



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 28, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Family Care, a Medical Assistance-related program, a hearing was held on September 9, 2015, at Milwaukee, Wisconsin.

The issues for determination are whether (1) the petitioner’s appeal is timely for the purpose of contesting her June 2015 Family Care (FC) cost share, and (2) the agency incorrectly determined the petitioner’s FC cost share for June 2015 forward.

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], IM Worker-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 # [REDACTED]) is a resident of Milwaukee County.

2. Prior to July 2015, the petitioner participated in FC with a cost share of \$305. Her case underwent a periodic review in May 2015. On May 8, 2015, the Department mailed her a notice advising that she would have to pay a \$423.77 monthly FC cost share from June 1, 2015, forward. *See*, Exhibit 9.
3. Prior to the June 2015 cost share calculation, the Department was budgeting gross income of \$1,946.10 for the petitioner. The agency also budgeted utility expenses totaling \$355.07 monthly.
4. The petitioner receives undisputed monthly gross income of \$1,965.10 (\$816.10 Social Security Retirement + \$1,149.00 VA). She pays rent of \$500, utilities totaling \$193.33, a \$285 health insurance premium, and has not documented medical/remedial expenses.

### 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, a Special Housing Amount for excessive 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 \$1,965 places her in Group B.

The petitioner's appeal was filed on July 28, so she missed the statutory 45-day time limit for appealing the June 2015 cost share. *See*, Wis. Stat. § 49.45(5). However, her appeal is timely for the purpose of contesting her cost share from July 2015 forward.

For June and July 2015, the agency's cost share computation looked like this:

Gross income	\$1965.10
-Basic Needs Allowance	- 913.00
-Special Housing Amount	- 343.33
-Health Insurance Premium	- 285.00
-Med/remedial expenses	- <u>0.00</u>
Cost share	\$423.77

*See*, Exhibit 8. The \$913 Basic Needs Allowance was subtracted. There is no dispute that the petitioner's rent is \$500. The Special Housing Amount is calculated by starting with a \$500 rent cost, plus a \$193.33 utility total (\$43.33 water, \$75.00 electricity, \$75.00 gas), for total allowable housing expenses of \$693.33. From the \$693.33, a \$350 shelter cost threshold is subtracted, leaving \$343.33 to be subtracted

as a deduction for her higher housing expenses. Thus, the cost share was correctly calculated from July onward. *See, MEH*, § 28.8.3.1.

The petitioner expressed her surprise that her cost share jumped \$118, while her gross income only increased by \$19. However, the higher income was not the only change to the case. The utility cost calculation was done differently. Prior to June 2015, the Department gave the petitioner credit for the entirety of the utility bills at her residence. However, the petitioner shares that residence with her daughter. At the May 2015 review, the Department realized that the daughter is paying half of the utility bills. Accordingly, the Department cut the amount of the countable utility expenses in half.

The Department's position makes common sense. If the petitioner is not paying the entire gas bill, she should not get a deduction premised on paying the entire gas bill. Also, in following the elaborate cross-referencing of legal authorities from the FC code, the cross-referencing trail leads to a federal statute that says utility costs are to be prorated if shared. *See, Wis. Admin. Code* § DHS 10.34(1)(a) & (3)(b)5d, referencing *Wis. Stat.* § 49.455(4)(d)2, referencing 7 U.S.C. § 2014(e)(6)(C)(ii)(III).

### **CONCLUSIONS OF LAW**

1. The petitioner's July 28, 2015 hearing request is not timely with respect to her June 1, 2015, FC cost share determination.
2. The petitioner's Special Housing Deduction in her FC cost share calculation was correctly determined for July 2015 forward.
3. The petitioner's FC cost share for July 2015 to the present was correctly determined.

**THEREFORE, it is**

**ORDERED**

That 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 21st day of October, 2015

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\sNancy J. Gagnon  
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 21, 2015.

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