



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/168613

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 11, 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 October 28, 2015, at Milwaukee, Wisconsin.

There remains no issue for determination.

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: Julie Salmeron

Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She is enrolled in the Family Care Program (FCP).
2. On July 8, 2015 the agency sent the petitioner a notice stating that effective July 1, 2015 the petitioner's monthly cost share amount was \$834.14.

3. The petitioner's monthly gross income is \$1,747.14 consisting of \$1,080.14 from a pension and \$667 from social security. The petitioner also pays \$104.90 for part B Medicare premium. The petitioner did not report rent or additional medical remedial expenses.
4. On September 11, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
5. Prior to the fair hearing the petitioner submitted shelter expenses to the agency. The agency recalculated the petitioner's cost share amount to be \$467.55 effective October 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 in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

Wis. Stat., §46.286(2)(a), provides that an FCP recipient must pay a cost share based upon income and certain expenses. Wis. Admin. Code, §DHS 10.34(3)(b) provides that cost of care is determined by taking the institutionalized person's income, then making several deductions. The first deduction is a personal needs allowance as provided under 42 C.F.R. §435.726(c), if the person is an FCP recipient. That personal needs allowance is \$913, as set out in the MA Handbook, App. 39.4.2. Another deduction is special housing expenses above \$350 per month. MA Handbook, App. 28.8.3.1. A third deduction is for out-of-pocket medical/remedial expenses. Handbook, App. 15.7.3. Any remainder after that is the recipient's cost share.

In this case there remains no issue for determination. The FCP was not deducting a special housing expense above \$350. That information had not been reported to the agency. Prior to the hearing the petitioner provided verification of the special housing expense to the agency. The agency then re-determined the petitioner's monthly cost share effective October 1, 2015. The petitioner does not dispute this cost share amount.

The petitioner's only question was whether the FCP was the best service for him. The petitioner viewed the cost share amount as very high. He questioned whether there were less expensive alternative services that could meet his needs. This is a question that the petitioner and his family will have to resolve. The FC team also gave the petitioner a phone number of a person who conducts exit counseling. If the petitioner no longer wants to receive services through the FCP, he may voluntarily dis-enroll at any time.

I further note that had there been an issue with the cost share amount, I would not have had jurisdiction because the petitioner's appeal was not timely. A FCP recipient can appeal a cost share determination within 45 days after receipt of notice of a decision in a contested matter, or after a resource center or CMO has failed to respond within timeframes specified by this chapter or the department. Wis. Adm. Code, §DHS 10.55(1)(b). The notice in this case was dated July 8, 2015. The Division of Hearings and Appeals did not receive the petitioner's appeal until September 11, 2015. This is well beyond the 45 day time limit. This issue is moot because the petitioner provided new information, and the agency re-determined the petitioner's cost share amount effective October 1, 2015.

### CONCLUSIONS OF LAW

There remains no issue for determination.

**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 Milwaukee,  
Wisconsin, this 30th day of October, 2015

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\sCorinne Balter  
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 30, 2015.

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