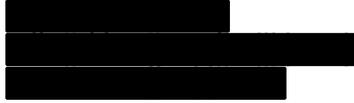




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/167369

PRELIMINARY RECITALS

Pursuant to a petition filed July 20, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA) – related Family Care benefits, a hearing was held on September 9, 2015, at Milwaukee, Wisconsin. The hearing record was held open 10 days to allow the petitioner to submit proof of higher medical/remedial expenses; nothing was received.

The issue for determination is whether the agency incorrectly determined the petitioner’s FC cost share for July 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By:  IM-Advanced
Milwaukee Enrollment Services
1220 W. Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. Prior to July 2015, the petitioner participated in the MAP program for disabled persons. In May 2015, she was notified that she would have to pay a \$675 monthly premium to remain on the

MAP program. She then converted to the Family Care (FC) program effective July 1, 2015. In June 2015, the Department issued written notice to the petitioner advising that her FC cost share would be \$1,176.69 monthly from July 1, 2015, forward.

3. On July 24, 2015, the Department issued another written notice to the petitioner, advising that her cost share would be \$444.69, from September 1, 2015 forward. The agency later corrected the petitioner’s cost share amount to \$444.69 for every month from July 2015 forward.
4. The petitioner receives monthly gross income of \$1,617.69 (\$1,524 + \$83.69 + \$10). She pays rent of \$468, utilities totaling \$100, a \$62 Aetna health insurance premium, and has documented medical/remedial expenses of \$20 monthly.

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 Statutes, § 46.286, and described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. See also, *Medicaid Eligibility Handbook* at §38.2 *et seq.*, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

In this case, the petitioner has been found eligible for FC. 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.” Wis. Admin. Code § DHS 10.34(3)(b). 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 Family Care, and is not on “regular MA” because of excess income, is classified as being in Group A, Group B, or Group “B Plus” (not relevant here). Group **A** is for person who receives SSI or certain other benefits that are not relevant here. The 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 \$2,199 in 2015. *MEH*, § 39.4.1. A Group B recipient may have health insurance premiums, a \$913 Basic Needs Allowance (possibly including housing expenses), and certain medical/remedial 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 gross income of \$1,617 places her in Group B.

For July 2015, the agency’s cost share computation looked like this:

Gross income	\$1617.69
-Basic Needs Allowance	- 913.00
-Special Housing Amount	- 178.00
-Health Insurance Premium	- 62.00
-Med/remedial expenses	- <u>20.00</u>
Cost share	\$444.69

The \$913 Basic Needs Allowance was subtracted. There is no dispute that the petitioner’s rent is \$468. The Special Housing Amount is calculated by starting with a \$468 rent cost, plus a \$40 telephone expense, plus a \$60 electricity expense, for total allowable housing expenses of \$568. From the \$568, a \$350 shelter cost threshold is subtracted, leaving **\$218** (not the \$178 shown above) to be subtracted as a deduction for her higher housing expenses. Thus, the cost share should have been \$404.69 (\$1,617.69 – 913 – 218 – 62 – 20) from July onward. *See, MEH*, § 28.8.3.1.

The petitioner testified that she has other debts which make it nearly impossible for her to meet her cost share. Specifically, she asserts (without documentation) that she owes \$200 monthly on a loan, has credit

card balance, and is facing car repairs. None of these expenses may be subtracted from income in the cost share calculation.

The petitioner also testified at hearing that she wanted her FC benefits to stop effective July 1, 2015, due to the cost share. She apparently did not sign any discontinuance documents. The portion of the agency's contemporaneously kept Case Comments submitted as an exhibit (covering July 17 through August 11, 2015) make no mention of a request to discontinue FC from the petitioner. Finally, on her hearing request, the petitioner checked the box in front of this sentence: "check this box if you would like to request the same services to continue during your appeal." Thus, there is nothing in this hearing record that allows me to find that the petitioner asked to have her FC stopped effective July 1, 2015. If the agency finds such documentation in a review of its files, it may act accordingly. However, I have no basis to conclude that cessation was requested, and cannot order elimination of the accumulating cost share liability on a "cessation request" theory.

CONCLUSIONS OF LAW

1. The agency correctly declined to consider the petitioner's loan indebtedness in computing her July 2015 FC cost share.
2. The petitioner's cost share for July 2015 to the present shall be reduced to \$404.69 monthly, due to an increase in her Special Housing deduction.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to recalculate the petitioner's FC cost share from July 1, 2015 to the present month by reducing it to \$404.69 monthly. This action shall be taken within 10 days of the date of this Decision. In all other respects, 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 Madison,
Wisconsin, this 17th day of October, 2015

\sNancy J. Gagnon
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 October 19, 2015.

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