



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/164891

PRELIMINARY RECITALS

Pursuant to a petition filed March 25, 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 28, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Julie Salmeron

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner's monthly gross income is as follows:
 - a. September and October 2014 - \$2,279.40
 - b. November 2014 - \$2,208.40

- c. December 2014 – March 31, 2015 - \$2,227.70
3. In all of the above months the petitioner's gross earned income was \$800.00. The remaining portion of his income was unearned income from social security.
 4. The petitioner has monthly expenses including a mortgage payment and property taxes.
 5. The petitioner had a monthly health insurance cost of \$71.00 in January, February, and March 2015.
 6. The petitioner was enrolled in the Family Care Program (FCP) September 2014 through March 30, 2015.
 7. On September 4, 2014 the agency sent the petitioner a notice stating that effective September 1, 2014 his monthly cost was \$1,235.23 for the FCP. The appeal deadline listed on this notice was October 20, 2014.
 8. On November 24, 2014 the agency sent the petitioner a notice stating that effective December 1, 2014 his monthly cost was \$1,164.23 for the FCP. The appeal deadline listed on this notice was January 16, 2015.
 9. On December 8, 2014 the agency sent the petitioner a notice stating that effective January 1, 2015 his monthly cost was \$1,183.53 for the FCP. The appeal deadline listed on this notice was February 16, 2015.
 10. On January 19, 2015 the agency sent the petitioner a notice stating that effective February 1, 2015 his monthly cost was \$1,112.53 for the FCP. The appeal deadline listed on this notice was March 19, 2015.
 11. On March 25, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.

DISCUSSION

The Division of Hearings and Appeals has the authority to hear cases pursuant to the Chapter HA 3 of the Administrative Code. (may be viewed online at https://docs.legis.wisconsin.gov/code/admin_code/ha/3 last viewed May 2015). The Division of Hearings and Appeals only has the limited authority to hear very specific cases on very specific issues as discussed in Wis. Admin. Code §§ HA 3.01 and 3.03. In addition, a party must timely file an appeal. All of the notices sent to a person state the deadline for filing an appeal.

In this case the petitioner's appeal of his monthly spend down amount is not timely. Even if the appeal was timely, the agency properly calculated the petitioner's monthly spend down amount for the months in question. The petitioner essentially argues that he could not afford this spend down amount because of other bills that he had to pay including a mortgage and property taxes. However, based upon the petitioner's income level, he was eligible as a Group C member, and as such these expenses are not deducted when determining the monthly cost share amount.

The Family Care program, 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 under Wisconsin Statute, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. See also Medicaid Eligibility Handbook, Chapter 29, available at www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm.

The petitioner is eligible for FCP. An eligible person's income is reviewed to determine if the recipient has enough income to be responsible for payment of a monthly "cost share." MA Handbook, §29.3. A recipient may request a hearing on the determination of the cost share amount. Wis. Stat.,

§46.287(2)(a)1b.

A person who receives both a Medical Assistance card and FCP, and is not on “regular MA” because of excess income, is classified as being in Group A, Group B, or Group C. Group A is for person who receives SSI or certain other benefits that are not relevant here. Petitioner does not fit within Group A. Group B status is available to a person who has gross income below the Community Waivers MA income limit of \$2,163. Handbook, §39.4.1. A Group B recipient may have health insurance premiums, certain medical/remedial expenses and a Personal Maintenance Allowance (possibly including housing expenses) subtracted from her income before a cost share is computed. 42 C.F.R. §435.726; Wis. Admin. Code, §DHS 103.07(1)(d).

The petitioner’s monthly gross income of \$2,208.40 and above places him over the income limit for Group B status. Therefore petitioner is relegated to Group C status. To be *eligible* under Group C, the recipient’s income minus expenses must be under \$591.67. In this case the petitioner is an eligible for the FCP in Group C status.

A person in Group C will then be subject to a spend-down for income that exceeds the “medically needy income limit of \$591.67, minus the \$20 unearned income disregard and the health insurance premium expense. Handbook, §39.4.1 – “EBD Medically Needy Limits.”

In somewhat confusing fashion, FCP allows for subtraction of medical/remedial expenses paid by the client as a deduction from his income to determine *eligibility* for the program. See the Department’s form F-20919. However, the Department’s instructions go on to direct the agency to *then* compute the *spend-down* amount by only subtracting the \$20 unearned income disregard, a health insurance premium, and the \$591.67 medically needy income limit from his income. The medical/remedial expenses are shifted to the calculation of the person’s room and board.

Although the petitioner’s appeal is not timely, I have reviewed the agency’s calculations of his monthly spend down amount, and those calculations are correct. The petitioner argues that he has expenses that have been considered in setting his spend-down. Specifically he paid an \$1800 per month mortgage and property taxes. I can find no authority for deducting these items for a Group C recipient’s spend-down, and I must conclude that the spend-down was correctly calculated. The petitioner did not dispute the agency’s calculation of his income or the cost of his health insurance premiums, which the agency also considered in setting his spend down amount.

At the hearing there was an additional issue of the petitioner being terminated from this program a few days after the hearing due to his failure to pay this spend down amount for several months. I note that following the hearing I learned that the petitioner’s benefits were not continued pending the outcome of the appeal because the petitioner’s request for hearing only addressed his spend down amount. The petitioner then submitted another request for hearing to address the termination of his benefits for failing to pay this monthly spend down amount. That appeal is still pending, and the issues regarding the termination of his benefits will be addressed in that separate appeal.

CONCLUSIONS OF LAW

The petitioner’s appeal of his monthly spend down amount is not timely. Nonetheless, the agency correctly calculated petitioner’s monthly FCP spend-down.

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 18th day of May, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 18, 2015.

Milwaukee Enrollment Services
Office of Family Care Expansion