agency decision to treat Petitioner's per capita as monthly income rather than a once a year lump sum. This affects Petitioner's Family Care cost share; it increases the monthly cost share amount.

The agency relies on the following provision from the *Medicaid Eligibility Handbook (MEH)* in support of its treatment of the per capita:

...
 16. Disregard Tribal Per Capita payments from gaming revenue up to the first \$500 of the monthly payment per individual. If the payments are received less than monthly, prorate the gross payment amount over the months it is intended to cover and disregard \$500 from the monthly amount.

This applies to eligibility determinations for BadgerCare Plus and all Medicaid subprograms for elderly, blind, or disabled persons except:

Senior Care and Long Term Care programs such Institutional Medicaid, Family Care (FC) and Home and Community Based Waivers (HCBW) including Partnership and Pace. For these subprograms, count all income from Tribal Per Capita payments from gaming revenue as unearned income.

...
MEH, §15.3.14, #16.

If the per capita is entirely from gaming revenue then the agency is correct in its conversion of the per capita to a monthly amount. The MEH states that fluctuating income, if amount or frequency is known, is to be averaged over the period between payments. *MEH, §15.2.3.* Here the frequency is known even if the dollar amount varies thus Petitioner's per capita is to be averaged, if not exempt. Again, gaming revenue is not exempt for Family Care purposes. There is, however, another potential wrinkle to this. There is nothing in the record to demonstrate that all of the per capita is from gaming and the MEH does provide that the following is also exempt:

- ...
 17. Per capita payments from a tribe that come from natural resources, usage rights, leases or royalties.
 18. Payment from natural resources, farming, ranching, fishing, leases or royalties from land designated as Indian trust land by the Department of Interior (including reservations and former reservations).
 19. Money from selling things that have cultural significance.
MEH, §15.3.15, #s 17, 18 and 19.

Nonetheless, there was no suggestion from Petitioner that the per capita is from other than gaming revenue. If she can demonstrate that the per capita has a portion that is attributable to an exempt source she should provide that information to the agency so that it can recalculate the monthly income amount.

CONCLUSIONS OF LAW

That the agency correctly budgeted Petitioner's annual tribal per capita payment as monthly income.

THEREFORE, it is

ORDERED

That this appeal 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 3rd day of June, 2015

\sDavid D. Fleming
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 June 3, 2015.

Milwaukee Enrollment Services
Office of Family Care Expansion