



FH

[REDACTED]

STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

**PRELIMINARY RECITALS**

Pursuant to a petition filed July 01, 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 August 25, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner’s cost share may be waived.

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: [REDACTED]  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner has been an ongoing participant in FCP. Petitioner’s current cost share is \$421.87.
3. Petitioner filed a grievance alleging partial services, delay in caregiver services, and poor communication with her Family Care team. The Grievance Committee notified petitioner of its recommendations on June 22, 2015, including its recommendation that she pursue a Fair Hearing

in order to address her request for a waiver of her cost share for the months of April and May, 2015.

4. Petitioner filed a Request for Fair Hearing on July 1, 2015.

### 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 under Wisconsin Statute, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. See also Medicaid Eligibility Handbook at §29.1 *et seq.*, available at [www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm](http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm).

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." Handbook, § 29.3. There is no dispute that the petitioner's income levels at all times relevant herein have caused her to be subject to a cost share liability. Also, it is clear that a recipient may request a hearing on the determination of the cost share amount. Wis. Stat., §46.287(2)(a)1b.

The issue is whether petitioner's cost share for April and May, 2015, can be waived due to the failure of her provider to provide adequate services in those months. The Wisconsin Administrative Code contains a provision regarding waiver of current cost share amounts:

#### **(4) PAYMENT OF COST SHARE REQUIRED.**

(a) Except as provided in par. (b), a person who is required to contribute to the cost of his or her care but who fails to make the required contributions is ineligible for the family care benefit.

(b) If the department or its designee determines that the person or his or her family would incur an undue financial hardship as a result of making the payment, the department may waive or reduce the requirement. Any reduction or waiver of cost share shall be subject to review at least every 12 months. A reduction or waiver under this paragraph shall meet all of the following conditions:

1. The hardship is documented by financial information beyond that normally collected for eligibility and cost-sharing determination purposes and is based on total financial resources and total obligations.
2. Sufficient relief cannot be provided through an extended or deferred payment plan.
3. The person is notified in writing of approval or denial within 30 days of providing necessary information to the department or its designee.

Wis. Admin. Code, §DHS 10.34(3)(4)(a),(b). See also, *FCP contract*, III-E. The code says that the department "may" waive/reduce the cost share requirement—it is not required to do so.

At hearing, the petitioner testified that the cost share is difficult to afford. The Member Liaison assigned to her case testified that the Grievance Committee recommended a cost share waiver for two months. The respondent did not refute this testimony. However, I do not see that the Family Care rules provide me with authority to waive a cost share obligation for reasons other than financial hardship. The petitioner

has not cited to any such authority, either. The calculation of a cost share does not incorporate the quality of the services provided to the petitioner, and the record does not identify any allegation of error in the calculations. Instead, the petitioner argues that her cost share should be waived since she did not receive the services that she should have until June of 2015, at the earliest. Waiver on those grounds is not provided for by the Family Care Program rules.

The petitioner has in effect argued that the program standard is unfair and that the administrative law judge should grant her relief from the program requirements. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, she is not eligible for a waiver except in cases of undue hardship; no exception applies; and I am without any equitable powers to direct any remedy beyond the remedies available under law.

### **CONCLUSIONS OF LAW**

Petitioner is not entitled to a waiver of her cost share payment for reasons other than undue financial hardship.

**THEREFORE, it is**

**ORDERED**

That the petitioner's appeal 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 September, 2015

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\sPeter McCombs  
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 September 14, 2015.

Milwaukee Enrollment Services  
Office of Family Care Expansion  
Health Care Access and Accountability