



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/167233

PRELIMINARY RECITALS

Pursuant to a petition filed July 14, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on August 04, 2015, at Waukesha, Wisconsin.

The issues for determination are whether Petitioner’s cost of care has been correctly determined and whether there is any basis for a reimbursement for Petitioner’s personal needs allowance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Nick Kusch

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner resides in a nursing home and has since 2011. He had a community spouse but she was also institutionalized as of February 2015. The institutionalization of Petitioner's community spouse

income allocation made her ended. A new cost of care also known as a patient liability amount was calculated him that amount was determined to be him \$4444.34 for petitioner.

3. Petitioner receive Social Security benefits in the amount of \$1543.90 per month gross him. From that deduction of \$104.90 is made for Medicaid part A and B premiums. Petitioner also has a pension that pension is \$2794.36 per month, gross. Federal and state income taxes are withheld. Petitioner's annuity payment is credited with \$209.80 for the Medicaid part A and B premiums he had been paying for himself as well as for his spouse. The agency included Petitioner's Social Security income after the Part A part B premiums (\$1439.00) and added that to Petitioner's gross pension of \$2795.54 plus the \$209.80 and that he was reimbursed by the County for the Part A & B premiums for himself and his spouse. This totals \$4444.34. From the agency subtracted a \$45 personal needs allowance, resulting in a patient liability or cost of care due from Petitioner in the amount of \$4399.34.
4. This appeal was filed contesting the inclusion of the reimbursement by the County pension for the \$209.80 as well as the use of gross income in determining Petitioner's cost of care instead of income after taxes and seeking reimbursement for the \$45.00 per month personal needs allowance for 4 years as the family maintains it did not know Petitioner had such an allowance.

DISCUSSION

Petitioner was represented at the hearing by his daughter. She seeks to have Petitioner's income after taxes counted for purposes of determining Petitioner's cost of care (aka patient liability), to have a pension credit for Petitioner's part A/B Medicare premium disregarded and to be reimbursed for 4 years of Petitioner's monthly \$45.00 personal needs allowance. As a side note – Petitioner's spouse's Part & B is now paid by the Medicare Savings Program.

Gross income is used for Medicaid financial determinations. *Medicaid Eligibility Handbook (MEH)*, §15.2.1. There is no provision for a deduction for taxes. Further, it is not clear why Petitioner has a tax liability as his income goes to medical costs.

As for ignoring the part of the annuity payment that is characterized as reimbursement for the Part A & B premium the MEH states the following as to reimbursements that are to be disregarded:

15.3.19 Reimbursements

A reimbursement is a payment which a person receives for out-of-pocket expenses. Disregard reimbursements for expenses an [AG](#) member has incurred or paid. Do not disregard reimbursements for normal household living expenses (rent, clothing, or food eaten at home).

Here are some examples of reimbursements you should disregard:

1. For job or training related expenses. The expenses may be for travel, food, uniforms, and transportation to and from the job or training site. This includes travel expenses of migrant workers.
2. For volunteers' out-of-pocket expenses incurred during their work.
3. Medical or dependent care reimbursements.
4. Reimbursement from the Indianhead Community Action Agency (Ladysmith) under its JUMP Start Program for start-up costs to set up an in-home child care business in the person's home.
5. Reimbursements received from the Social Services Block Grant Program for expenses in purchasing Social Services Block Grant services, for example, transportation, chore services, and child care services.

The reimbursement payment should not be more than the person's actual out-of-pocket expenses. If it is more, count the excess amount as unearned income.

There is no basis for disregarding the Part A & B portion of Petitioner's annuity. The disregards really are for purposes of determining eligibility not cost of care. Also, the Part A and B premium is already accounted for in the cost of care calculation where the Social Security income used for Petitioner is net of the A & B premium.

The cost of care or patient liability is computed as follows:

1. For a Medicaid member in a medical institution who does not have a community spouse, subtract the following from the person's monthly income:
 - a. \$65 and ½ earned income disregard (15.7.5 \$65 and ½ Earned Income Deduction).
 - b. Monthly cost for health insurance (27.6.4 Health Insurance).
 - c. Support payments (15.7.2.1 Support Payments).
 - d. Personal needs allowance (39.4 EBD Assets and Income Tables).
 - e. Home maintenance costs, if applicable (15.7.1 Maintaining Home or Apartment).
 - f. Expenses for establishing and maintaining a court-ordered guardianship or protective placement, including court-ordered attorney and/or guardian fees (27.6.6 Fees to Guardians or Attorneys).
 - g. Medical Remedial Expenses. See 27.7.8 Payment for Non-Covered Services.
MEH, §27.7.1.

Reading all of the policies together, it is apparent that gross income is used for Medicaid financial purposes and that all income is used to compute the cost of care except for items listed at a-g of MEH, §27.7.1.

Finally, there is no legal basis for the Department or Division of Hearings and Appeals to direct payment to Petitioner or his family for the \$45.00 personal needs allowance. That allowance has always been excluded from the cost of care so was available to use for any other of Petitioner's wants or needs.

CONCLUSIONS OF LAW

1. That gross income is used for purposes of determining cost of care.
2. That there is no basis for excluding the Part A & B reimbursement from Petitioner's gross income.
3. That Petitioner's cost of care has been correctly calculated.
4. That there is no basis for reimbursing Petitioner or his family for the \$45.00 personal needs allowance.

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 2nd day of October, 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 October 2, 2015.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability