



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

MRA/165420

PRELIMINARY RECITALS

Pursuant to a petition filed April 14, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Wood County Human Services - WI Rapids in regard to Medical Assistance, a telephonic hearing was held on May 28, 2015, at Florence, Wisconsin.

The issue for determination is whether the county agency correctly increased the petitioner's patient liability from \$718.87 to \$1,153.33 effective April 1, 2015, due to the loss of petitioner's deduction of maintaining a home per Medicaid Eligibility Handbook, §15.7.1.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Representative:

[Redacted representative name], wife

Respondent:

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

By: Beulah Garcia, ESS
Wood County Human Services - WI Rapids
220 Third Avenue South
Suite 4
Wisconsin Rapids, WI 54495

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is an 87 year old resident of Florence County who entered a nursing home on August 20, 2014. His community spouse is [REDACTED], who resides in their home.
2. Petitioner's wife receives SSI as disabled, and is enrolled in the Family Care Program.
3. On September 5, 2014, petitioner applied for Long-Term Care/Institutional MA as a single person and supplied a doctor's statement to the county agency stating that there was a reasonable expectation that he could return to his home. Therefore, the agency allowed him a \$434.46 home maintenance deduction which resulted in a \$705.87 monthly patient liability.
4. When a person on Medicaid is in the nursing home, his income after a few specified deductions must be paid to the nursing home. This amount is his "patient liability." The unpaid nursing home bill above the patient liability amount is then paid for by Medicaid.
5. The petitioner went home from the nursing home on November 14, 2014 and his case was closed. He was re-admitted to the nursing home on February 6, 2015. The agency indicated that petitioner had a patient liability of \$718.87.
6. On March 11, 2015, the assigned agency ESS worker discovered that the MA Handbook §15.7.1 indicates that even though the petitioner's doctor certified that a petitioner is likely to return home within six months, the deduction for maintain his home cannot be given if his spouse is living in the home. Petitioner's wife has been living in their home during all relevant periods.
7. On March 16, 2015, the Department issued a written notice to the petitioner advising him that his patient liability would increase from \$718.87 to \$1,153.33 effective April 1, 2015, due to the loss of petitioner's deduction of maintaining a home because his wife resides in their home which did not meet the second condition of Medicaid Eligibility Handbook, §15.7.1.

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 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. 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>.

15.7.1 Maintaining Home or Apartment

If an institutionalized person has a home or apartment, deduct an amount from his/her income to allow for maintaining the home or apartment that does not exceed the SSI  payment level plus the E supplement for one person (See 39.4.1). The amount is in addition to the personal needs allowance (See 39.4.2 EBD Deductions and Allowances). It should be enough for mortgage, rent, property taxes (including special assessments), home or renters insurance, utilities (heat, water, sewer, electricity), and other incidental costs.

Make the deduction only when the following conditions are met:

1. A physician certifies (verbally or in writing) that the person is likely to return to the home or apartment within six months, and

2. The person's spouse is not living in the home or apartment.

Deduct this amount for no more than six months. If the person is re-admitted to the institution, grant a six month continuance. A physician must again certify that s/he is likely to return to the home or apartment within six months.

The home maintenance allowance can be granted at any time as long as the person is institutionalized. It is not limited to the first six months of institutionalization.

MEH, §15.7.1.
(Emphasis added).

During the hearing, petitioner's wife explained that it will create a financial hardship to pay the increased amount of patient liability. The petitioner provided a physician statement that he was likely to return to his home within six months. However, petitioner's representative, his wife, admitted that she has been residing in their home and continues to reside in the home. As a result, the petitioner fails to meet the second condition for receiving a deduction for maintaining a home: "The person's spouse is not living in the home or apartment." Accordingly, based upon the above, I must conclude that the county agency correctly increased the petitioner's patient liability from \$718.87 to \$1,153.33 effective April 1, 2015, due to the loss of petitioner's deduction of maintaining a home per Medicaid Eligibility Handbook, §15.7.1.

CONCLUSIONS OF LAW

The county agency correctly increased the petitioner's patient liability from \$718.87 to \$1,153.33 effective April 1, 2015, due to the loss of petitioner's deduction of maintaining a home per Medicaid Eligibility Handbook, §15.7.1.

THEREFORE, it is

ORDERED

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 13th day of July, 2015

\sGary M. Wolkstein
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 July 13, 2015.

Wood County Human Services - WI Rapids
Division of Health Care Access and Accountability