



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact
[Redacted]

DECISION

FCP/165112

PRELIMINARY RECITALS

Pursuant to a petition filed April 1, 2015, under Wis. Admin. Code, §DHS 10.55, to review a decision by the Dodge County Dept. of Human Services in regard to Family Care Program (FCP) eligibility, a hearing was held on May 12, 2015, by telephone.

The issue for determination is whether the county agency correctly determined petitioner's financial eligibility for the FCP.

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact
[Redacted]

Respondent:

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

By: [Redacted]
Dodge County Dept. of Human Services
143 E. Center Street
Juneau, WI 53039-1371

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dodge County.
2. Petitioner began to receive FCP services in 2014. When his application was processed the only income counted was his social security and an annuity. Those two sources now account for \$1,267.10 monthly income.

3. In 2000 petitioner and his late-wife transferred their homestead/family farm to their son. As part of the transfer petitioner kept a life estate, agreeing to pay all real estate taxes and assessments as a condition to holding the life estate.
4. Petitioner entered into a land use rental agreement in which the renter uses 82 acres of land on the farm in exchange for a yearly payment of \$9,349.41.
5. The agency began to count income from the rental agreement in 2015; it appears that petitioner began to owe a monthly cost share beginning January 1. In mid-March, the county informed petitioner that he would have a monthly \$224.69 cost share effective February 1, 2015 (the amount was lower than the original cost share for February). This appeal was filed soon after.
6. Petitioner's FCP eligibility was reviewed in April, 2015. There was a notice that FCP would end at some point, but the review was completed by the end of April and no discontinuance occurred.
7. The county obtained petitioner's 2014 tax return. It treated the rental income as self-employment, and took the net 2014 rental income, divided by twelve, to reach a monthly income figure of \$499.41.
8. The county determined petitioner's monthly cost share by taking monthly gross income, then deducting the \$913 special needs allowance, an earned income deduction (\$65 plus one half of the remainder equaling \$282.20), a special housing allowance (petitioner's assisted living rent of \$601 minus \$350 equals \$251), and his health insurance premium of \$68.60. The result is a monthly cost share of \$251.71 effective May 1, 2015 (higher than the \$224.69 amount due to a decrease in petitioner's health insurance premium).

### DISCUSSION

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 in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

Wis. Stat., §46.286(2)(a), provides that an FCP recipient must pay a cost share based upon income and certain expenses. Wis. Adm. Code, §DHS 10.34(3)(b) provides that cost of care is determined by taking the institutionalized person's income, then making several deductions as set out in the MA Handbook, Appendix 28.8.3.1. If there is earned income there is a deduction of \$65 plus one-half of the remainder of the monthly income. See Wis. Admin. Code, §103.07(1)(d). Next there is a personal needs allowance as provided under 42 C.F.R. §435.726(c). That personal needs allowance is \$913, as set out in the MA Handbook, App. 39.4.2. Another deduction is special housing expenses for costs above \$350 per month. MA Handbook, App. 28.8.3.1. A third deduction is for health insurance premiums. Handbook, App. 28.8.3.4. Finally there is a deduction for out-of-pocket medical/remedial expenses as described in the Handbook, App. 15.7.3. Handbook, App. 28.8.3.5.

Rental income is treated like self-employment. Handbook, App. 15.5.3. To calculate monthly self-employment, the agency takes net income from the prior year and divides by the number of months the business operated in the year, usually twelve. Handbook, App. 15.6.5 and 15.6.5.2.

In this case I cannot find an error in how the county calculated petitioner's cost share. It followed Department policy in both determining monthly rental income, and then in determining the various deductions.

Petitioner also raised the issue of how to handle bank accounts. If the annual rental deposit occurs in December or January, at the next review it is possible that the money will still be in the back account,

which could cause petitioner to be over the MA asset limit of \$2,000. The answer is in the Handbook, App. 15.2.2, "Prorated Income Is an Unavailable Asset":

A source of income which is received in a particular month cannot also be counted as an asset for that same month. This policy also applies to income which has been prorated and will be budgeted over the appropriate prorated period (e.g. 12 months). The client is expected to use this prorated income for their personal needs over an extended period of time. Therefore, any unbudgeted balance is an unavailable asset during the period of time for which the prorated income is being counted. The amount of the unavailable asset will decrease with each month in which the prorated income is budgeted.

Thus if the yearly rent payment is placed in petitioner's back account, it will be considered an unavailable asset subject to a one-twelfth reduction in the unavailable portion each month.

Petitioner's representatives complained that they cannot foresee expenses. There are two types of expenses involved here. First, there are those petitioner is responsible for in his farmland rental agreement. Those expenses would be deducted on the taxes and would be considered in the next year's monthly income determination. That simply is the way self-employment income is determined. The other expenses have to do with maintenance of the homestead. It appears to me that petitioner is not responsible for those expenses. The life estate makes him responsible only for real estate taxes and assessments. A new roof, for example, seemingly would be petitioner's son's responsibility.

Finally, petitioner's representatives noted discrepancies in the computer forms. Not all are discrepancies. For example, they questioned the amount showing as rent owed by petitioner. It was explained that that amount is determined by the FCP to be his rent at his assisted living residence. Actual discrepancies often arise due to the system and forms covering several programs. Some discrepancies were explained. For example, apparently petitioner's late wife still is included on the forms because she remains on is SeniorCare case, and that program is operated an agency other than the economic support agency. Petitioner's representatives should contact the SeniorCare program. While the discrepancies are an annoyance, they do not appear to affect petitioner's eligibility.

### CONCLUSIONS OF LAW

The agency correctly determined a monthly FCP cost share using petitioner's rental income and deductions as set out in FCP policy requirements.

**THEREFORE, it is**

**ORDERED**

That 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 14th day of May, 2015

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\sBrian C. Schneider  
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 14, 2015.

Dodge County Department of Human Services  
Office of Family Care Expansion